

The Convention on Animal Protection: The Missing Link in a One Health Global Strategy for Pandemic Prevention

Rajesh K Reddy and Joan Schaffner

Abstract

As the COVID-19 pandemic demonstrates, society's failure to address animal well-being has had grave consequences not just for animals but also for humans. The emergence of zoonotic diseases is largely a result of high-risk contact with and mistreatment of animals, and it obligates states to assess the risks and mitigate, if not prevent, the underlying harms to animals that ensue. In keeping with the One Health approach, the proposed Convention on Animal Protection for Public Health, Animal Welfare, and the Environment (CAP) lays the groundwork for a comprehensive global strategy to address the missing link in other approaches to the pandemic—specifically by recognizing explicitly that the protection of animal well-being is good for animals, for people, and for the planet.

This Article sets CAP in its historical context, capturing how previous international agreements have been reached to preserve the exploitation of animals as living resources but have not ventured much further than that. This Article looks at how high-risk contact with and mistreatment of animals led to the emergence of COVID-19 and highlights how existing legal frameworks are ill-equipped to prevent similar pandemics. This Article then turns to a discussion of CAP. Here, this Article addresses its origins with the adoption of an American Bar Association (ABA) policy urging the negotiation of a treaty to prevent pandemics by advancing animal protection and welfare. This Article then presents CAP's structure and provisions as framed by its first draft and distinguishes CAP from other treaty proposals. In conclusion, this Article underscores the opportunity CAP presents not just to help prevent future pandemics but also to advance animals' intrinsic interests, which are inextricably interwoven with our own.

1 Introduction

Although the circumstances surrounding the spillover of a novel coronavirus into the human population in Wuhan, China continue to be debated, with no definitive answer in

sight,¹ the general consensus is still that the 2019 outbreak of COVID-19 was a consequence of our high-risk contact with and mistreatment of animals.² It prompted the World Health Organization (WHO) to issue a clarion call to states in 2021 to negotiate a treaty “for pandemic preparedness and response.”³ Since then, several frameworks have been proposed and debated yet none get to the root of the problem.⁴ COVID-19 is just one of many in a long line of zoonoses, or pathogens that prove transmissible from animals to humans, together accounting for 70% of all emerging and re-emerging diseases that afflict humankind.⁵ Despite the diagnosis of COVID-19’s animal origins and confirmed reports of other, potentially deadlier zoonotic outbreaks since then,⁶ states answering the call to negotiate a treaty concerning “pandemic preparedness and response” have lost sight of their ability, if not their duty, to see such outbreaks prevented in the first place. The predominant focus of world leaders has been to treat the effects of disease rather than attend to the conditions that gave rise to it.

In the vanguard of efforts to see states adopt a more considered approach is a cadre of international attorneys and animal law scholars who have drafted an international agreement that pays due regard to how the emergence of zoonotic diseases is largely a result of high-risk contact with and mistreatment of animals and obligates contracting

¹ Laura Ungar, ‘Pandemic mystery: Scientists focus on COVID’s animal origins’ (*Associated Press*, 10 December 2021) <<https://apnews.com/article/coronavirus-pandemic-science-health-covid-19-083bd75a801f9824e0b9ad7316062a5c>> accessed 21 January 2022.

² *ibid*; Associated Press, ‘Manufacturers shutter plants, travel halted as virus spreads’ (*Associated Press*, 18 March 2020) <<https://abcnews.go.com/Travel/wireStory/travel-grinds-halt-plants-close-virus-takes-hold-69671003>>; Daniel E. Slotnik, ‘The official global virus death toll has passed five million. The full count is undoubtedly higher.’ (*New York Times*, 1 November 2021) <www.nytimes.com/2021/11/01/world/5-million-covid-deaths.html> accessed 21 January 2022.

³ World Health Organization, ‘COVID-19 shows why united action is needed for more robust international health architecture’ (*World Health Organization*, 30 March 2021) <www.who.int/news-room/commentaries/detail/op-ed---covid-19-shows-why-united-action-is-needed-for-more-robust-international-health-architecture> accessed 21 January 2022. Note that the WHO, in its statement, speaks to pandemic prevention; however, the authors’ view is that this speaks to the distinction between epidemics and pandemics.

⁴ Text to n 169, n 170, n 171 in Part 4.

⁵ United Nations, ‘Strengthen “One Health approach” to prevent future pandemics – WHO chief’ (*United Nations*, 17 February 2021) <<https://news.un.org/en/story/2021/02/1084982>> accessed 21 January 2022.

⁶ Kamala Thiagarajan ‘Why The World Should Be More Than A Bit Worried About India's Nipah Virus Outbreak’ (*NPR*, 12 September 2021) <www.npr.org/sections/goatsandsoda/2021/09/12/1035571714/why-the-world-should-be-more-than-a-bit-worried-about-indias-nipah-virus-outbrea> accessed 21 January 2022.

parties to assess risks and mitigate, if not prevent, the underlying harms to animals. Called the Convention on Animal Protection for Public Health, Animal Welfare, and the Environment (CAP),⁷ the proposed draft draws heavily on the One Health approach, which illustrates how human health is inextricably intertwined with the health of the environment and of animals.⁸ The key implication of One Health is that human health cannot be safeguarded unless the habitat, health, and well-being of animals are also protected. Poor conditions in one of these spheres can readily overflow to affect, if not infect, the others. Such was almost certainly the case with respect to the emergence of COVID-19, which epidemiologists point to as a direct consequence of habitat encroachment, if not destruction, and animal mistreatment.⁹ As noted earlier, COVID-19 represents just one in a long line of zoonoses stemming from high-risk contact with and mistreatment of animals, with other prominent examples including Nipa Virus, SARS, Ebola, Marburg Hemorrhagic Fever, and HIV-AIDS.¹⁰ Given its distinct focus, CAP, if adopted, would signify a move to a more comprehensive global strategy, one that moves beyond pandemic preparedness and response to prevention. As drafted, CAP creates an umbrella framework that can serve as a first line of defense. Under this umbrella, protocols or sub-treaties could be negotiated to protect animals in other critical contexts.¹¹

This Article calls on states to adopt CAP as a means of helping to address pandemic prevention while improving animal well-being globally. Part 2 explains how this would fit

⁷ ‘Convention of Animal Protection for Public Health, Animal Welfare, and the Environment’ (*Convention on Animal Protection* 20 October 2021) preamble <www.conventiononanimalprotection.org/the-cap-treaty> accessed 22 January 2022 (CAP).

⁸ “One Health is an integrated, unifying approach that aims to sustainably balance and optimize the health of people, animals and ecosystems. It recognizes the health of humans, domestic and wild animals, plants, and the wider environment (including ecosystems) are closely linked and inter-dependent. The approach mobilizes multiple sectors, disciplines and communities at varying levels of society to work together to foster well-being and tackle threats to health and ecosystems, while addressing the collective need for clean water, energy and air, safe and nutritious food, taking action on climate change, and contributing to sustainable development.” Joint Tripartite (FAO, OIE, WHO) and UNEP Statement, ‘Tripartite and UNEP support OHHLEP’s definition of “One Health”’ <<https://wedocs.unep.org/bitstream/handle/20.500.11822/37600/JTFOWU.pdf>> accessed 4 January 2022; Centers for Disease Control and Prevention, ‘One Health’ (*Centers for Disease Control and Prevention*) <www.cdc.gov/onehealth/index.html> accessed 21 January 2022.

⁹ Text to n 100 in Part 3.

¹⁰ W. Ian Lipkin, ‘Zoonoses’ in John E. Bennett and others (eds) *Mandell, Douglas, and Bennett's Principles and Practice of Infectious Diseases* (8th edn, Elsevier 2015).

¹¹ CAP (n 7) art 14.

into the history of prior international agreements that have tried to balance the protection of animals as living resources with their continued exploitation. This Article shows how, over time, treaties initially intended to protect economic interests in animals have more recently gained credit for preserving ecosystems and combating climate change to sustain human life. Part 3 addresses how high-risk contact with and mistreatment of animals leads to zoonoses and explores commonalities between COVID-19 and other zoonotic disease outbreaks. This highlights how existing international legal frameworks are ill-equipped to prevent what has become a recurring problem and underscores the need to make a robust animal protection agreement a critical feature of pandemic treaty talks. Part 4 briefly reviews the origins of CAP and then delves into the proposed treaty's structure and provisions as framed in its first full draft form. Although CAP will be revised as part of the drafting process, this Article concludes by noting its potential not only to help prevent future pandemics but also to advance animals' intrinsic interests.

2 A historical and evolving view of animal protection treaties' purpose

For the last one hundred years, states have negotiated agreements about animals primarily as a means to advance human interests. Those interests were initially defined in narrow economic terms, treating animals as natural resources that could be conserved and exploited for profit. More recently, the value of animal treaties struck for economic reasons has been reassessed in light of what has been learned about the deterioration of ecosystems and the onset of climate change. This reassessment is consistent with the logic of the One Health approach which sees the interests of humans, the environment, and animals as interrelated.

2.1 Animal treaties as the only solution to a zero-sum game

The Fur Seal Treaty of 1911 was one of the first international animal protection agreements and serves to illustrate how the exploitation of animals as natural resources necessitated global cooperation and self-imposed checks on state sovereignty.¹² The treaty

¹² *Convention between the United States and Other Powers Providing for the Preservation and Protection of Fur Seals*, opened for signature 7 July 1911, 104 BFSP 175 (entered into force 14 December 1911).

was negotiated among the United States, Japan, Russia, and Great Britain on behalf of Canada¹³ at a time when hunting had caused seal populations to fall to historic lows in the North Pacific Ocean.¹⁴ While each state could have practiced unilateral conservation to achieve a maximum sustained yield of the seals breeding on their own shores, the seals migrated through the open seas, where they became the target of other states' unrestricted pelagic seal hunts.¹⁵ The resulting zero-sum game dilemma was clear: a state's individual efforts to protect seals by regulating their own on- and off-shore hunting could not prevent exploitation by others. Only two realistic options existed. One was for each state to let hunters take as many seals as they could, while they could and wherever they could. The second was to broker an agreement among states to let seal populations recover and limit hunts in the long-term interests of their respective fur seal industries. Opting for the latter, the parties acknowledged that the exploitation of animals as natural resources demanded international cooperation at the cost of limitations on each party's sovereignty. The resulting rise in seal numbers constituted a historic success,¹⁶ one that could be calculated by summing the total increase in animal parts and in the share of the profits each party enjoyed.

The same principles were at work when the United States and Canada realized that the unconstrained hunting of migratory birds for sport and decorative feathers was imperiling avian species.¹⁷ Both countries had the power to implement controls within their respective jurisdictions. But the fact that birds migrated between the United States and Canada raised the same zero-sum predicament evident in the fur seal case. Self-imposed checks by either state could readily be exploited by the other. In response, the two negotiated the Migratory Bird Treaty in 1916 (MBT).¹⁸ The MBT's preface extolls the

¹³ *ibid.*

¹⁴ Amanda L. Shirnina, 'The Fur Seals of Early American Alaska' (*National Park Service*) <www.nps.gov/articles/000/aps-20-2-9.htm> accessed 21 January 2022.

¹⁵ *ibid.*

¹⁶ The herd at the heart of the dispute increased from 132,000 in 1910 to 1,500,000 by 1961. 'INTERNATIONAL FUR SEAL TREATY NEGOTIATED 50 YEARS AGO' (*Department of the Interior*, 2 July 1961), 2 <www.fws.gov/news/Historic/NewsReleases/1961/19610702.pdf> accessed 24 January 2022.

¹⁷ 'The Migratory Bird Treaty Act, Explained' (*Audubon*, 26 January 2018) <www.audubon.org/news/the-migratory-bird-treaty-act-explained> accessed 21 January 2022 (MBTA Explained).

¹⁸ *ibid.*

great value migratory birds have for humankind, both as a source of food and as a form of natural pest control for public lands and agricultural crops,¹⁹ both areas of economic significance. The treaty then assigned useful migratory birds to one of three categories: game; nongame; and insectivorous birds.²⁰ The treaty banned the hunting of game birds during “close” seasons,²¹ allowed the hunting of nongame birds by Indians and Eskimos for noncommercial food and clothing purposes, and banned the hunting of insectivorous birds year-round.²² After it was incorporated into each country’s domestic law in 1917 and 1918,²³ the MBT proved to be a success. It has been credited for bringing numerous species back from the brink of extinction by preventing bird deaths that in some estimates run into the billions.²⁴ It protected crops and it allowed hunting to continue, successes that persuaded Mexico in 1936, Japan in 1972, and Russia in 1976 to join the MBT as contracting parties.²⁵ Other states have since entered into separate migratory bird agreements around the world.²⁶

The best known example of an animal protection treaty negotiated for exclusively economic purposes is the 1946 International Convention for the Regulation of Whaling (ICRW).²⁷ The history of whaling for meat, oil, and bones extends over several centuries.²⁸ Early hunts occurred in close proximity to land, with whalers armed with hand-held harpoons and nets rowing out into coastal waters and hauling the mammals back to

¹⁹ *Convention between the United States and Great Britain for the Protection of Migratory Birds* opened for signature 16 August 1916, 39 Stat. 1702 (entered into force 6 December 1916).

²⁰ *ibid* art I(3)-(5).

²¹ *ibid* art I(1).

²² *ibid* art I(2); art I(3).

²³ ‘Birds protected under the Migratory Birds Convention Act’ (*Government of Canada*) <www.canada.ca/en/environment-climate-change/services/migratory-birds-legal-protection/convention-act.html> accessed 21 January 2022.

²⁴ MBTA Explained (n 17).

²⁵ ‘Migratory Bird Treaty Act’ (*U.S. Fish & Wildlife Service*) <www.fws.gov/birds/policies-and-regulations/laws-legislations/migratory-bird-treaty-act.php> accessed 21 January 2022.

²⁶ For examples of others, see Mitsuhiko A. Takahashi, ‘Migratory Bird Treaties’ Issues and Potentials: Are They Valuable Tools or Just Curios in the Box?’ (2012) 24(2) *Environmental Law* 609, 611.

²⁷ *International Convention for the Regulation of Whaling*, opened for signature 2 December 1946, 161 UNTS 72 (entered into force 10 November 1948) (ICRW).

²⁸ Malgosia Fitzmaurice, ‘International Convention for the Regulation of Whaling’, *United Nations Audiovisual Library of International Law* (2017) 1, 1 <https://legal.un.org/avl/pdf/ha/icrw/icrw_e.pdf> accessed 24 January 2022.

land.²⁹ With the advent of coastal factories, however, whaling moved further offshore³⁰ and into international pelagic waters when coastal populations were depleted.³¹ Later technological developments like sonar and mechanical harpoons fitted with exploding heads, as well as the ability of larger vessels to process whales onboard, saw whale stocks reduced in very large numbers.³² The result was a zero-sum game on a global scale. Multiple treaties negotiated to try to rein in unfettered exploitation were unsuccessful and when the Great Depression triggered a drastic fall in commodity prices, encouraging even greater exploitation of limited stocks, the global whaling industry collapsed.³³ The initial attempts to address this problem³⁴ laid the foundation for the development of the ICRW in 1946. The goal was to allow whale numbers to rebound to a point where there could be sustainable exploitation, and the treaty had some success in bringing some species back from the brink of extinction and preventing the complete demise of the industry.³⁵ The success could be measured by the increase in whale stocks available to be exploited for their parts.

2.2 Animal treaties as more than the sum total of animal parts

The United Nations Conference on the Human Environment in Stockholm in 1972 marked an inflection point in how the purpose and value of animal protection treaties are assessed. The Conference's official report³⁶ included direct acknowledgement of the "growing evidence of man-made harm in many regions of the earth: dangerous levels of pollution in water, air, earth and living beings" and "major and undesirable disturbances to the ecological balance of the biosphere," among other things.³⁷ The report made a series

²⁹ *ibid* 1.

³⁰ *ibid* 1.

³¹ *ibid* 1.

³² *ibid* 1.

³³ *ibid* 1.

³⁴ *ibid* 1.

³⁵ *ibid* 2; ICRW (n 27) preamble; Ian Hurd, 'Almost Saving Whales: The Ambiguity of Success at the International Whaling Commission' (*Ethics & International Affairs*, March 2012) <www.ethicsandinternationalaffairs.org/2012/almost-saving-whales-the-ambiguity-of-success-at-the-international-whaling-commission-full-text/> accessed 21 January 2022.

³⁶ Special to The New York Times, 'U.N.'s '72 Motto: "Only One Earth"' *New York Times* (New York City, 14 June 1971) 7.

³⁷ United Nations, *Report of the United Nations Conference on the Human Environment* (Report of the Meeting in Stockholm 5-16 June 1972) 3 (Stockholm Report).

of recommendations spanning several spheres of human activity to mitigate, if not reverse, these anthropogenic harms and restore ecological balance. The need for states to protect biological diversity³⁸ was underlined, as was the need to monitor and protect species with commodity values that might be endangered by trade.³⁹

This marked a subtle but significant shift in the global conversation about legal strategies for protecting animals. The earliest treaties allowed exploitation to continue whilst avoiding the bad economic outcome of a zero-sum game. After Stockholm, animals were to be protected because they had economic value but also because they were integral parts of an environment “essential to [the] well-being” of humankind.⁴⁰ This shift spurred a reexamination of existing treaties, eventually including the institution of a ten-year moratorium on commercial whaling under the ICRW to allow stocks to recover.⁴¹

So, although animal treaties still cited economic rationales for advancing animal protections, they increasingly tried to look beyond the status of animals as mere commodities. One example can be found in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),⁴² a measure negotiated to protect endangered species by imposing restrictions on their international trade⁴³ and one anticipated in the Stockholm Conference report.⁴⁴ The preamble to CITES describes the need to prevent the “over-exploitation” of animals as urgent. It asserts that “beautiful and varied forms” of wildlife represent an “irreplaceable part of the natural systems of the earth which must be protected.”⁴⁵ Only with this holistic statement that captures the spirit of the One Health approach does CITES list anthropocentric considerations concerning

³⁸ *ibid* 13-16.

³⁹ *ibid* 12.

⁴⁰ *ibid* 3.

⁴¹ *ibid* 12.

⁴² *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, opened for signature 3 March 1973, 993 UNTS 243 (entered into force 1 July 1975) (CITES)

⁴³ *ibid* preamble.

⁴⁴ Stockholm Report (n 37) 12.

⁴⁵ CITES (n 42) preamble.

the “ever-growing value [of wildlife] from aesthetic, scientific, cultural, recreational and economic points of view.”⁴⁶

CITES can be distinguished, then, from the Fur Seal Treaty and the ICRW because it views the anthropocentric value of animals through multiple lenses and gives states more reasons to protect them than just their commodity or economic value. One of the objectives of CITES is to prevent the “over-exploitation”⁴⁷ of animals. But the goal, here, is not just to prop up commodity prices. CITES envisions a more complex calculus in which the value of animals can also be calibrated in terms, for example, of the ecosystem services they support and their importance for tourism and leisure.

The same sort of calculus about the value of animals is reflected in the Convention on Biological Diversity (CBD),⁴⁸ negotiated approximately two decades after the Stockholm Conference in an effort to protect “natural genetic diversity.”⁴⁹ Defining “biological diversity” to include “all living organisms,” including animal life, the CBD’s first preambular statement asserts the “intrinsic” value biological diversity holds *before* citing rationales for its conservation and sustainable use.⁵⁰ The secondary rationales certainly include recognition and protection of the “economic, scientific, educational, cultural, recreational and aesthetic” values of biological diversity.⁵¹ But in common with CITES, the CBD legitimizes non-economic lenses through which biological diversity can be appreciated and protected, whether through in-situ or ex-situ conservation efforts.⁵²

It bears repeating that the recommendations of the Stockholm Conference were not only forward-looking with respect to their value for animal protection agreements but also retrospective. Its call to elevate animal protections in order to safeguard a shared environment also included a recommendation that states strengthen the ICRW, with a

⁴⁶ *ibid* preamble.

⁴⁷ *ibid* preamble.

⁴⁸ *Convention on Biological Diversity*, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993) (CBD).

⁴⁹ Stockholm Report (n 37) 13.

⁵⁰ CBD (n 48) art 2.

⁵¹ *ibid* preamble.

⁵² *ibid* arts 8, 9.

specific call for a ten-year moratorium on commercial whaling.⁵³ Answering it, conservationists lobbied their governments to ratify the ICRW—not for the purpose of engaging in commercial whaling but to see the practice temporarily or permanently stopped for the sake of the shared environment, even if not out of animal welfare concerns.⁵⁴

Indeed, the transformation of the ICRW probably represents the most compelling example of the paradigmatic shift in global animal law ushered in by the Stockholm Conference. After the ten-year moratorium on commercial whaling was extended indefinitely,⁵⁵ states have increasingly acknowledged the ecosystem services whales provide by stimulating the production of phytoplankton, which removes approximately thirty-seven billion tons of carbon dioxide, a potent greenhouse gas, from the atmosphere every year, and by serving as massive carbon reservoirs during their lives.⁵⁶ These benefits are not confined to ocean habitats. Whales sequester about thirty-three tons of carbon dioxide each when they die and sink to the seabed.⁵⁷ This is a significant contribution to the mitigation of anthropogenic climate change, an existential threat to the survival of all life on earth.⁵⁸

It would be a mistake, then, to measure the effectiveness and contribution of the ICRW and other animal protection treaties in terms of the calculus that gave rise to them in the first place.⁵⁹ Decades after the development of the earliest international animal protection frameworks as solutions to a zero-sum game of resource exploitation, states have begun to embrace their unintended but broader benefits. While evaluations of the success of the early treaties focused on how many animals would be available for continued exploitation

⁵³ Stockholm Report (n 37) 12.

⁵⁴ Gerry J. Nagtzaam, 'The International Whaling Commission and the Elusive Great White Whale of Preservationism' (2009) 33(2) *William & Mary Environmental Law and Policy Review* 375, 410-413.

⁵⁵ Fitzmaurice (n 28) 4.

⁵⁶ Ralph Chami, Thomas Cosimano, Connel Fullenkamp, and Sena Oztosun, 'Nature's Solution to Climate Change' (2019) 56(4) *Finance and Development* 34, 35-36.

⁵⁷ *ibid* 35.

⁵⁸ *ibid* 34.

⁵⁹ It should be noted that without the zero-sum game, it is likely that the world's whales would have been lost given the rate at which they were hunted. Nevertheless, what this new understanding of how animals help sustain all life, including human life, on earth, the zero-sum game necessarily proves a rigged one—that is, one in which all players, or parties to it, alongside those who refuse to play, stand to lose by design.

and use, the focus has shifted to the value of protecting species as a first line of defense against the existential dangers facing humankind.

2.3 Animals as more than just a number

Although states have increasingly recognized that protecting the lives of animals helps in an aggregate sense to sustain ecosystems, mitigate climate change, and underpin the conditions for human existence, states have paid almost no attention to safeguarding the interests of animals as individuals. Domestic law on this subject is highly variable.⁶⁰ Thus, animals who cross borders either on their own volition or are transported by humans are left with no minimum level of protection. Moreover, in the absence of a global baseline for animal welfare, states are free to sacrifice animal welfare so that their animal industries are not competitively disadvantaged in a global marketplace.⁶¹ Corporations trading in animals and animal products have an incentive to locate production in states with the lowest animal welfare standards. This proverbial ‘race-to-the-bottom’ provides little incentive to endorse an animal protection treaty that would disrupt the status quo.

The few animal treaties that actually contemplate animal welfare do so in a narrow context. For example, CITES only protects the welfare of animals insofar as it requires “any living specimen [to] be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment,”⁶² but it does not define or offer any context for what might constitute cruel treatment and governs only international transport of endangered species. The multilateral but narrowly focused Agreement on International Humane Trapping Standards (AIHTS), negotiated by the European Union, Canada, and Russia and in effect since 2008,⁶³ requires parties to cooperate in the development of humane

⁶⁰ ‘67 Best & Worst Countries For Animal Rights (2021)’ (*The Swiftest*, 3 December 2021) <<https://theswiftest.com/animal-rights-index>> accessed 24 January 2022.

⁶¹ Leesteffy Jenkins and Robert Stumberg, ‘Animal Protection in a World Dominated by the World Trade Organization’ in Deborah J Salem and Andrew N Rowan (eds), *State of the Animals: 2001* (Humane Society Press 2001).

⁶² Although this protection against cruel treatment appears several times in CITES, it is in the singular context of preparation, shipment, and holding. CITES (n 42) arts III(2)(c), III(4)(b), IV(2)(c), IV(5)(b), IV(6)(b), VII(7)(c), VIII(3).

⁶³ *Agreement on International Humane Trapping Standards Between the European Community, Canada and the Russian Federation*, opened for signature 15 December 1997, 1998 OJ (L 42) 43 (entered into force 22 July 2008).

trapping methods “on the basis of mutual benefits and the desire to facilitate trade,”⁶⁴ with access to one another’s markets predicated upon adherence to the treaty’s terms.⁶⁵ To this end, the AIHTS bans the use of non-certified traps for listed species based on specific animal welfare criteria.⁶⁶ These provisions of CITES and AIHTS might be cited as the earliest attempts to safeguard the interests individual animals have in their welfare. This accounting for animals’ interests as individuals as opposed to humans’ interests in them at a species level represents a significant, if small, step away from protecting animals as a solution to a zero-sum game or as part of a numbers game of any kind. Put differently, it signals a shift from counting each animal to making each one count. The critical question remains, however: How can the economic hurdles to safeguarding the interests of animals as individuals be overcome?

Previous efforts to address this challenge have yielded several initiatives, none of which have been adopted. One of them is the Universal Declaration for Animal Rights⁶⁷ presented at the United Nations Educational, Scientific and Cultural Organization in 1978.⁶⁸ Another is the Universal Declaration on Animal Welfare, drafted in 2005.⁶⁹ Both lay out foundational principles regarding animal rights and welfare.⁷⁰ As declarations, they do not, however, entail binding obligations and are, therefore, distinct from treaties,⁷¹ even draft treaties, in terms of their potential impact. Declarations would, of course, if adopted, signal an interest in framing domestic legislation consistent with the listed principles and perhaps a willingness to engage in treaty talks.⁷² But that is, at best, an uncertain outcome.

⁶⁴ *ibid* art 6(b).

⁶⁵ *ibid* art 13(1). Technically, the AIHTS stipulates that “no Party may impose trade restrictive measures on fur and fur products originating from any other Party.” *ibid* art 13(1).

⁶⁶ Just a few of these include likelihood of incidence of self-biting leading to injury, spinal cord injuries; and severe organ damage. *ibid* annex 2, annex 3.

⁶⁷ Jean Marc Neumann, ‘The Universal Declaration of Animal Rights or the Creation of a New Equilibrium Between Species’ (2012) 19 *Animal Law* 91, 94-95.

⁶⁸ *ibid* 98-99.

⁶⁹ Miah Gibson, ‘The Universal Declaration of Anima Welfare’ (2011) 16(2) *Deakin Law Review* 539, 541.

⁷⁰ Neumann (n 67) 97-98; Gibson (n 69) 541, 547-48.

⁷¹ Gibson (n 69) 552.

⁷² *ibid* 558.

In an effort to provide more formal and binding obligations on states, Professor David Favre drafted the International Convention on the Protection of Animals (ICPA) in 1988.⁷³ Using an umbrella approach, the ICPA contained general animal protection principles in its main framework and then allowed for the possibility that protocols could be negotiated and adopted to deal with the specific welfare issues that arise, for example, in the context of companion animals, the taking of wild animals, exhibited wildlife, and the international transportation of animals.⁷⁴ To be a party to the ICPA, states would have had to adopt both the framework treaty and at least one protocol.⁷⁵ Despite being presented to the World Society for the Protection of Animals and a potentially receptive country that might sponsor it, the ICPA failed to gain traction at the time.⁷⁶ In 2019, the Global Animal Law Association also developed a draft treaty, which it called the United Nations Convention on Animal Health and Protection (UNCAHP).⁷⁷ The drafters sought to advance their treaty through the United Nations, but as with the ICPA it has not been adopted.⁷⁸

Favre has observed that a state's agreeing to sponsor an animal protection treaty "requires a level of political concern within the nation state, such that the expenditure of human and financial resources is justified."⁷⁹ This initial hurdle had yet to be overcome.⁸⁰

It is possible that the COVID-19 pandemic will begin to create the levels of concern Favre thinks are needed. Less than a decade after the negotiation of the Fur Seal Treaty, the world witnessed an outbreak of rinderpest, or cattle plague, in Belgium, when zebu cows being transported from India to Brazil passed through the port of Antwerp in 1920.⁸¹ What that epidemic made clear was that in an increasingly globalizing world, animal

⁷³ David Favre, 'An International Treaty for Animal Welfare Symposium Article' (2012) 18(2) *Animal Law* 237, 246.

⁷⁴ *ibid* 259.

⁷⁵ *ibid* 255.

⁷⁶ *ibid* 262.

⁷⁷ 'UN Convention on Animal Health and Protection' (*Global Animal Law Association*) <www.globalanimallaw.org/gal/projects/uncahp.html> accessed 21 January 2022.

⁷⁸ *ibid*.

⁷⁹ Favre (n 73) 262.

⁸⁰ *ibid* 262.

⁸¹ 'Rinderpest' (*World Organisation for Animal Health*) <www.oie.int/en/disease/rinderpest/> accessed 21 January 2022.

diseases could not be confined to a single state. The response at the time was the creation of an Office International des Epizooties, or what is now also known as the World Organization for Animal Health (OIE).⁸² The OIE promotes farmed animal health and thus the profitability of agricultural industries, as well as works to prevent the spread of zoonotic diseases, such as rabies.⁸³ The OIE does this by developing animal welfare guidelines.⁸⁴ The guidelines exist, however, outside the context of a treaty regime, meaning that states may choose to adopt them but are not obligated to do so.⁸⁵ Countries can be encouraged to embrace them,⁸⁶ but the standards are not binding and therefore of limited value in preventing zoonotic disease outbreaks.

3 An animal protection treaty for pandemic prevention and beyond

3.1 The almost certain zoonotic origins of the COVID-19 outbreak

While no definitive answer exists as to the question of how SARS-CoV-2 originated, the majority view is that it is zoonotic in nature, not manufactured in and leaked from a Chinese lab.⁸⁷ Indeed, the majority of other viruses that have affected humans are also zoonotic in origin.⁸⁸ For example, HIV-AIDS spilled into humans when hunters in the Democratic Republic of Congo ate infected chimpanzees.⁸⁹ Nipah virus emerged in 1998 when Malaysians came into contact with pigs infected by bats, with the spillover

⁸² *International Agreement for the Creation of an International Office for Epizootics (OIE)*, opened for signature 25 January 1924, 57 LNTS 135 (entered into force 12 January 1925).

⁸³ ‘One Health’ (*World Organisation for Animal Health*) <www.oie.int/en/what-we-do/global-initiatives/one-health/> accessed 21 January 2022.

⁸⁴ ‘Animal Welfare’ (*World Organisation for Animal Health*) <www.oie.int/en/what-we-do/animal-health-and-welfare/animal-welfare/> accessed 21 January 2022.

⁸⁵ ‘Standards’ (*World Organisation for Animal Health*) <www.oie.int/en/what-we-do/standards/> accessed 21 January 2022.

⁸⁶ *ibid.*

⁸⁷ Associated Press, ‘Pandemic Mystery: Scientists Focus on COVID's Animal Origins’ (*U.S. News*, 10 December 2021) <www.usnews.com/news/health-news/articles/2021-12-10/pandemic-mystery-scientists-focus-on-covids-animal-origins> accessed 21 January 2022. Although the lab-leak theory cannot be dismissed, one of the scientists who contributed to the report argued that the “idea is almost certainly a huge distraction that’s taking focus away from what actually happened.” *ibid.*

⁸⁸ Holmes, et. al. *The origins of SARS-CoV-2: A critical review* (2021) 184 *Cell* 4848. On top of this, “SARS-CoV-2 also shows similarities to the four endemic human coronaviruses: human coronavirus-OC43 (HCoV-OC43), human coronavirus-HKU1 (HCoV-HKU1), human coronavirus-229E (HCoV-229E), and human coronavirus NL63 (HCoVNL63).” *ibid* 4849.

⁸⁹ ‘Origin of HIV and AIDS’ (*Avert*) <www.avert.org/professionals/history-hiv-aids/origin> accessed 4 January 2022.

attributed to “anthropogenic factors including agricultural expansion and intensification.”⁹⁰ And initial outbreaks of Marburg virus in Germany and Serbia in 1967 were connected to the import of African Green monkeys from Uganda for laboratory research.⁹¹ With regard to SARS-CoV-2, a joint report issued by the WHO and China underscores SARS-CoV-2’s striking similarities to coronaviruses found in pangolins and horseshoe bats, with one of the two likely serving as a reservoir species,⁹² a host that carries but does not get sick from the virus.⁹³ While the report argues that direct transmission from one of these species to humans cannot be discounted,⁹⁴ it nevertheless calls attention to the prospect of SARS-CoV-2 having mutated in an intermediate host, likely one of the species kept at the Huanan live animal market in Wuhan, before spilling over into the human population.⁹⁵ Although scientists have yet to find either the reservoir or intermediate host species,⁹⁶ this theory is buttressed by the fact that this scenario has played out multiple times in the region. SARS-CoV-2 bears similarities with SARS-CoV, which emerged in Guangdong province in 2002 and then again in 2003.⁹⁷ Both of these outbreaks were linked to live animal markets selling many of the same species known to be susceptible to and thus likely to have served as intermediate hosts for SARS-CoV2—in particular, civets and raccoon dogs.⁹⁸

Dr. Christian Walzer of the Wildlife Conservation Society notes that pathogens are normally confined to reservoir species’ natural habitats.⁹⁹ Humans come into contact with

⁹⁰ Jonathan H. Epstein, Hume E. Field, Stephen Luby, Julliett R.C. Pulliam, & Peter Daszak, ‘Nipah Virus: Impact, origins, and causes of emergence’ (2006) 8(1) *Curr Infect Dis Rep*. <www.ncbi.nlm.nih.gov/pmc/articles/PMC7088631/> accessed 4 January 2022.

⁹¹ ‘Marburg virus disease’ (*World Health Organization*) <www.who.int/health-topics/marburg-virus-disease> accessed January 4, 2022.

⁹² Joint WHO-China Study Team, *WHO-convened Global Study of Origins of SARS-CoV-2: China Part* (14 January-10 February 2021) 7-8 <www.who.int/docs/default-source/coronaviruse/final-joint-report_origins-studies-6-april-201.pdf> accessed 21 January 2022 (Joint Report).

⁹³ Natasha Daly, ‘Chinese citizens push to abolish wildlife trade as coronavirus persists’ (*National Geographic*, 30 January 2020) <www.nationalgeographic.com/animals/2020/01/china-bans-wildlife-trade-after-coronavirus-outbreak> accessed 21 January 2022.

⁹⁴ Joint Report (n 92) 93. “However, neither of the viruses identified so far from these mammalian species is sufficiently similar to SARS-CoV-2 to serve as its direct progenitor.” *ibid* 7.

⁹⁵ *ibid* 93.

⁹⁶ Holmes (n 88) 4850.

⁹⁷ *ibid* 4848. The 2002 and 2003 outbreaks occurred in Guangdong Province. *ibid* 4848.

⁹⁸ *ibid* 4848.

⁹⁹ Daly (n 93).

them through habitat encroachment, providing for a direct transmission into the human population.¹⁰⁰ But even if SARS-CoV-2 was not directly transmitted, habitat encroachment and the poor welfare conditions under which captured animals are often kept in live markets create perfect conditions for diseases to mutate and thus indirectly affect humans. The animals in live markets often suffer from injuries, such as missing limbs or open wounds or are stressed by thirst.¹⁰¹ This mistreatment has led to live animal markets being described as “cauldron[s] of contagion” given their crowded and unhygienic conditions,¹⁰² with captive animals’ immune systems compromised due to elevated stress levels,¹⁰³ as well as different species in cages stacked one on top of another and a resulting exchange of air and excreta that facilitates the spread and mutation of viruses.¹⁰⁴ Whether SARS-CoV-2 directly or indirectly spilled over into humans, the Huanan live animal market was at the epicenter of the COVID-19 outbreak. Indeed, two of the first three documented cases had direct ties to the market and more than half of all cases featured ties to it, or to another Wuhan live animal market, in December of 2019, the first month of the outbreak.¹⁰⁵

3.2 Imperfect individual state measures insufficient to prevent pandemics

The Chinese government announced a temporary ban on wildlife trade in January 2020.¹⁰⁶ This implicitly substantiated the belief that COVID 19 was zoonotic in origin. A month later, the government openly acknowledged the dangers that zoonotic diseases pose to public health and stated its intention to make the ban permanent.¹⁰⁷ The ban itself,

¹⁰⁰ *ibid.*

¹⁰¹ *ibid.*

¹⁰² *ibid.*

¹⁰³ Bing Lin, Madeleine L Dietrich, Rebecca A Senior, and David S Wilcove, ‘A better classification of wet markets is key to safeguarding human health and biodiversity’ (2021) 5.6 E386-E394 <[www.thelancet.com/journals/lanplh/article/PIIS2542-5196\(21\)00112-1/fulltext](http://www.thelancet.com/journals/lanplh/article/PIIS2542-5196(21)00112-1/fulltext)> accessed 27 July 2022.

¹⁰⁴ Simon Denyer and Lyric Li, ‘China bans wild animal trade until coronavirus epidemic is eliminated’ (*Washington Post*, 26 January 2020) <www.washingtonpost.com/world/asia_pacific/china-bans-wild-animal-trade-until-coronavirus-epidemic-eliminated/2020/01/26/0e05a964-4017-11ea-971f-4ce4f94494b4_story.html> accessed 24 January 2021.

¹⁰⁵ Holmes (n 88) 4849.

¹⁰⁶ Denyer and Li (n 104).

¹⁰⁷ James Gorman, ‘China’s Ban on Wildlife Trade a Big Step, but Has Loopholes, Conservationists Say’ (*New York Times*, 27 February 2020) <www.nytimes.com/2020/02/27/science/coronavirus-pangolin-wildlife-ban-china.html> accessed 21 January 2022.

however, was narrow in scope.¹⁰⁸ While it prohibited the transport and consumption of non-aquatic wildlife at live animal markets and restaurants and via e-commerce platforms,¹⁰⁹ it did not prohibit the trade in wildlife for research, clothing, or medicinal purposes,¹¹⁰ thereby creating significant loopholes. There is a lingering fear that the ban will be overturned, as happened with the ban imposed following the 2003 SARS-CoV epidemic, which killed roughly 750 people around the world.¹¹¹

The COVID-19 pandemic and China's response to it underscore the need for international measures to prevent high-risk contact with and mistreatment of animals if the risk of future pandemics is to be meaningfully mitigated. Although states can enact laws to reduce the risk of zoonotic disease outbreaks within their own borders, those measures are highly unlikely to prevent their emergence elsewhere. A state with domestic controls still has to bear the risk that other states will have no controls. And as states have come to learn, simply closing borders is not a viable strategy to keep disease from spreading.¹¹² That can only be done through an international agreement that obligates all states to implement sensible and substantive domestic laws to mitigate the risk that zoonotic diseases, such as Marburg Hemorrhagic Fever, SARS, Nipa Virus, Ebola, and HIV-AIDS will emerge and spread.

¹⁰⁸ *ibid.*

¹⁰⁹ *ibid.*

¹¹⁰ *ibid.*; Reuters Staff, 'China bans trade, consumption of wild animals due to coronavirus' (*Reuters*, 24 February 2020), <www.reuters.com/article/uk-china-health-wildlife-idAFKCN20J065> accessed 21 January 2022.

¹¹¹ Gorman (n 107) Notably, China lifted the ban after those in the wildlife trade industry complained of its economic impact. Koh, L.P., Li, Y. & Lee, J.S.H. 'The value of China's ban on wildlife trade and consumption' (2021) 4(3) *Nature Sustainability* 2, 3.

¹¹² Smriti Mallapaty, 'What the data say about border closures and COVID spread' (*Nature*, 22 December 2020) <www.nature.com/articles/d41586-020-03605-6> accessed 21 January 2022.

4 The Convention on Animal Protection for Public Health, Animal Welfare, and the Environment

4.1 The origins of CAP

The origins of CAP can be traced to the American Bar Association (ABA), founded in 1878 and one of the largest voluntary professional organizations in the world.¹¹³ Its mission “is to serve equally [its] members, [the] profession and the public by defending liberty and delivering justice as the national representative of the legal profession.”¹¹⁴ The ABA has four overarching goals, including Goal IV to “advance the rule of law” by “work[ing] for just laws.”¹¹⁵ The House of Delegates (HOD) is the legislative body that formulates ABA policy on a variety of legal issues.¹¹⁶ The composition of the HOD is comprehensive and diverse,¹¹⁷ an important reason why ABA policy recommendations are generally respected as sound and nonpartisan.

In 2004, an Animal Law Committee (ALC) was established in the Tort Trial and Insurance Practice Section (TIPS) of the ABA.¹¹⁸ In 2016, an International Animal Law Committee (IALC) was established in the ABA’s International Law Section (ILS).¹¹⁹ Both committees provide a voice for nonhuman animals in the ABA, raise awareness of their plight under the law within the ABA and beyond, and develop ABA policy that supports the

¹¹³ ‘ABA Mission and Goals’ (*American Bar Association*) <www.americanbar.org/about_the_aba/aba-mission-goals/> accessed 15 January 2022.

¹¹⁴ *ibid.*

¹¹⁵ *ibid.*

¹¹⁶ ‘ABA Constitution’ (*American Bar Association 2020-2021*) § 6.1 <www.americanbar.org/groups/leadership/house_of_delegates/aba-constitution-and-bylaws/> accessed 15 January 2022.

¹¹⁷ Delegates represent every state and each of the territories, state bar associations, eligible local bar associations, each Section of the ABA and various judicial conferences, as well as the Attorney General of the US and the Director of the Administrative Office of the US Courts. *ibid* § 6.2.

¹¹⁸ The mission of the ALC is to “address all issues concerning the intersection of animals and the law to create a paradigm shift resulting in a just world for all.” ‘Animal Law’ (*ABA Communities Tort Trial and Insurance Practice Section*) <<https://communities.americanbar.org/topics/12999/feed>> accessed 15 January 2022.

¹¹⁹ The IALC “works to further animal welfare through advocacy and education. The IALC educates the legal community, policy makers, government officials and the public about animal issues. It also monitors the drafting and adoption of agreements affecting animals and takes a proactive position to advocate for the protection of animals on a world-wide basis. ‘International Animal Law’ (*ABA Communities International Law Section*) <<https://communities.americanbar.org/topics/13251/feed>> accessed 15 January 2022.

establishment of just laws for all sentient beings, including nonhuman animals, in the U.S. and internationally.

In March 2020, the committees co-hosted a webinar featuring David Favre, who presented and discussed his earlier proposal for ICPA.¹²⁰ The timing proved to be fortuitous. March 2020 was the month in which the COVID-19 lockdown in the U.S. began. At the time, no one envisioned that the pandemic would reach virtually every corner of the world, continue for years, and result in more than 6.14 million deaths,¹²¹ including over 1 million deaths in the U.S., which leads the world in total human deaths.¹²² Additional infections of nonhuman animals, including cats, dogs, big cats and gorillas in zoos, mink on farms, and other mammals, after their exposure to humans with the virus, were also not anticipated.¹²³ But as the global dimensions of the pandemic became clear, support grew for a HOD resolution recommending that a convention on animal protection should be negotiated.

On February 22, 2021, the HOD was presented with the following resolution:

RESOLVED, That the American Bar Association urges all nations to negotiate an international convention for the protection of animals that establishes standards for the proper care and treatment of all animals *to protect public health, the environment, and animal wellbeing*; and

FURTHER RESOLVED, That the American Bar Association encourages the U.S. State Department to initiate and take a leadership role in such negotiations.¹²⁴

¹²⁰ Favre (n 73).

¹²¹ ‘COVID-19 Coronavirus Pandemic’ (*Worldometer*) <www.worldometers.info/coronavirus/?utm_campaign=homeAdvegas1?%221> accessed 26 March 2022.

¹²² *ibid.*

¹²³ ‘Animals’ (*CDC* 18 November 2021) <www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/animals.html> accessed 5 January 2022.

¹²⁴ ‘ABA Resolution 21M101C’ (emphasis added) (*American Bar Association*) <www.americanbar.org/content/dam/aba/administrative/news/2021/02/midyear-resolutions/101c.pdf> accessed 5 January 2022.

There was no opposition and the resolution passed by a large majority. The accompanying report read in part as follows:

As the recent pandemic has demonstrated, the failure of society to address animal welfare has grave consequences not just for animals, but directly for humans in our shared existence with animals on the planet. As the One Health approach embraced by the United Nations (UN) and the US Center for Disease Control and Prevention (CDC) recognizes, the health of humans and the risk of diseases spilling over to humans from animals (zoonotic diseases) is directly related to the health of animals. Human use and mistreatment of animals, including the wildlife trade and human destruction of natural habitats, contribute significantly to the risk of diseases “spilling over.” . . . Given the recognized connection between animal wellbeing, public health, and the environment, an ICPA would be “just” and promote quality of life and the public good in that it provides the missing link in that three-pronged relationship and will result in direct benefits to animals by improving their wellbeing and to humans by protecting their rights to life, security, and a safe, clean, healthy, and sustainable environment. Further, the legal implications of the ICPA are far-ranging. Not only is the Convention itself an international legal instrument and, for signatory countries, will likely require changes to their national laws to come into compliance, but the consequences of not taking animal well-being seriously has [sic] legal implications in several substantive areas of the law, including tort law, insurance law, employment law, health law, and environmental law.¹²⁵

The resolution deliberately avoided describing the specific provisions of a convention.¹²⁶ That work requires specialized knowledge of animal health, welfare, and law across many species and jurisdictions. The ABA did, however, take an important first step in

¹²⁵ *ibid* 1-2.

¹²⁶ *ibid* 3.

recognizing the need for an international convention to protect animals for their own sake as well as for the health of humans and our planet.

The effectiveness of such a convention in protecting animal well-being, however, is a function of its specific provisions. The ABA’s resolution was adopted with the understanding that it, would, in fact, advance existing standards for public health, the environment, and animal well-being. Thus, negotiations for a convention should proceed only if “there is some level of belief that the results of . . . negotiations [for a convention] will not . . . simply make present animal welfare treatment the global standard . . . [and] enhance[e] the economic, and therefore political, power of the global and national corporations that control [and exploit] so many millions of animals.”¹²⁷ With the WHO’s call, in March 2021, for global action to address COVID 19 and future pandemics,¹²⁸ attention turned to drafting CAP to provide greater protections for animals while helping to prevent the next pandemic.

The goal for CAP is to ensure buy-in from countries worldwide, which each have different social, cultural, religious, economic, and political perspectives. As such, CAP is an animal welfare, not an animal rights treaty, with provisions designed to be politically feasible while also improving legal protections for animals. Nevertheless, a theme of CAP is the acknowledgment that animals are sentient beings with intrinsic worth who are deserving of protection.

4.2 A summary of CAP

The following discussion of CAP is based on the version that was finalized in late October 2021 and remained open for comment until February 2022.¹²⁹ CAP has been drafted in line with the One Health approach—that human health, animal well-being and the health of the environment are inextricably linked. To date, however, animal well-being is not a focus of international agreements, especially in the context of public health and the

¹²⁷ Favre (n 73) 263-64.

¹²⁸ World Health Organization (n 3).

¹²⁹ CAP (n 7) 1. The drafters received significant comments on the October draft and at the time of this writing are revising its text. A discussion of the revised CAP is left for a future article once completed.

environment. CAP fills this gap. CAP follows an umbrella treaty approach creating the general framework of a treaty that establishes basic principles and providing for the adoption of protocols to establish more specific and more refined animal welfare standards and requirements. This approach is likely one that can accommodate in the first instance countries with significantly different social, cultural, religious, economic, and political backgrounds.

CAP has three parts: Introduction, Operational Provisions, and Functioning of the Treaty. The Introduction¹³⁰ sets out the fundamental principles on which CAP is based and defines animal communities based on their species and the environment in which they are found.¹³¹ The One Health obligation to act responsibly towards all animals is explained. The premise is that animals as sentient beings with intrinsic value should never “be killed unnecessarily or be subjected to cruel acts or unnecessary suffering.”¹³² Thus, humans have a “positive obligation” to ensure the well-being of any animal under their control “by providing [the animal] with a suitable environment and care appropriate for their species.”¹³³ Moreover, “[h]umans and animals co-exist within an interdependent ecosystem”¹³⁴ and “[s]ubjecting animals to physical, mental, and environmental stress increases their susceptibility to contracting and thus transmitting disease.”¹³⁵ Thus, the “global health of humankind requires careful regulation” of our treatment of all animals and especially “the taking, control, transportation, and keeping of wild animal species that are natural primary reservoirs of viruses and other pathogens, and those animals who can act as intermediate hosts of such pathogens that may spill over to humans.”¹³⁶

¹³⁰ CAP (n 7) arts 1, 2.

¹³¹ Animal is defined as “any non-human mammal, bird, reptile, amphibian, or fish any other organism that may be included specifically within a particular Protocol.” *ibid* art 2. Six animal communities based on the animal species and specific environment—wildlife, captive wildlife, domestic animal, companion animal, commercial animal, and animal used in entertainment—are also defined. *ibid* art 2.

¹³² *ibid* art 1(2).

¹³³ *ibid* art 1(3).

¹³⁴ *ibid* art 1(1).

¹³⁵ *ibid* art 1(5).

¹³⁶ *ibid* art 1(4).

Part II, dealing with operational provisions¹³⁷ is the core of CAP. It proposes establishing a regime to avoid the spillover of zoonotic diseases from animals to people and to set minimum standards for the well-being of animals. Articles 3-6 specifically target the spillover of zoonotic diseases by requiring parties “to identify species susceptible to being reservoirs or hosts of viruses and other pathogens”¹³⁸ that are a material risk to public or animal health,¹³⁹ to list them in a convention annex, and to take appropriate measures to “regulate interaction amongst those species, humans, and other animals.”¹⁴⁰ It is important to emphasize that the animals themselves do not create the public health risk; rather inappropriate human use of, and interaction with, these animals is the source of the risk and what must be avoided.

CAP would establish a Risk Assessment and Remedy Committee responsible for creating the list of high-risk species and for identifying strategies that would reduce the risk of zoonotic disease transmission, in coordination with Science and Health Authorities, to be established by each contracting party.¹⁴¹ The authorities would submit annual reports to the convention’s Secretariat, “identifying the specific location of each [annex-listed] species, its proximity to other animals and human settlements, the nature of the risks the species presents, and the strategies that are presently employed or could be employed to mitigate such risks, including through the effective preservation of the species and its habitat and sufficient isolation from other species and humans to reduce the risk of transmission of viruses and other pathogens to other animals and humans”¹⁴² and for “educating the public about the risks of transmission of viruses and other pathogens and strategies necessary to mitigate them.”¹⁴³ CAP would require that all parties prohibit the use of listed wildlife in research and testing;¹⁴⁴ “prohibit the capture of listed wildlife and the keeping, sale, purchase, farming, consumption, import and export of wild-caught animals . . . listed in the annex regulate any live animal market where listed wildlife are

¹³⁷ *ibid* arts 3-14.

¹³⁸ *ibid* art 3.

¹³⁹ *ibid* art 4.

¹⁴⁰ *ibid* art 3.

¹⁴¹ *ibid* art 6.

¹⁴² *Ibid* art 4(2).

¹⁴³ *ibid* art 5.

¹⁴⁴ *Ibid* art 12(2)(d).

present . . . ; adopt plans to reduce or prevent [high-risk] interaction of humans and other animals within the habitat of the listed species through a variety of non-lethal measures; and “adopt preparation and mitigation plans to reduce or prevent the risk of transmission of zoonotic viruses and other pathogens from commercial animals to humans.”¹⁴⁵

Articles 7-13 provide minimum standards for the well-being of animals and for the prevention of spillover of diseases for each animal community and during transport. Article 7 addresses wildlife management and habitat and requires that parties “take all reasonable steps to use those scientific management practices that result in the least suffering and killing of wildlife and maximize the conservation of wildlife habitat.”¹⁴⁶ Further, parties are to ensure that the habitats of listed species are isolated from “residential and commercial facilities where other animals are present.”¹⁴⁷ Fur farming is expressly prohibited, and wildlife farming is either strictly regulated or prohibited.¹⁴⁸ Moreover, the live taking of wildlife can only occur when resources are available for assuring the well-being of the animal after the taking.¹⁴⁹

Article 9 governs transportation of animals and requires that animals are “provided with responsible care for their well-being during transport, to prevent cruelty and unnecessary suffering,” and to ensure the non-mixing of species and the isolation of listed species from other animals during transport.¹⁵⁰ Additional, specific protections are enumerated to ensure that no animal is subjected to “inadequately constructed containers or insecurely fitted vehicles . . . or exposure to potentially harmful substances . . . or contaminated containers or cargo spaces; undue exposure to the weather, including extremes of temperature, humidity, or air pressure; inadequate fresh air . . . or exposure to undue noise and vibration; overcrowding or confinement with non-compatible species; and inadequate supplies of water and food.”¹⁵¹

¹⁴⁵ *ibid* art 4(3).

¹⁴⁶ *Ibid* art 7(1).

¹⁴⁷ *ibid* art 7(1).

¹⁴⁸ *ibid* art 7(4).

¹⁴⁹ *ibid* art 7(2).

¹⁵⁰ *ibid* art 9(1).

¹⁵¹ *ibid* art 9(2).

The remaining operational articles concern the treatment of animals under the direct care of humans. Independent of any specific commercial environment, CAP requires that parties take all necessary steps to: ensure the animals are provided “an appropriate species-specific environment and the necessary care for their well-being,” “prevent cruelty to or unnecessary suffering of” the animals, and mitigate the risks of spillover of zoonotic diseases.¹⁵² Additional basic minimum standards of care are stipulated for captive wildlife, companion animals, animals used in scientific research and testing, and animals used in entertainment. They include providing “suitable and sufficient food and water;” “adequate shelter from adverse environmental conditions;” “adequate opportunities for exercise;” “appropriate socialization and mental stimulation;” and “adequate and species-specific veterinary care.”¹⁵³

Additionally, there are requirements tailored to specific environments designed to promote the well-being of animals and public health. For example, for companion animals, parties shall promote “vaccination campaigns in order to prevent the transmission of virus and vector-borne diseases; and sterilization campaigns to control the overpopulation of stray companion animals.”¹⁵⁴ And for animals used in scientific research and testing, parties shall take all necessary steps to “minimize the use of animals in scientific research and testing; require scientific research and testing facilities to publish publicly the number and species of animals used in research and testing practices; . . . move toward the elimination of live animal testing of commercial products through standards setting and by providing the resources necessary for using alternative methods of testing; and prohibit the import, export, purchase, sale, or advertisement of any cosmetic product if the cosmetic product or any component was developed using animal testing.”¹⁵⁵

These operational provisions of CAP set minimal standards that bind all parties. CAP is not subject to general reservations. Parties may, however, enter specific reservations in

¹⁵² *ibid* arts 8(1), 11, 12(1), 13(1).

¹⁵³ *ibid* art 8(2), 10(2), 12(3), 13(3). Veterinary care is not required for companion animals. *ibid* art 10(2).

¹⁵⁴ *ibid* art 10(4).

¹⁵⁵ *ibid* art 12(2).

accordance with Article 28.¹⁵⁶ Importantly, CAP provides for the negotiation of subsequent protocols for specific animal communities to set standards for adopting parties at a greater level of detail and increased protection for animals and public health.¹⁵⁷ Moreover, CAP contemplates the rights of parties to set stricter domestic standards than those provided in the umbrella treaty or protocols.

Article 14, the final operational provision, requires parties to adopt measures that implement the principles and standards set forth in CAP and to cooperate in the formulation and adoption of protocols, the exchange of data and other information to further the purposes of CAP, and the enforcement of CAP.¹⁵⁸

Finally, Part III¹⁵⁹ governs the functioning of the treaty and is consistent with similar provisions in other international conventions. CAP would have a Secretariat¹⁶⁰ and a Standing Committee,¹⁶¹ there would be periodic reports on domestic legislation implementing the treaty,¹⁶² and amendment of the treaty.¹⁶³ At conferences of the parties, non-party participation would be allowed for any duly registered organization working in animal or environmental protection, or the prevention of zoonotic diseases, unless a majority of the parties object.¹⁶⁴ Moreover, CAP includes provisions to encourage implementation and enforcement. Specifically, CAP provides for the collection, evaluation, and publication of information about domestic legislation enacted to implement the umbrella treaty and protocols, and authorizes the Standing Committee to investigate problems¹⁶⁵ and sanction a party determined to have violated a treaty obligation.¹⁶⁶ And parties “are encouraged to restrict the trade of any animal or animal parts, products, or derivatives with other Contracting Parties or with any State that treats

¹⁵⁶ *ibid* art 28.

¹⁵⁷ *ibid* art 16.

¹⁵⁸ *ibid* art 14.

¹⁵⁹ *ibid* arts 15-34.

¹⁶⁰ *ibid* art 18.

¹⁶¹ *ibid* art 19.

¹⁶² *ibid* art 20.

¹⁶³ *ibid* art 25.

¹⁶⁴ *ibid* art 23.

¹⁶⁵ *ibid* art 21.

¹⁶⁶ *ibid* art 22(6).

or interacts with animals in a manner inconsistent with any of the provisions of this Convention.”¹⁶⁷

4.3 Distinguishing CAP from other proposed pandemic reforms

The COVID-19 pandemic has triggered calls for legal reforms to address and improve pandemic prevention, preparedness, and response on a worldwide basis.¹⁶⁸ Suggestions include closing high-risk wildlife markets and banning trade in wildlife for human consumption,¹⁶⁹ adding a wildlife crime protocol to the UN Treaty Against Transnational Organized Crime (UNTOC), amending CITES to include public health and animal health criteria in its decision-making processes,¹⁷⁰ and amending WHO International Health Regulations (IHR) in concert with negotiating a new WHO Pandemics Treaty.¹⁷¹

The early focus in China on live wildlife markets has surfaced elsewhere. In 2021, for example, a Preventing Future Pandemics Act¹⁷² was introduced in the U.S. Senate to influence the closure of commercial markets that sell or slaughter wildlife for human consumption as food or medicine in communities where alternative nutritional or protein sources are available and to try to bring an end to wildlife trafficking.¹⁷³

Wildlife trafficking has been described as among the biggest risk factors “in the global spread of zoonotic and emerging infectious diseases . . . [and is] unarguably among the

¹⁶⁷ *ibid* art 27.

¹⁶⁸ James Wingard, Sofija Belajcic, Manohar Samal, Kathy Rock, Mayra Lima Custodio, Maria Heise, Sicily Fiennes, Catherine Machalaba, & A. Alonso Aguirre, ‘Wildlife Trade, Pandemics, and the Law: Fighting this year’s virus with last year’s law’ (*Legal Atlas 2021*) 3 <www.ecohealthalliance.org/wp-content/uploads/2021/01/Wildlife-Trade-Pandemic-and-the-Law.pdf> accessed 4 January 2022 (Wingard).

¹⁶⁹ S. 37 117th Cong. (2021-2022) <www.congress.gov/bill/117th-congress/senate-bill/37/text> accessed 4 January 2022.

¹⁷⁰ ‘End Wildlife Crime: A Global Initiative addressing serious gaps in international law’ (*End Wildlife Crime*) <<https://endwildlifecrime.org>> accessed 4 January 2022 (EWC).

¹⁷¹ Gian Luca Burcu, ‘A New Pandemic Treaty, Revised International Health Regulations, or Both? What is the Actual Roadmap?’ (*Health Policy Watch*, 10 February 2021) <<https://healthpolicy-watch.news/a-new-pandemic-treaty-revised-international-health-regulations-or-both-what-is-the-actual-roadmap>> accessed 4 January 2022.

¹⁷² S. 37 117th Cong. (2021-2022) <www.congress.gov/bill/117th-congress/senate-bill/37/text> accessed 4 January 2022.

¹⁷³ *ibid*.

top-ranking modes of transmission.”¹⁷⁴ This is why the Global Initiative to End Wildlife Crime has proposed adding a new Wildlife Crime protocol to UNTOC, to enhance cooperative enforcement efforts to combat and prevent wildlife crime¹⁷⁵ and to reduce zoonotic disease transmission across the globe. A second related proposal is to amend CITES and expand its reach beyond the trade in endangered species to include the regulation of trade in high-risk wildlife.¹⁷⁶ Specifically, the amendments would add a new Appendix to CITES to identify “all [traded] fauna species . . . considered to pose a risk to public or animal health [and] may be subject to strict regulation in order not to endanger public or animal health.”¹⁷⁷ Trade in wildlife listed in the new Appendix would require permits for export and import. An export permit would require that “the Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State; . . . that any living specimen will be so prepared and shipped as to minimize the risk of injury, cruel treatment, and risk to human or animal health; and . . . that an import permit has been granted for the specimen by the relevant authorities of the importing country.”¹⁷⁸ An import permit would require that a “Management Authority of the State of import, following consultation with relevant scientific, veterinary and human health authorities, is satisfied that such import will not result in significant risk to human or animal health, and that appropriate sanitary and biosecurity checks and measures are in place to prevent such risks from emerging.”¹⁷⁹

While these proposed amendments are constructive, they are severely limited. First, those focused exclusively on live animal markets and/or wildlife trafficking are too narrow given that many other uses of animals and legal wildlife trade provide opportunities for disease transmission and deficient animal welfare. Moreover, regarding the proposed CITES amendments, because CITES is focused on international trade, enforcement

¹⁷⁴ U.N. Env’t Programme, World Conservation Monitoring Centre & Joint Nature Conservation Committee, *Zoonotic potential of international trade in CITES-listed species* (JNCC Report No. 678, May 2021) 1 <<https://data.jncc.gov.uk/data/964ae259-410e-4205-8ec7-e2c54f5c6e3d/JNCC-Report-678-FINAL-WEB.pdf>> accessed 4 January 2022.

¹⁷⁵ EWC (n 170).

¹⁷⁶ *ibid.*

¹⁷⁷ ‘Outline of possible amendments to wildlife trade laws’ (*End Wildlife Crime*) <<https://endwildlifecrime.org/cites-amendments>> accessed 4 January 2022.

¹⁷⁸ *ibid.*

¹⁷⁹ *ibid.*

occurs “primarily at the borders, airports, and shipping docks where cargo is checked, permits required for legal trade, and enforcement against illegal international trade occurs.”¹⁸⁰ This leaves out trade in wildlife that occurs within a nation, where there are also zoonotic disease risks. And the CITES permit system is a “paper-based system, not a fact-based system. Determining legality rests on the sufficiency of the permit, not whether an item has been legally sourced. A permit is a useful tool, but it is not a guarantee that health and welfare standards have been met.”¹⁸¹ In fact, existing “CITES mandates are not always mainstreamed into the awareness and practices of everyday enforcement officials”¹⁸² even today, over 45 years after CITES entered into force.

Finally, the WHO has been focused on pandemic preparedness and response since the early days of the pandemic.¹⁸³ Notably, the WHO International Health Regulations (IHR)¹⁸⁴ stem from the sole international agreement designed specifically to deal with pandemics. “The IHR are an instrument of international law that is legally binding on 196 countries, including the 194 WHO Member States.”¹⁸⁵ The regulations require that states “detect and notify the WHO of ‘events’ . . . that may constitute a public health emergency” and “build capacity to respond to any public health risk.”¹⁸⁶ The WHO then determines whether the event qualifies as a “public health emergency of international concern” and if so, provides assistance and recommendations. COVID-19 has inspired calls to amend the IHR to better protect public health by, among other things:

- Generating financial and technical resources to support countries in meeting IHR requirements.

¹⁸⁰ Wingard (n 168) 14.

¹⁸¹ *ibid* 15.

¹⁸² *ibid*.

¹⁸³ ‘Timeline: WHO’s COVID-19 response’ (*World Health Organization*) <www.who.int/emergencies/diseases/novel-coronavirus-2019/interactive-timeline> accessed 4 January 2022.

¹⁸⁴ International Health Regulations (3d ed. 2005) (*World Health Organization*) <<https://apps.who.int/iris/bitstream/handle/10665/246107/9789241580496-eng.pdf>> accessed 4 January 2022.

¹⁸⁵ ‘International Health Regulations’ (*World Health Organization*) <https://www.who.int/health-topics/international-health-regulations#tab=tab_1> accessed 19 March 2022.

¹⁸⁶ Wingard (n 168) 12.

- Mandating that countries comply with all IHR obligations to prepare for, prevent, and respond to global health emergencies.
- Insisting that countries provide public health rationales and scientific evidence to justify policy measures that interfere with international trade or travel.
- Ensuring that the WHO has access to all sources of data about potential outbreaks, strengthening mechanisms for dispute resolution and enforcement, and allowing WHO-led teams to access territories of State Parties to investigate any potential outbreak or health emergency.¹⁸⁷

Notably, the IHR do not discuss zoonotic diseases.¹⁸⁸ Instead, they are “human health oriented and . . . aimed at controlling the spread of disease through human populations by limiting their movement.”¹⁸⁹

On December 1, 2021, the World Health Assembly agreed to negotiate a new Pandemics Treaty.¹⁹⁰ In the words of the WHO Director-General: “The COVID-19 pandemic has shone a light on the many flaws in the global system to protect people from pandemics: the most vulnerable people going without vaccines; health workers without needed equipment to perform their life-saving work; and ‘me-first’ approaches that stymie the global solidarity needed to deal with a global threat.”¹⁹¹ The decision by the Assembly was to establish an intergovernmental negotiating body (INB) to draft and negotiate a pandemics treaty.¹⁹² The INB held its inaugural meeting on March 1, 2022 and will submit its outcome for consideration by the Assembly in 2024. Although the scope of the proposed pandemics treaty remains to be seen, it is doubtful that it will directly address

¹⁸⁷ Katherine F. Ginsbach, John T. Monahan, Katie Gottschalk, ‘Beyond COVID-19: Reimagining The Role Of International Health Regulations In The Global Health Law Landscape’ (*Health Affairs Blog*, 1 November 2021) <www.healthaffairs.org/doi/10.1377/forefront.20211027.605372/full/> accessed 4 January 2022.

¹⁸⁸ Wingard (n 168) 12.

¹⁸⁹ *ibid* 12.

¹⁹⁰ ‘World Health Assembly agrees to launch process to develop historic global accord on pandemic prevention, preparedness and response’ (*World Health Organization* 1 December 2021) <www.who.int/news/item/01-12-2021-world-health-assembly-agrees-to-launch-process-to-develop-historic-global-accord-on-pandemic-prevention-preparedness-and-response> accessed 4 January 2022.

¹⁹¹ *ibid*.

¹⁹² ‘The World Together: Establishment of an intergovernmental negotiation body to strengthen pandemic prevention, preparedness, and response (World Health Assembly 1 December 2021) SSA2(5) <[https://apps.who.int/gb/ebwha/pdf_files/WHASSA2/SSA2\(5\)-en.pdf](https://apps.who.int/gb/ebwha/pdf_files/WHASSA2/SSA2(5)-en.pdf)> accessed 4 January 2022.

the spillover of zoonotic diseases, which has no mention in the IHR. Moreover, the statement by the Director-General focuses exclusively on human health equity, notably in relation to preparedness and response to pandemics, rather than their prevention as zoonotic spillovers.

While all these proposals are positive steps, they do not go far enough to make a One Health approach integral to international law and policy. In contrast, CAP specifically targets the prevention of spillover of zoonotic diseases from wildlife not only in the international trade in Annex I-listed wildlife but also across the spectrum of interactions with listed wildlife. Moreover, CAP is fact-based, not permit-based, which will facilitate enforcement. And perhaps even more importantly, CAP addresses human interactions with all animals, wild and domestic, with the goal of not only addressing the transmission of zoonotic diseases but also of protecting animal well-being.

Two provisions of CAP are notable for being based on lessons learned during the recent pandemic, as well as associated changes in social attitudes. First, Article 7 bans fur farming.¹⁹³ Mink fur farms became hotspots for COVID-19 outbreaks, resulting in the mass extermination of millions of minks—including up to 15 million in Denmark alone.¹⁹⁴ However, even before the pandemic, fur farming was under attack as an inherently cruel industry designed to cater to mere human vanity and prestige.¹⁹⁵ Fur-free brands and retailers have grown exponentially in recent years. In 2021, this trend continued, with many fur-free announcements including one from Kering, Inc., the conglomerate behind Gucci and Yves Saint Laurent,¹⁹⁶ Neiman Marcus, Canada Goose, and Saks Fifth Avenue.¹⁹⁷

¹⁹³ CAP (n 7) art 7(4).

¹⁹⁴ Tom Levitt and Sophie Kevany, ‘Mink farms a continuing COVID risk to humans and wildlife, warn EU experts’ (*Guardian*, 18 February 2021) <www.theguardian.com/environment/2021/feb/18/mink-farms-a-continuing-covid-risk-to-humans-and-wildlife-warn-eu-experts> accessed 4 January 2022.

¹⁹⁵ Rachael Bale, ‘Fur farms still unfashionably cruel, critics say’ (*National Geographic*, 17 August 2016) <www.nationalgeographic.com/animals/article/wildlife-china-fur-farming-welfare> accessed 23 January 2022.

¹⁹⁶ Leah Dolan, ‘Luxury fashion giant Kering bans fur across all its businesses’ (*CNN Style* 24 September 2021) <www.cnn.com/style/article/kering-bans-fur/index.html> accessed 4 January 2022.

¹⁹⁷ Liam Pritchett, ‘Luxury retailer Neiman Marcus going fur-free’ (*Livekindly* 30 June 2021) <www.livekindly.co/neiman-marcus-group-fur-free/> accessed 4 January 2022.

Italy subsequently became the sixteenth country in Europe to ban fur farming¹⁹⁸ and Israel was the first to ban fur sales.¹⁹⁹

Second, Article 12 requires that parties “take all necessary steps to minimize the use of animals in scientific research and testing; . . . [including prohibiting] the import, export, purchase, sale, or advertisement of any cosmetic product if the cosmetic product or any component was developed using animal testing.”²⁰⁰ The objective, here, is to recognize that there is considerable potential for zoonotic spillover from animals used in research and testing. But there is also an acknowledgement that much has been learned in recent years about non-animal methods for research and testing, especially in relation to cosmetics. “This is partly because many cosmetics companies have funded research for alternatives to animal testing and partly because most ingredients used in cosmetics today have already been proven safe after years of use.”²⁰¹ The move towards banning all cosmetic products developed through the unnecessary and cruel use of animals has accelerated globally, with bans enacted by the EU, India, Israel, and Guatemala.²⁰²

5 Conclusion

In February 2020, when confirmed cases of COVID-19 in the United States did not yet number in the hundreds, the director of the CDC's National Center for Immunization and Respiratory Diseases observed that it was just a question of time before the novel coronavirus became widespread and many people fell victim to severe illness.²⁰³ His point

¹⁹⁸ ‘Italy votes to ban fur farming and shut down mink farms’ (*Ecowatch* 24 December 2021)

<www.ecowatch.com/italy-bans-fur-farming-mink-2656144530.html> accessed 4 January 2022.

¹⁹⁹ Joe Hernandez, ‘Israel has become the first country to ban the sale of most fur clothing’ (*NPR* 14 June 2021) <www.npr.org/2021/06/14/1006279660/israel-has-become-the-first-country-to-ban-the-sale-of-fur-clothing> accessed 4 January 2022.

²⁰⁰ CAP (n 7) art. 12(2)(a),(f).

²⁰¹ Lea Surugue, ‘Cosmetics: What are the alternatives to animal testing?’ (*Euronews.green* 3 March 2019) <www.euronews.com/green/2019/03/03/cosmetics-what-are-the-alternatives-to-animal-testing> accessed 4 January 2022.

²⁰² Sreedhar, D., Manjula, N., Pise, A., Pise, S., & Ligade, V. S. ‘Ban of cosmetic testing on animals: A brief overview’ (2020) 12(14) *International Journal of Current Research and Review* 113-116.

²⁰³ Elliott C. McLaughlin and Steve Almasy, ‘CDC official warns Americans it's not a question of if coronavirus will spread, but when’ (*CNN*, 26 February 2020) <www.cnn.com/2020/02/25/health/coronavirus-us-american-cases/index.html> accessed 24 January 2022.

was that pandemic preparedness and response were insufficient to prevent such outcomes. The larger truth, however, is that preparedness and response will never be enough, because they only treat the effects of diseases once they become apparent rather than the conditions that give rise to them.

Scientists have made it clear that unless high-risk contact with and mistreatment of animals is urgently addressed, “the next pandemic—one perhaps even worse than COVID-19—is only a matter of time,” a prospect that is “a probability, not a possibility.”²⁰⁴ While no international agreement can fully eliminate the emergence of zoonotic diseases, the history of animal protection treaties over the last century demonstrates that the law can and must promote the health of people, animals, and the environment as one. Given this shared fate, CAP represents the missing link of a One Health global strategy that the international community must embrace.

²⁰⁴ Michael Dulaney, 'The next pandemic is coming – and sooner than we think, thanks to changes to the environment' (*ABC News*, 6 June 2020) <www.abc.net.au/news/science/2020-06-07/a-matter-of-when-not-if-the-next-pandemic-is-around-the-corner/12313372> accessed 24 January 2022.