

The Challenges of Global Animal Law

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Abstract

Animals play a formidable role in human affairs across a wide range of areas including, but not limited to, religion, food, governance, commercial activity and culture. Law being a tool to create order, it becomes necessary that the law regulates the many facets of human-animal interaction. The prominence of this role explains various attempts at regulating these activities both at the domestic and the international level.

Zooming in on the international plane, there have been many attempts at regulating animal activity both for economic purposes, disease control and in a limited sense, welfare. As global animal law continues to advance at a faster rate, it is pertinent to smoothen out edges and analyze the possibilities in international law for progressive development. The situation is further worsened by the discrepancies that already exist between the global south and the global north. These discrepancies are not exclusive to animal protection but also arise in other sociolegal headways.

This paper seeks to analyze the challenges of global animal law. The analysis shows that existing structures, like that of the African Union through its agencies, offer pathways of surmounting these challenges by bringing many states under the same normative force concurrently and seamlessly. To make progress on the advancement of animal law internationally, a harmonious approach is needed, and that approach cannot be achieved until the international community retreats and considers diverse perspectives and cultural patterns that might stand in the way of a clear understanding of what is at stake, and what is to be achieved.

Keywords

Global Animal Law; culture; welfare; International Law; Universal Declaration

1. Introduction

Despite emerging global enlightenment, animal protection internationally is so far plagued with hurdles of advancement.¹ At least three major examples highlight the need for a common legal framework. First, one should note the disparity that exists between domestic animal welfare regulation and its non-binding nature.² Second, one must deal with the

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¹ See Thomas Kelch, 'Towards Universal Principles for Global Animal Advocacy' (2016) 5 *Transnational Environmental Law* 60.

² See Michael Bowman, Peter Davies, and Catherine Redgwell, *Lyster's International Wildlife Law* (2nd edn, CUP 2011) 670.

shortcomings of piecemeal law on different aspects of animal protection at the international level.³ Third, the widespread concern for food safety, consumer health concerns and ethical distresses arising from poor facilities housing animals raised for food.⁴ Other issues include possible evasion of the law, the industrialization of dairy and fur production and the unlevelled playing field for multinationals.⁵ Consequently, coming to a consensus is a necessary journey that is required for animal protection to advance properly. It is with these considerations in view that the phenomenal term 'global animal law' was coined.⁶ This paper contributes to the ongoing discussion arising in the current era of globalization with specific reference to animal rights, by looking especially at the following two questions: Is it *desirable* to develop a global animal law? Is it *possible* to develop a global animal law?

Global regulation seems to be indispensable in light of the far-reaching effects of poor animal protection standards arising in the 21st century. For example, intensive livestock farming is a major catalyst of global warming.⁶ The COVID-19 pandemic might have originated from a market in Wuhan where the sale of wild animals – without adherence to minimum standards of food safety and animal welfare – is a major cause of zoonotic contaminations.⁷ What is obvious is that singular activities of some states have far-reaching effects on other states. The unilateral character of animal welfare legislation has rendered the international legal order somewhat paraplegic in addressing these concerns. States with 'robust' animal welfare legislation include Canada,⁸ the United States (US)⁹ and countries in the European Union (EU). Many other states, particularly African states, have little to no regime on legal animal welfare.¹⁰

Three major attempts were made at a universal declaration that codify animal welfare interests. Such initiatives demonstrate, at least, that the international community has a sense of commitment to improve animal welfare standards.¹¹ First, the Universal Declaration on Animal Rights (UDAR) drafted by Georges Heuse, through the Director-General of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1978.¹² Second, under the auspices of the World Society for the Protection of Animals (WSPA), the 2005

³ What is available are various international instruments on specific issues including protection of habitat and endangered species codified in the Conservation of Migratory Species of Wild Animals and Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) respectively.

⁴ See WTO Committee on Agriculture, 'European Communities Proposal: Animal Welfare and Trade in Agriculture', WTO Doc. no G/AG/NG/W/19 28 June 2000.

⁵ See Charlotte E Blattner, *Protecting Animals Within and Across Borders: Extraterritorial Jurisdiction and the Challenges of Globalization* (OUP 2019).

⁶ See Anne Peters, 'Global Animal Law: What It Is and Why We Need It' (2016) 5 *Transnational Law* 9.

⁶ See Bruce Myers and Linda Breggin, 'Tackling the Problem of CAFOs and Climate Change: A New Path to Improved Animal Welfare?' in Randall Abate (ed), *What Can Animal Law Learn from Environmental Law?* (Environmental Law Institute 2015) 117.

⁷ See Tommy Tsan-Yuk Lam and others, 'Identifying SARS-CoV-2 Related Coronaviruses in Malayan Pangolins' (2020) 583 *Nature* 282 <<https://www.nature.com/articles/s41586-020-2169-0>> accessed 15 March 2024.

⁸ Section 446 of the Criminal Code of Canada prohibits anyone from willfully causing animals to suffer from neglect, pain or injury.

⁹ The Animal Welfare Act is the primary federal animal protection law in the US. In addition, all 50 states in the US have legislation on animal welfare although discrepancies exist in definitions and penalties.

¹⁰ See A Shoyombo and others, 'Animal Rights Policy in Nigeria: The Way Forward' (2019) 14(22) *Journal of Engineering and Applied Sciences* 8439.

¹¹ See Saba Pippia, 'Formation of Animal Law as an Autonomous Branch of International Law' (2019) MPIL Research Paper Series no 2019-07.

¹² See Jean-Marc Neumann, 'The Universal Declaration of Animal Rights or the Creation of a New Equilibrium Between Species' (2012) 19 *Animal Law* 91, 95.

Universal Declaration on Animal Welfare which draws on the foundations of the UDHR and the failed UDAR.¹³ Third, the International Convention for the Protection of Animals drafted and proposed by David Favre in 1988.¹⁴ Although in itself, the ICAP is not a universal declaration, its contents reveal a similar purpose and form. The failure of these three legal instruments, among many, is proof that the international legal order is yet to be fully equipped with the ability to protect animals.¹⁵ In spite of their long-standing presence and legal references, these juridical tools have not achieved a binding status in international law and they remain proposals at this time.¹⁶ In effect, the absence of formal and uniform international instruments has been shown to lead to regulatory ambiguity among domestic animal welfare laws. Together, they bring to the fore the main objective of this paper in an attempt to answer: what are the challenges of global animal law? Therefore, drawing upon the trend of the UDHR and other global laws, this research intends to bypass/remedy the weaknesses of selected international instruments in a proposed uniform law for animal protection of some sort.¹⁷

The United Kingdom (UK) Farm Animal Welfare Council introduced and developed the ‘five freedoms’ of animal welfare. These comprise animals’ freedom from: (1) hunger and thirst; (2) discomfort; (3) pain, injury, or disease; (4) fear and distress; and (5) freedom to express normal behaviour.¹⁸ The five freedoms have been endorsed by the World Organization for Animal Health (WOAH) and now form the basis of a wide range of animal protection instruments.¹⁹ Many arguments have gone in favour of the ‘protection of animals from suffering and cruelty as a universal issue’, one that should be addressed in international agreements.²⁰ However, in order to move forward, one needs to examine the foundations of the past so as to overcome such impediments in the future. With this in view, the peculiarities of multicultural societies and the formulation of a common standard are paramount points that must be considered in pursuance of a global animal law.

¹³ See World Society for the Protection of Animals (WSPA) Universal Declaration on Animal Welfare (2013) <https://www.worldanimalprotection.ca/sites/default/files/media/ca_-_en_files/case_for_a_udaw_tcm22-8305.pdf> accessed 15 March 2024. See Miah Gibson, ‘The Universal Declaration of Animal Welfare’ (2011) 16 *Deakin Law Review* 539.

¹⁴ See <<https://www.animallaw.info/treaty/international-convention-protection-animals>> accessed 15 March 2024.

¹⁵ See Steve White, ‘Into the Void: International Law and the Protection of Animal Welfare’ (2013) 4(4) *Global Policy* 391.

¹⁶ See Saba Pipia, ‘Emergence of Global Animal Law as a Separate Branch of International Law’ (2020) 16 *Animal and Natural Resource Law Review* 171; Guillaume Futhazar, ‘Biodiversity, Species Protection, and Animal Welfare under International Law’ in Anne Peters (ed), *Studies in Global Animal Law* (Springer 2020) 95.

¹⁷ For an impact assessment in Africa, see Eric Engle, ‘Universal Human Rights: A Generational History’ (2006) 12 *Annual Survey of International and Comparative Law* 219; Nsongurua Udombana, ‘Mission Accomplished? An Impact Assessment of the UDHR in Africa’ (2008) 30 *Hamline Journal of Public Law and Policy* 335.

¹⁸ See Melissa Elischer, ‘The Five Freedoms: A History Lesson in Animal Care and Welfare’ (*Michigan State University Extension 4-H Animal Science*, 6 September 2019) <https://www.canr.msu.edu/news/an_animal_welfare_history_lesson_on_the_five_freedoms> accessed 15 March 2024.

¹⁹ See, for example, Canada’s Model Animal Welfare Act <<https://worldanimal.net/our-programs/model-lawproject>> accessed 15 March 2024.

²⁰ Amy B Draeger, ‘More than Property: An Argument for Adoption of the Universal Declaration on Animal Welfare’ (2007) 12 *Drake Journal of Agricultural Law* 297.

2. The Cultural Embeddedness of Animal Laws

As a matter of course, in a bid to pursue the desirability of a global animal law, cultural differences tower as the germane consideration for any research.²¹ All cultures have interests that might conflict with its desirability. They include religious activity, cultural festivals and economic ties.²² For example, in 2002, the German *Bundesverfassungsgericht* granted Muslim butchers exceptional permission to conduct ritual slaughter for religious reasons.²³ Further, in 2012, the French *Conseil constitutionnel* validated bullfighting in the south of France given its deemed local traditional value.²⁴ Moreover, various translation issues emerge as a pivotal matter of concern in comparative legal scholarship.²⁵ Particularly in relation to animal protection, many domestic legal frameworks already have legislation that reflect a sense of commitment to animal welfare and so, by taking full advantage of the innovations of comparative law, this paper will proffer possible solutions. Global animal law is deeply entrenched in a very wide range of national domestic laws and before we begin to think or consider a consensus, even at the regional level, a solid and trustworthy understanding must be achieved.²⁶

Given the cultural embeddedness of animal laws, it is important to explore the key role of translation and interpretation in the development of common standards.²⁷ In this respect, I would like to refer to the example of the ‘okapi’ recently used in comparative legal scholarship where the author relies on German philosopher Hans-Georg Gadamer’s philosophical hermeneutics in order to highlight important interpretation issues arising in cross-cultural communication in law:

Suppose a German tourist is for the first time making her way to New York’s Bronx Zoo, often described as the world’s largest metropolitan zoo. While strolling around, the German visitor comes across an okapi, an exotic mammal native to the Ituri rainforest located in the northeast of the Democratic Republic of Congo, in Central Africa. Now, the German tourist has never encountered this animal before, and she is immediately struck by its physical characteristics. The body shape is similar to that of a giraffe, except that okapis have much shorter necks. Further, okapis have dark backs, with striking horizontal white stripes on the front and back legs making them look like zebras. How can the German tourist make sense of this unfamiliar creature? Gadamer would emphatically contend that she has no choice but to refer to familiar or pre-existing ideas – giraffe and zebra – in order to gain a certain understanding of the animal. Also, we can expect that an inhabitant of the Ituri rainforest who has been living

²¹ See Naomi Mezey, ‘Mapping a Cultural Studies of Law’ in Austin Sarat and Patricia Ewick (eds), *The Handbook of Law and Society* (Wiley-Blackwell 2015) 39–55.

²² See generally David Fraser, ‘Understanding Animal Welfare: The Science in its Cultural Context’ (2008) 50 *Acta Veterinaria Scandinavica* 5.

²³ BVerfG, Judgment of the First Senate of 15 January 2002, 1 BvR 1783/99, paras 1–61 <https://www.bverfg.de/e/rs20020115_1bvr178399en.html> accessed 15 March 2024.

²⁴ See Decision no 2012-271, QPC of 21 September 2012 <<https://www.conseil-constitutionnel.fr/en/decision/2012/2012271QPC.htm>> accessed 15 March 2024.

²⁵ See Simone Glanert and Pierre Legrand, ‘Foreign Law in Translation: If Truth Be Told...’ in Michael Freeman and Fiona Smith (eds), *Current Legal Issues: Law and Language* (OUP 2013) 513.

²⁶ See Duncan Large and others (eds), *Untranslatability: Interdisciplinary Perspectives* (Routledge 2018) 28.

²⁷ See Caley Otter, Siobhan O’Sullivan, and Sandy Ross, ‘Laying the Foundations for an International Animal Protection Regime’ (2012) 2 *Journal of Animal Ethics* 53.

alongside okapis all her life will approach the animal from a different point of view and will probably not (need to) think of okapis in terms of them being like giraffes or zebras. In other words, her pre-understanding will differ. The point is that the historical tradition to which the interpreter belongs matters to the act of understanding she brings to bear on the entity to which she is purporting to ascribe meaning.²⁸

Clearly, the context in which a person currently stands, the background from which the person previously came from and the literal setting in which the animal is being viewed in an international context, will most likely not be the same. The human nature seeks to build the unknown from what is known.²⁹ However, this task becomes difficult when diverse cultures with different mindsets and values take it on. The diversity in perception offers insight into the cause of the gap that exists among national jurisdictions today.

When applying this same analysis in the context of Yorubaland of Western Nigeria, the gap is all the more obvious. The word 'animal' translated into Yoruba language is '*eran-oko*'. The word '*eran-oko*' translated literally in English would mean 'a beast of the bush'. It is a categorical name for grouping animals that generally do not live with or near humans (such as dogs) but are wild. These animals include monkeys, goats, lions and bears. Notwithstanding the discrimination in the category, one should be aware of the fact that there are certain other animals that, although animals in essence, would not be included in the '*eran-oko*' category. For example, a snake would be directly called '*ejo*' rather than '*eran-oko*' even though, in many contexts, it is a beast of the bush. Another illustration is 'rabbit' which would rather be called '*ehoro*' despite the possibility of wild instincts. Further, it is important to note that '*eran-oko*' is also an insult which in the right context, can be translated to mean a stupid person.

These two evocative examples show the kind of challenges posed by interpretation and the cultural embeddedness of many animal laws that might be discoverable through deep reflection and further analysis. It is easy to imagine that a Yoruba man during a UN meeting on the development of animal welfare standards would have certain animals in mind to the exclusion of others. The danger of this is that this person's thoughts would allow rights to be offered to goats, for instance, which, of course is not in itself undesirable, but it becomes untenable if such a protection had been given to the exclusion of dogs.

Therefore, it is essential to adopt simpler and more specific methods of interpretation in order to overcome some of the challenges that plague the advancement of a common standard for legal animal protection for all nations. Because of how complex these issues can be, recent scholarship has attempted to demystify some of these notions by providing simplified modes of understanding law in a particular area and the possibility of uniformity in another area.³⁰ But because culture is not immutable and therefore, can change, a global animal law

²⁸ Simone Glanert, 'On the Untranslatability of Laws' in Simone Glanert, Alexandra Mercescu, and Geoffrey Samuel, *Rethinking Comparative Law* (Edward Elgar 2021) 169–70.

²⁹ See Wilhelm von Humboldt, *On Language: On the Diversity of Human Language Construction and its Influence on the Mental Development of the Human Species* (Michael Losonsky ed, Peter Heath tr, first published 1836, CUP 1988) 130.

³⁰ See Susan Bassnett, 'The Translator as Cross-Cultural Mediator' in Kirsten Malmkjær and Kevin Windle (eds), *The Oxford Handbook of Translation Studies* (OUP 2011) 94, 99.

is likely to sponsor change in attitudes no matter how slow, just as was the case with women's rights and slavery.

2.1. The Role of International Institutions

The role of international institutions in animal welfare protection globally towers as a necessity in this comparative analysis. The World Organization for Animal Health (WOAH) is an intergovernmental international organization with 183 member states and its actions clearly point to the commitment of states to animal welfare which might amount to some form of international custom.³¹ The United Nations Convention on Animal Health and Protection is a recent initiative by many organizations under the auspices of the Global Animal Law Association.³² It remains the most recent and strongest attempt at a hard law instrument for animal protection internationally. Developments like these are important because they sponsor stronger domestic laws which can be attributed largely to the activities of international organizations.³³ This institutional factor, combined with the international law principles, will be important considerations in the development of global animal law.

While there is research that goes beyond demonstrating the strengths and weaknesses of existing animal welfare legislation in both international and domestic jurisdictions, it nonetheless highlights one of the main challenges of a global animal law, that is cultural differences. Unfortunately, there is presently no literature supporting a harmonized system that can accommodate such competing interests in the animal rights context. Given the scope of this paper, it is important to evaluate how some African cultures can accommodate animal welfare as a matter of global concern by taking advantage of the structure of the AU and to briefly consider the different perspectives on animal rights generally. This method is interesting and necessary in order to appreciate the different ways that a global law might apply across cultures.

3. Adopting Public International Law Principles for Harmony

The year 2020 was significant for many reasons, one of which was the revival of the idea of the need for a cross border regulation of animal treatment.³⁴ Generally speaking, animal protection has been a private concern for states through diverse forms of Animal Welfare Acts,³⁵ Prevention of Cruelty to Animals Acts³⁶, Humane Methods of Slaughter Acts³⁷ and certain provisions in criminal codes.³⁸ In national jurisdictions, developments have contained

³¹ See <<https://www.woah.org/en/who-we-are/members/>> accessed 15 March 2024.

³² United Nations Convention on Animal Health and Protection (first pre-draft, Global Animal Law Association, 23 August 2018) <<https://www.globalanimallaw.org/database/universal.html>> accessed 15 March 2024.

³³ See Sabine Brels, 'The Evolution of International Animal Law: From Wildlife Conservation to Animal Welfare' in Randall S Abate (ed), *What Can Animal Law Learn from Environmental Law?* (Environmental Law Institute 2015) 365.

³⁴ See Daina Bray and others, 'International Animal Law' (2021) 55 American Bar Association Section on International Law – Year in Review 85.

³⁵ See Australia: Animal Welfare Act 1992 A1992-45 Republication no 17, s 7: 'A person commits an offence if the person commits an act of cruelty on an animal'.

³⁶ See s 295, CAP 56, Laws of the Federation of Nigeria.

³⁷ See United States: Humane Methods of Livestock Slaughter Act, 7 USC 1901–1907, s 1902: 'No method of slaughtering or handling in connection with slaughtering shall be deemed to comply with the public policy of the United States unless it is humane'.

³⁸ See Nigeria: Criminal Code Act, Cap C38 LFN 2004, 1 June 1916, s 495: 'Any person who cruelly [treats] an animal is guilty of an offence of cruelty and is liable to imprisonment for six months or to a fine of fifty naira

a mix of progressive and regressive actions. Whatever the case is, this argument is based on some fundamental notions. First, animals need protection. Second, to achieve this, states must come to a consensus, even if loose, on foundational principles for international cooperation. And third, globalization has created an urgent need for international cooperation on animal protection such that discussions are imminent.³⁹

Currently, there exists no international treaty that regulates the welfare of animals or sets clear standards of procedure on minimum standards of animal treatment. This is not surprising as it is significantly challenging to reach a conclusion on the principles guiding the subject. On the other hand, there has been more progress for animal protection at the regional level. The most notable examples include the Animal Welfare Strategy for Africa⁴⁰ and the Treaty on the Functioning of the European Union.⁴¹ Despite the challenges, the international community needs a regime for the protection of animals through a combined effort without ignoring the significant hurdles. Adopting a comparative legal approach with respect to animal law by selectively analyzing the status of international organizations in international law context, and presenting solutions for the advancement of global animal law is the way forward.

It is not desirable that animal protection remains a local issue.⁴² The international society is not an unchanging entity but is subject to the ebb and flow of political life so much so that in the end, the final appeal of law is to the various peoples,⁴³ and in the context of international law ultimately to states. This is true whether in the local or the international context. Since individuals, societies, and states are attaining a serious level and concern for these issues, the law must respond and cater for these concerns. Until now, evidently, local law has not done too well.

3.1. A Comparative Legal Approach as the Panacea for Solutions

To answer the questions indicated in the previous parts, the adoption of a critical comparative and interdisciplinary approach offers important insights into the challenges. By briefly assessing the literature on animal rights generally, I shall emphasize the theoretical underpinnings of animal rights and welfare in general and specifically, how culture stands in the way of its advancement. This will lead to a better understanding of the available approaches that states and regional institutions alike have taken in order to protect animals. With a view to determining the shortcomings and successes of the available frameworks, significant consideration will be given to legal translation issues and cultural implications.⁴⁴ Comparative

or to both such imprisonment and fine' <<https://www.refworld.org/docid/49997ade1a.html>> accessed 15 March 2024.

³⁹ See generally Thomas G Kelch, *Globalization and Animal Law* (Kluwer 2011).

⁴⁰ See Animal Welfare Strategy for Africa: Executive Summary <<http://repository.au-ibar.org/handle/123456789/543>> accessed 15 March 2024. Mission statement: 'an Africa where animals are treated as sentient beings, as a leading continent in implementation of good animal welfare practices for a competitive and sustainable animal resource sector'.

⁴¹ See Consolidated Version of the Treaty on the Functioning of the European Union, 13 December 2007, 2008/C 115/01 <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF>> accessed 15 March 2024.

⁴² See Tanya Wyatt, *Is CITES Protecting Wildlife? Assessing Implementation and Compliance* (Earthscan 2021).

⁴³ See Janne Elisabeth Nijman, *The Concept of International Legal Personality: An Inquiry into the History and Theory of International Law* (TMC Asser 2004) 144.

⁴⁴ See Glanert (n 28).

legal research will allow us to look at the states of the African Union as a regional institution and at their agencies' narrowly tailored proposals in contrast with broader approaches like universal declarations.

After having considered different comparative legal methods,⁴⁵ a culturalist approach of different animal rights views seems apt. Speaking from the perspective according to which law is culture,⁴⁶ it becomes obvious that these notions on animal rights are bereft of other useful perspectives. For examples, it is unlikely that the aforementioned Yoruba culture would intend the rights-based approach for 'eran-oko'. This paper aims to reveal the significance of translation studies for the development of a global animal law.⁴⁷ It is necessary to bear in mind the important contribution that philosophical hermeneutics can make for a better understanding of the challenges to a common legal framework on animal law and this can be best achieved through an interdisciplinary approach.⁴⁸

One of the cardinal reflections must be on the challenge brought about by plurilingual societies as they can have a direct impact on comparative approaches to global animal law. While the international community seems to be unsettled as to whether animal welfare is an issue of global concern that requires global solutions, this research predicts that it is only a matter of time until the need for global regulation becomes an urgent necessity. In the following section, I will use as an example the issue of extraterritorial enforcement of habeas corpus rights regarding primates in certain parts of the US.

3.2. Interpretation of General Principles – The AU and the Animal Welfare Strategy

As a foundation, international organizations are best suited to elaborate legislation in the field of animal law. They are the most important players in international law after states.⁴⁹ Their structure has been a design of states; and their personality is limited to as much as states confer on them.⁵⁰ International organizations have a special legal status in international law. They are not states, yet they have the capacity to enter into binding legal relations with states and enforce them against states. They can also have binding legal relations between other international organizations and are subjects of law to which the rules of international law apply. In relation to the first point, the legal structure of international organizations is settled. They are created by an international agreement such as the United Nations Charter and such constituent instrument sets out its powers, functions and membership procedure clearly.⁵¹

⁴⁵ See Uwe Kischel, *Comparative Law* (Andrew Hammel tr, OUP 2019); Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (2nd edn, OUP 2019).

⁴⁶ See, for example, Martin Krygier, 'Law as Tradition' (1986) 5 *Law and Philosophy* 237; Pierre Legrand, 'On the Singularity of Law' (2006) 47 *Harvard International Law Journal* 517.

⁴⁷ See Simone Glanert, 'Translation Matters' in Simone Glanert (ed), *Comparative Law – Engaging Translation* (Routledge 2014) 10.

⁴⁸ See Lawrence Schmidt, 'Intercultural Understanding in Philosophical Hermeneutics', in Ming Xie (ed), *The Agon of Interpretations: Towards a Critical Intercultural Hermeneutics* (University of Toronto Press 2014) 210.

⁴⁹ See Stephen McCaffrey, *Understanding International Law* (2nd edn, Lexis Nexis 2015) 156.

⁵⁰ See generally Jan Klabbers (ed), *The Cambridge Companion to International Organizations Law* (CUP 2022).

⁵¹ See Chittharanjan F Amerasinghe, *Principles of the Institutional Law of International Organizations* (2nd edn, CUP 2005) 447.

International organizations and the laws regulating them are important for the proper running of the international system, especially based on the principle of state equality. Some of the most important include the United Nations, the International Labor Organization and the World Health Organization. By focusing on the proposed international organizations for this model, the WOA and the AU, this analysis offers the argument that these organizations can serve as a guardian for the rights of animals. The WOA is the central intergovernmental organization vested with the duty of engaging member states on common standards of animal health and welfare promotion. The African Union has a corresponding agency with comparable responsibilities. In considering its Strategy for 2021–2025,⁵² some provisions are important in providing an analysis of how the law of international organizations can offer a leeway for a normative animal welfare standard among member states. There are five areas of strategic focus, namely, (1) scientific expertise; (2) data governance; (3) responding to members' needs; (4) collaboration with partners; and (5) efficiency and agility. This part of my paper focuses on the fourth area of strategic focus, *collaboration with partners*, as a foundational board upon which the general principle of public international law that govern international institutions may be applied to advance legal protection for animals. The goal under the fourth strategic area is 'optimizing cooperation with partners to better respond to global challenges'.⁵³

There is little discussion on the method with which this goal will be achieved. Nonetheless, it offers valuable insight into animal protection. For example, the document proposes a collaboration with other international organizations including the Food and Agriculture Organization of the United Nations and the World Health Organization. This alludes to the opinion that collaboration brings 'added-value and synergy to addressing One Health challenges' and a proposed extension to include the United Nations Environment Programme (UNEP) in order to 'take better account of the environmental component'.⁵⁴ The fact that this strategy recognizes that the protection of animal health and welfare is better achieved in collaboration with UNEP further stresses the interdependence of these principles in advancing animal protection internationally.

The regional structure of the African Union (AU) offers worthy suggestions in order to surmount these challenges. The structure is set up in a unique way such that when a decision is made in that center, it has an automatic normative force on the member states. In the context of animal protection, this structure provides a solution to the lack of harmony that plagues the advancement of global animal law. For example, where a decision is made by the AU as a whole, all 55 member states are automatically and immediately bound by such decisions. The essence of this analysis is not to embark on a journey in order to analyze the structure of the AU as extensive studies are available on that but rather, to assess how the already existing structure provides avenues to surmount the challenges. First, the presence of a body which in this context is the AU-IBAR is helpful in bridging the gap at a more concise level although not completely, considering the fact that the member states have thousands of communities within. Second, smaller meetings can be held at the grassroots level after fundamental conclusions have been made at the AU level. Third, and most importantly,

⁵² See World Organisation for Animal Health, *OIE Seventh Strategic Plan for the Period 2021–2025* <<https://www.woah.org/en/document/seventh-strategic-plan/>> accessed 15 March 2024.

⁵³ *ibid* 16.

⁵⁴ *ibid* 17.

the camaraderie that already exists among members ensures a smooth sail of animal-centric decision-making.

The activities of the Nonhuman Rights Project in the US have also paved the way for landmark developments in animal rights. Significant is the case of Happy, a 50-year-old Asian elephant held in captivity since 1977 under harsh conditions. Her case became the first where the highest court of any English-speaking jurisdiction heard a habeas corpus case brought on behalf of an entity that is not a human being. An amicus brief filed by philosopher Martha Nussbaum argues that ‘the law requires reformation to protect our modern scientific and philosophical understanding that many animals can live their own meaningful lives and that the court should reform the law in this case’.⁵⁵ Therefore, with cases like this in view, legal animal rights are evolving into a tangible reality in domestic courts.⁵⁶ Comparing the case of Happy in a global south context, it might be safe to assume that the ‘*eran-oko*’ nature of the elephant might preclude this status from actually manifesting as a legal reality in the near future.

4. A Brief Consideration on Other Perspectives in Animal Protection

The literature on animal rights jurisprudence is very rich.⁵⁷ In the beginning, Western thinkers like Bentham contended the need to determine the capacity of animals to suffer when assessing the moral status of animals.⁵⁸ The UK then pioneered the codification of animal welfare standards following some concerns raised about inhumane factory farming conditions.⁵⁹ This led to initiatives like the Brambell Report in 1965 adapted by the UK Farms Advisory Committee,⁶⁰ the 1968 UK Agriculture (Miscellaneous Provisions) Act, and then multilateral treaties pioneered by the European Convention for the Protection of Animals Kept for Farming Purposes.⁶¹ In the 1980’s a shift emerged from ‘welfare’ to a ‘rights based’ approach.

Interestingly, whether animals have rights is still in debate. On one hand, Cupp among others argue that there is no allocation for animals as subjects of any legal system;⁶² and as such, the usage of the term ‘rights’ is faulty and unnecessary.⁶³ On the other hand, Singer pioneered an argument in favor of rights for animals even though they are not able to enforce

⁵⁵ Lauren Choplin, ‘World-Renowned Philosopher Martha Nussbaum Supports New York Elephant Rights Case’ (*Nonhuman Rights Blog*, 24 August 2021) <<https://www.nonhumanrights.org/blog/martha-nussbaum-elfantrights/>> accessed 15 March 2024.

⁵⁶ For a similar amicus brief filed by Professor Christine Korsgaard (Harvard), see <<https://www.nonhumanrights.org/wp-content/uploads/Christine-M.-Korsgaard-Amicus-Brief-Happy-Case.pdf>> accessed 15 March 2024.

⁵⁷ See Sue Donaldson and Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (OUP 2011).

⁵⁸ See Jeremy Bentham, ‘Duty to Minimize Suffering’ in Andrew Linzey and Paul B Clarke (eds), *Animal Rights: A Historical Anthology* (first published 1789, Columbia University Press 2004); Johannes Kniess, ‘Bentham on Animal Welfare’ (2019) 27 *British Journal for the History of Philosophy* 556, 557.

⁵⁹ See Edward Eadie, *Understanding Animal Welfare: An Integrated Approach* (Springer 2012) 26.

⁶⁰ See Brambell Committee, *Report of the Technical Committee to Enquire into the Welfare of Livestock Kept under Intensive Conditions* (Her Majesty’s Stationery Office, Command Paper 2836, London 1965).

⁶¹ See generally European Convention for the Protection of Animals Kept for Farming Purposes, CETS no 87, 3 October 1976; John Callicott, ‘Animal Liberation: A Triangular Affair’ (1980) 2 *Environmental Ethics* 312.

⁶² See Richard L Cupp, ‘Moving Beyond Animal Rights: A Legal/Contractualist Critique’ (2009) 46 *San Diego Law Review* 27.

⁶³ See David R Schmahmann and Lori J Polacheck, ‘The Case Against Animal Rights’ (1995) 22 *Boston College Environmental Affairs Law Review* 747.

them alluding to children and the mentally disabled as possessors of human rights despite their limitations.⁶⁴ Other supporters of this view, like Regan who in *The Case for Animal Rights*⁶⁵ steer away from the utilitarian standpoint and tilt towards a deontological perspective, assert that every form of exploitation of animals by humans must be prohibited.

Robert Garner propounded the *Ethics of Welfarism* and established the notion that exploitation is inevitable but must be strictly regulated.⁶⁶ It does not recognize a minimum standard and it has not received enough critique.⁶⁷ This approach is underpinned by anthropocentric visions that are adversative to animal protection. The *New Welfarist* position coined by Gary Francione is an attempt at reconciling the rights and welfarist approaches.⁶⁸ These reformists seek to put abolition as a long-term goal but at the moment, exhaust resources on improving welfare conditions.⁶⁹ It has actually been embraced by several organizations in the realm of animal protection like PETA and Animal Compassion over Killing.

Some shift away from law entirely and propose regulation of animal labor as a worthy approach of securing rights for animals.⁷⁰ This means that animals are subjected to work for the benefit of humans until death, the only condition being protection from unnecessary suffering.⁷¹ Such animals are killed when they are not able to meet conditions for work although Porcher argues that death is not a bad thing for animals based on the gift theory.⁷² Similarly, Cochrane simply proposes a consideration of animal interests when the common good is in question.⁷³ While these may seem well meaning and innocent, it is not enough to effect real change. Rather, it facilitates an 'animal industrial complex'.⁷⁴

Very recently, an interesting theory of legal personhood emerged describing animals as legal 'beings'.⁷⁵ This rests on the notion that the inability of animals to have duties does not preclude them from being possessors of rights in themselves.⁷⁶ This approach is embraced in the drafting of a proposed universal declaration. The rights standpoint is based on the assumption that animals cannot be used by humans for the satisfaction of wants, while the

⁶⁴ See Peter Singer, *Animal Liberation: A New Ethics for Our Treatment of Animals* (Harper Collins 1975) 23.

⁶⁵ See Tom Regan, *The Case for Animal Rights* (University of California Press 1983) 243.

⁶⁶ See Robert Garner, *Animals, Politics and Morality* (Manchester University Press 2004).

⁶⁷ See Brian Favre, 'Is There a Need for a New, an Ecological, Understanding of Legal Animal Rights?' (2020) 11 *Journal of Human Rights and the Environment* 297.

⁶⁸ See Gary Francione, *Rain Without Thunder: The Ideology of the Animal Rights Movement* (Temple University Press 1996) 36.

⁶⁹ See Nicola Taylor, 'Whither Rights? Animal Rights and the Rise of New Welfarism' (1999) 3 *Animal Issues* 27.

⁷⁰ See Charlotte E Blattner, Kendra Coulter and Will Kymlicka, 'Introduction: Animal Labour and the Quest for Interspecies Justice' in Charlotte E Blattner, Kendra Coulter, and Will Kymlicka (eds), *Animal Labour: A New Frontier of Interspecies Justice?* (OUP 2020) 4.

⁷¹ See David Wolfson and Mariann Sullivan, 'Foxes in the Hen House: Animals, Agribusiness, and the Law: A Modern American Fable' in Cass Sunstein and Martha Nussbaum (eds), *Animal Rights: Current Debates and New Directions* (OUP 2004) 205.

⁷² See Jocelyne Porcher, *The Ethics of Animal Labor* (Springer 2017).

⁷³ See Alasdair Cochrane, 'Labour Rights for Animals' in Robert Garner and Siobhan O'Sullivan (eds), *The Political Turn in Animal Ethics* (Rowman and Littlefield 2016) 15.

⁷⁴ Barbara Noske, *Beyond Boundaries: Humans and Animals* (Black Rose Books 1997) 22.

⁷⁵ Angela Fernandez, 'Not Quite Property, Not Quite Persons: A "Quasi" Approach for Nonhuman Animals' (2019) 5 *Canadian Journal of Comparative and Contemporary Law* 1; Visa Kurki, 'Legal Personhood and Animal Rights' (2021) 11 *Journal of Animal Ethics* 47.

⁷⁶ See Matthew Kramer, 'Do Animals and Dead People have Legal Rights?' (2001) 14 *Canadian Journal of Law and Jurisprudence* 29, 42.

animal welfare view advocates a beneficial use for humans while minimizing suffering.⁷⁷ Notwithstanding the divergent views, it matters not what terminology is employed; what is important is that animals have welfare interests that are protected by statute.⁷⁸

4.1. Zooming in on Africa

By contrast, in Nigeria, like in many other countries in Africa, the animal protection regime remains very unstructured.⁷⁹ What is available are vague constitutional provisions and criminal code sections that criminalize bestiality and animal cruelty with laughable penalties below a dollar.⁸⁰ Nonetheless, regional developments in the African Union also reflect a growing commitment by the member states to animal welfare.⁸¹ For example, the recently adopted executive summary of the Animal Welfare Strategy for Africa (AWSA) by the African Union Interafrican Bureau for Animal Resources (AU-IBAR) aimed towards implementing the 2030 Agenda for Sustainable Development in Africa in relation to animal protection.⁸² It is safe to say that a future of animal welfare is emerging for African states, a future which might prove problematic if these states were to disregard law as culture and to simply import the provisions of other regional laws into their domestic regimes. Among many other options, a universal declaration might be able to offer some answers to the apparent challenges. First, because of its non-binding elements. Second, because of the global reach possessed by the United Nations. And, third, its ability to crystallize into hard law over time.

5. Conclusion

The earlier parts of this article have highlighted the discrepancies that exist in the understanding of what an animal is, examined selected literature on animal rights in depth, considered existing challenges and offered possible solutions in international law that might be worthy of consideration when discussing the furtherance of global animal law. Despite the challenges highlighted, it is clear that there is a possibility of a future where animal interests are a major consideration in serious international discussions. This is not without being aware of the fact that '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'.⁸³

To propose a properly structured universal declaration might be considered ambitious, but so have been other attempts at societal change including human rights, rights for indigenous

⁷⁷ See Bernard Rollin, 'An Ethicist's Commentary on Animal Rights Versus Welfare' (2002) 43 *Canadian Veterinary Journal* 913.

⁷⁸ See generally Clare McCausland, 'The Five Freedoms of Animal Welfare Are Rights' (2014) 27 *Journal of Agricultural and Environmental Ethics* 649.

⁷⁹ Commendable developments include Egypt's 2014 Constitution establishing the duty to perform kind treatment to animals under Article 45.

⁸⁰ See Ayoola Shoyombo and others, 'Animal Rights Policy in Nigeria: The Way Forward' (2019) 14 *Journal of Engineering and Applied Sciences* 8439.

⁸¹ See, for recent trends in international institutional law in the AU, Nsongurua Udombana, *The African Union in International Law Selected Studies* (John Archers 2020).

⁸² See <https://rr-africa.woah.org/wp-content/uploads/2019/05/awsa_executive_summary_layout_eng_2017.pdf> accessed 15 March 2024.

⁸³ Rajesh K Reddy and Joan Schaffner, 'The Convention on Animal Protection: The Missing Link in a One Health Global Strategy for Pandemic Prevention' (2022) 10(2) *Global Journal of Animal Law* 1, 11.

peoples and, specifically in the field of animal rights, the regulation of whaling. Such attempts have nevertheless given rise to credible international instruments including the Convention for the Elimination of all forms of Discrimination Against Women (CEDAW) and the International Convention for the Regulation of Whaling (ICRW). When these possibilities become enough of a 'shield', global animal law will be truly effective and efficient.

Finally, it is likely that more discussions and concerns will emerge as new developments continue to surface both domestically and internationally. Global animal law allows for the developments to continue to arise in a progressive manner for the purpose of better advancing and criticizing the legal regimes that govern animals globally. Indeed, animals play an important role in human affairs ranging from economic to spiritual facets. These prominent features assure the international community that the need to surmount these challenges is not just desirable, it is necessary.