

CITES AND ANIMAL WELFARE: THE LEGAL VOID FOR INDIVIDUAL ANIMAL PROTECTION

FRANCESCA NYILAS*

“While the environmental perspective of the importance of wildlife as part of ecosystems is well accepted, the conditions of life and death of individual animals at the hands of humans around the world are not yet a focus of legal drafting.”¹

1 INTRODUCTION

Animal welfare is a topic of global importance slowly seeping into the frameworks of international law. It has garnered popular support internationally with many new non-governmental organisations (‘NGOs’) and national organisations being formed over the past fifty years. For example, World Animal Protection has been in operation over thirty years and formed partnerships in over fifty states with governments, the United Nations (‘UN’) and industries, advocating for legal and policy reforms as well as “challeng[ing] investments that foster animal suffering.”² Additionally, significant battles are being fought to secure fundamental protections for individual animals by changing their legal status from property to legal persons. For instance, in 2013, the Non-Human Rights Project filed writs of *habeas corpus* in New York for four chimpanzees held in captivity.³

Despite these developments, there are very few legal instruments protecting the welfare of individual animals in international law. International environmental law

* B International Studies/ LL.B (Dist) (UNSW). I wish to thank Tara Ward and Dr Ben Milligan (UNSW) sincerely for their guidance while writing this paper.

¹ David Favre, ‘An International Treaty for Animal Welfare *Symposium Article*’ (2012) 18(2) *Animal Law* 237, 246.

² World Animal Protection, *Global Review 2019: Moving the World* (Global Review 2019) <https://dkt6rvnu67rjq.cloudfront.net/sites/default/files/media/WAP_Global_Review_2019_v13_spreads.pdf> 3.

³ Nicole Pallotta, ‘Though Denied by New York Court of Appeals, Habeas Corpus Claim for Chimpanzees Prompts Reflection’, *Animal Legal Defense Fund* (Blog Post, 7 September 2018) <<https://aldf.org/article/though-denied-by-new-york-court-of-appeals-habeas-corpus-claim-for-chimpanzees-prompts-reflection/>>.

remains principally focused on endangered species conservation,⁴ habitat protection⁵ and biological diversity.⁶ These instruments do not deal with individual animal wellbeing and do not acknowledge that they regulate sentient beings capable of pain and suffering.⁷

Nonetheless, some welfare norms exist under international environmental law, albeit in an incidental manner, such as within the Convention on the Trade in Endangered Species of Wild Fauna and Flora ('CITES') (1975).⁸ CITES regulates the international trade of endangered and threatened plants and animals and includes consideration of their welfare. In several provisions, CITES requires trade in species to be carried out in ways that minimize the risk of injury, damage to health and cruel treatment.⁹ It has been cited as an "exception to the [international] lack of concern for the welfare of wildlife."¹⁰

This article examines the animal welfare dimensions of international law, in turn observing its ad hoc and piecemeal nature, which fails to add up to a coherent whole. I analyse CITES as an exception to most international treaties which do not normally focus on the welfare of individual wild animals. Accordingly, I suggest that CITES is an insufficient mechanism to advance animal welfare generally because of its limited application to international trading activities. Because of this animal welfare void in international law, I advocate for the adoption of the 'International Convention for the Protection of Animals' ('ICPA').¹¹ This draft umbrella treaty was originally proposed by animal law scholar, David Favre, in 1988 and is yet to be incorporated into international law.¹² This umbrella treaty would create a global anti-cruelty standard and establish clear guidelines and policies regarding animal treatment.¹³ I argue COVID-19 has propelled global recognition for the need to protect animal welfare and health to prevent disease transmission. This recognition has created the necessary political climate for the adoption of ICPA.

In the first section, I outline key definitions and clarify the meanings of terms relevant to the body of the article. In the second section, I consider the often opposing objectives of animal conservation and animal welfare which characterize international law's treatment of animals. In the third section, I scrutinize the international presence of

⁴ For example, *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').

⁵ For example, *Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora* [1992] OJ L 206/7.

⁶ For example, *Convention on Biological Diversity*, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993) ('CBD').

⁷ Werner Scholtz, 'Injecting Compassion into International Wildlife Law: From Conservation to Protection?' (2017) 6(3) *Transnational Environmental Law* 463, 465.

⁸ CITES (n 4).

⁹ *Ibid* art 3(2)(c); art 3(3)(b); art 3(4)(b); art 4(2)(c); art 4(5)(b); art 4(6)(b); art 5(2)(b); art 7(7)(c); art 8(3).

¹⁰ Favre (n 1) 246.

¹¹ *Ibid*.

¹² See Bill Clark, David Favre and Stanley Johnson, 'International Convention for the Protection of Animals', *Animal Legal and Historical Center* (Web Page) <<https://www.animallaw.info/treaty/international-convention-protection-animals#:~:text=Summary%3A,and%20protection%20from%20cruel%20treatment>>; Favre (n 1).

¹³ David Favre, 'When Will Concern for Animal Welfare Become Part of International Law?' [2017] (Winter) *American Bar Association* 1, 1.

animal welfare by examining several treaties and declarations with animal welfare elements. Collectively, these instruments demonstrate that animal welfare is an insignificant – but not completely absent - area of international law.¹⁴ The existing, rudimentary fragments of international animal welfare law are inadequate in creating sufficient protections for animal welfare internationally. I propose ICPA as a solution to this problem and explain why it is the best mechanism for protecting animal welfare in the international arena.

2 KEY DEFINITIONS AND TERMINOLOGY

In this article, I examine international treaties that purport to regulate animal welfare. I use the phrases ‘animal welfare’ and ‘animal welfare protections’ to denote regulations concerning animal welfare. I use the collective term ‘international animal law’ to refer to individual instances of animal welfare protection under international law.

The concept of ‘animal welfare’ is multi-faceted, covering scientific, ethical and political dimensions.¹⁵ It embraces ethical assumptions in pursuit of animal physical and mental wellbeing.¹⁶ At a scientific level, animal welfare encompasses three overlapping dimensions: the animal’s basic health and functioning, their affective state and their ability to engage in natural, specific-specific behaviours (natural living).¹⁷ Consequently, animal welfare laws involve the humane treatment of animals and prevention of unnecessary pain and suffering.¹⁸ They are predicated on compassion and moral assumptions dictating human responsibility to prevent or mitigate animal suffering because animals are sentient beings.¹⁹ Moral arguments are informed by empirical data which provides insights into the extent of suffering an animal may experience in certain situations, such as when caught in ‘killing traps’. The use of ‘killing traps’ has precipitated international controversy because of academic debate about the extent of animal suffering from the moment the trap is triggered until loss of consciousness or death.²⁰ Scientific data is used to formulate moral judgements regarding what constitutes an ‘acceptable level’ of suffering.²¹

¹⁴ See CITES (n 4); *International Convention for the Regulation of Whaling*, opened for signature 2 December 1946, 161 UNTS 72 (entered into force 10 November 1948) (‘ICRW’); *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995) annex 1A (‘General Agreement on Tariffs and Trade 1994’) (‘GATT’).

¹⁵ Nibedita Priyadarshini Jena, ‘Animal Welfare and Animal Rights: an Examination of some Ethical Problems’ (2017) 15(4) *Journal of Academic Ethics* 377, 380.

¹⁶ Scholz (n 7) 468.

¹⁷ Anne Peters, ‘Global Animal Law: What It Is and Why We Need It’ (2016) 5(1) *Transnational Environmental Law* 9, 11; Mark James Learmonth, ‘Dilemmas for Natural Living Concepts of Zoo Animal Welfare’ (2019) 9(6) *Animals* 318.

¹⁸ Scholz (n 7) 468.

¹⁹ David Fraser et al, ‘A Scientific Conception of Animal Welfare that Reflects Ethical Concerns’ (1997) 6(3) *Animal Welfare* 187, 193.

²⁰ See Gilbert Proulx and Rodtka Dwight, ‘Killing Traps and Snares in North America: The Need for Stricter Checking Time Periods’ (2019) 9(8) *Animals (Basel)* 570.

²¹ Scholz (n 7) 469; Stuart R. Harrop, ‘The International Regulation of Animal Welfare and Conservation Issues through Standards Dealing with the Trapping of Wild Animals’ (2000) 12(3) *Journal of Environmental Law* 333, 350.

Animal welfare concerns are often contrasted with animal conservation concerns, which focus on macro-level issues including wild animal populations, and threats to biodiversity and species numbers. ‘Conservation’ prioritizes endangered or threatened species as opposed to individual animal wellbeing. Consequently, conservationists focus on broader environmental issues, ecosystem dynamics and species or sub-species survival. The purpose of conservation is to preserve species with the aim of preventing extinction, whereas animal welfare measures prioritize the protection of individual animals regardless of conservation status. For example, a conservationist may not be interested in the welfare of common, introduced species that could be said to threaten the survival of an endangered species.²² By contrast, welfarists emphasize the intrinsic, moral worth of individual animals and extend their concern to ensuring that conservation strategies are humane.²³ ‘Animal welfare’ and ‘conservation’ are therefore differentiated by their concern for animals at differing scales.²⁴ They create a “potential clash between individualism (welfare) and holism (conservation).”²⁵

3 THE CONSERVATION/WELFARE SEPARATISM

3.1 HISTORICAL SEPARATION OF ANIMAL WELFARE AND CONSERVATION

Prior to examining existing animal welfare law and policy, it is helpful to reflect upon the history of conservation and environmental laws, and how they have been characterized by a lack of concern for animal welfare. As welfare and conservation doctrines have developed along separate historical trajectories, they are often perceived to be unrelated in substance and form.²⁶ This separation is significant in the context of international animal law because animal welfare has frequently been excluded from international environmental law on the grounds that it is a matter of domestic affairs.²⁷

The split between welfare and conservation pre-dates CITES and has influenced the text, interpretations and applications of environmental law treaties. This split manifests itself through two important regulatory distinctions. Firstly, international law has traditionally endorsed species conservation as a transboundary concern and animal welfare as a domestic matter.²⁸ Secondly, international conservation law concerns wild animals and welfare laws are primarily concerned with domestic animals.²⁹

²² Stuart R. Harrop, ‘Wild Animal Welfare in International Law: The Present Position and the Scope for Development’ (2013) 4(4) *Global Policy* 381, 382.

²³ Scholz (n 7) 464.

²⁴ Paul C. Paquet and Chris T. Darimont, ‘Wildlife Conservation and Animal Welfare: Two Sides of the Same Coin?’ (2010) 19(1) *Animal Welfare* 177, 179.

²⁵ Scholz (n 7) 464.

²⁶ Michael Bowman, ‘Animals, Humans and the International Legal Order: Towards an Integrated Bioethical Perspective’ in Werner Scholtz (ed), *Animal Welfare and International Environmental Law: From Conservation to Compassion* (Edward Elgar Publishing, 2019) 38, 44.

²⁷ Scholz (n 7) 467.

²⁸ Katie Sykes, ‘Globalisation and the Animal Turn: How International Trade Law Contributes to Global Norms of Animal Protection’ (2016) 5(1) *Transnational Environmental Law* 55, 56.

²⁹ *Ibid.*

Notwithstanding this, these distinctions are not absolute and have the potential to overlap and are not as entrenched as they used to be.³⁰

One reason for the distinct trajectories of welfarism and conservation is that both doctrines have evolved over different timeframes and through separate political processes. This has occurred through what Jedediah Purdy calls the “near divorce of environmental law from ethics in the past few decades.”³¹ This refers to the traditional association of animal welfare with ethics, and conservation with empirical data.³² ‘Welfarists’ and ‘conservationists’ can accordingly form distinct epistemic communities.³³ As a result, these concepts and outlooks have been perceived as unrelated in substantive and organisational terms and have seldom interacted. Consequently, these areas attract their own idiosyncratic commentators, modes of inquiry and channels of communication.³⁴ Whilst there has been some recognition of the logical interlinkage between conservation and animal welfare at an academic level, serious engagement with animal welfare as part of international law to date occurs only within academia.³⁵

3.2 INTERNATIONAL LAW ON CONSERVATION

International frameworks regulating the conservation of biological diversity first appeared in the 19th century, but grew in prominence from the 1970s. Their traditional focus was quite narrow and concerned specific species perceived to be at risk of exploitation.³⁶ For instance, the North Pacific Fur Seal Convention (1911) regulated the commercial harvest of fur-bearing mammals in the Pribilof Islands of the Bering Sea to maintain sustainable harvest.³⁷ While concern for wildlife has traditionally been premised on its ‘instrumental value’ to humans, the scope of international environmental law has broadened in recognition of the “ecological connectivity and evolutionary seamlessness” of biological diversity.”³⁸ Consequently, the focus of contemporary international environmental law is directed towards maintaining biological diversity instead of individual specimens. Relevantly, Robert Vrijenhoek remarks it is inevitable that evolutionary and conservation biology will focus attention on species levels because individuals cannot evolve or be considered in perpetuity.³⁹

As a result of scientific advances, it is no longer doubted that species and ecosystem protection are critical to the maintenance of all life and human dependence on

³⁰ Ibid 67.

³¹ Jedediah Purdy, ‘Our Place in the World: A New Relationship for Environmental Ethics and Law’ (2013) 62(4) *Duke Law Journal* 857, 862.

³² Scholz (n 7) 470.

³³ Stuart R. Harrop, ‘Climate Change, Conservation and the Place for Wild Animal Welfare in International Law’ (2011) 23(3) *Journal of Environmental Law* 441, 442.

³⁴ Bowman (n 26) 44.

³⁵ Ibid 45.

³⁶ Ibid 55.

³⁷ *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).

³⁸ Bowman (n 26) 55.

³⁹ Robert Vrijenhoek, ‘Natural Processes, Individuals and Units of Conservation’ in Bryan G. Norton, Michael Hutchins, Elizabeth F. Stephens and Terryl L. Maple (eds) *Ethics on the Ark: Zoos, Animal Welfare and Wildlife Conservation* (Smithsonian Institution Press, 1995) 74, 78.

nature for survival.⁴⁰ This understanding underpins international environmental law's principal conservation instrument, the Convention on Biological Diversity ('CBD') (1993). The objective of the CBD is "the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of benefits arising out of utilisation of genetic resources."⁴¹ Though notions of conservation and sustainable use are integrated throughout the Convention, only 'sustainable use' is defined. Its given definition is "the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations."⁴² The focus of this definition concerns the manner and rate of human use to ensure ecologically sustainable development ('ESD'). The definition of biological diversity is also significant, referring to "the variability among living organisms from all sources... [including] diversity within species."⁴³ This definition groups all living organisms together with minimal recognition of individual differences and intrinsic value. This definition is indicative of the focus of the CBD, which is not on individual forms of life. This means the CBD is ill-equipped to address the importance protecting individual ecological units to achieve goals of ecosystem health and ensuring ESD.

3.3 THE EMERGENCE OF ANIMAL WELFARE

The entry of animal welfare into international law has occurred mostly through ancillary and incidental means. It has been included as an ad-hoc supplement to treaty arrangements with other objectives, such as species conservation. Within some Conventions, animal welfare was inadvertently protected despite a lack of explicit welfare considerations in the treaty texts. For instance, Conventions prohibiting particular hunting methods which posed a threat to species populations due to their harmful effects, such as the use of fire, poisons, explosives or automated weapons, have secured welfare benefits for individual animals as a side-effect.⁴⁴ Furthermore, treaties adopted to prevent the spread of animal diseases have produced collateral benefits for animal welfare, despite their primary objective to protect human health and benefit livestock owners.⁴⁵

In some treaties, concern for animal welfare was explicitly included in its text, as is the case with CITES. The peculiarity of CITES lies in the fact that animal welfare became "a recurrent complementary feature" to its conservation agenda.⁴⁶ Through collective, ad-hoc inclusions of animals under international instruments, animal welfare began to emerge as a distinct concern in its own right. This is particularly evident within the development of the World Organisation for Animal Health ('OIE'), an organisation

⁴⁰ Jean-Louis Martin et al, 'The Need to Respect Nature and its Limits Challenges Society and Conservation Science' (2016) 113(22) *Proceedings of the National Academy of Sciences* 6105, 6107.

⁴¹ CBD (n 6) art 1.

⁴² *Ibid* art 2.

⁴³ *Ibid*.

⁴⁴ For example, *Convention Relative to the Preservation of Fauna and Flora in their Natural State*, opened for signature 8 November 1933, 172 LNTS 241 (entered into force 14 January 1936) art 10.

⁴⁵ For example, *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).

⁴⁶ Bowman (n 26) 58.

originally founded to foster collaboration regarding regulation of animal diseases. The OIE has championed international concern for animal welfare and health out of recognition of the symbiotic relationship between animal and human health.⁴⁷

The above analysis illustrates that ‘conservation’ and ‘animal welfare’ have developed along divergent historical trajectories. This has resulted in an ‘epistemological gulf’ between the concepts, creating and maintaining their separation, despite the obvious connections between them.⁴⁸ To secure collective environmental goals such as species survival and biodiversity conservation, there must exist individuals of a particular species whose survival depends on individual wellbeing.⁴⁹

4 THE INTERNATIONAL PRESENCE OF ANIMAL WELFARE

This section delves into doctrinal analysis of international instruments concerning animal welfare. Acknowledging the historical split between conservation and animal welfare, it explains why animal welfare is nonetheless rising in priority on international reform agendas. This explanation is followed by examples of the piecemeal, unsatisfactory way animal welfare is incorporated into international law.

Until recently, the legal protection of animals has been considered a matter of conservation.⁵⁰ Evidence has emerged at an international level recognising animal welfare protection as a distinct value to be pursued globally. For instance, on 13-14 November 2015, the George Washington University Law School held a workshop on ‘International Law and Wildlife Wellbeing’ that was attended by approximately a hundred wildlife advocates from governments, inter-governmental organisations, NGOs and academia. The aim of this workshop was to stimulate dialogue between proponents of conservation/sustainable use and animal welfarists on the topic of how international law can protect wildlife “not only in preventing extinctions but also as regards the inhumane treatment of wildlife caused by human exploitation.”⁵¹ Steven White attributes the international transition towards animal welfare to the rise of challenges such as climate change, habitat loss, illegal animal trade and the confinement of wild animals in captivity.⁵² These problems have seriously affected the welfare of wild animals and accordingly raised crucial conservation issues. Decreases in population numbers in addition to suffering experienced by animals as a result of climate change have

⁴⁷ World Organisation for Animal Health, ‘Strategic Plan: OIE – World Organisation for Animal Health’, *World Organisation for Animal Health* (Web Page) <<https://www.oie.int/about-us/director-general-office/strategic-plan/>>.

⁴⁸ Harrop (n 33) 441.

⁴⁹ David Bilchitz, ‘Why Conservation and Sustainability Require Protection for the Interests of Animals’ in Werner Scholtz (ed), *Animal Welfare and International Environmental Law: From Conservation to Compassion* (Edward Elgar Publishing, 2019) 207, 211.

⁵⁰ Steven White, ‘Shifting Norms in Wild Animal Protection and Effective Regulatory Design’ in Werner Scholtz (ed), *Animal Welfare and International Environmental Law: From Conservation to Compassion* (Edward Elgar Publishing, 2019) 180, 180.

⁵¹ Rachele Adam and Joan Schaffner, ‘International Law and Wildlife Well-Being: Moving from Theory to Action’ (2017) 20(1) *Journal of International Wildlife Law and Policy* 1, 1.

⁵² White (n 50) 180.

exacerbated welfare concerns.⁵³ Stuart Harrop echoes these claims, arguing that current climate change predictions and anthropogenic activity may fundamentally alter the status of ‘wild animals’.⁵⁴ Destruction and fragmentation of habitats may necessitate consolidating species into more geographically sparse and controlled environments, which could result in more intrusive conservation strategies, in addition to the superimposing of regulatory measures over wild populations, such as assisted migration.⁵⁵ This increase in human control over animals may necessitate the “[injection] of compassion into our environmental law and policy.”⁵⁶ Impacts of climate change and habitat fragmentation must be understood at both individual and species levels, necessitating individual animal protection from harmful effects and human maltreatment.⁵⁷

4.1 ‘SOFT LAW’ ANIMAL WELFARE INSTRUMENTS

One instrument indicating the emergence of animal welfare as an international concern is the World Charter for Nature, adopted by UN member-states in October 1982.⁵⁸ In its preamble, it blends conservation and animal welfare concerns by embracing a ‘deep ecological’ approach acknowledging the uniqueness of “every form of life ... warranting respect regardless of its worth to man.”⁵⁹ The Charter expresses the necessity of humankind’s “[guidance] by a moral code of action,” reminiscent of the ethical dimensions of animal welfare discourse.⁶⁰ It recognizes the crucial connection between respecting individual forms of life and “maintaining the stability and quality of nature and of conserving natural resources,”⁶¹ and synthesizes the “ethics of the welfarists and the pragmatism of the conservation scientists.”⁶²

As a formal declaration of ethical and ecological principles, the World Charter for Nature has the potential to create an animal welfare foundation in the context of environmental regulatory instruments. This potential is predicated on examples of the innovative use of soft law declarations, such as the 1992 Rio Declaration on Environment and Development,⁶³ which catalysed the creation of legally binding treaties and caused the codification of concepts such as sustainable development in international environmental law.⁶⁴

The Charter’s potential for influence in this regard is undermined by its substantive text, which takes a more traditional approach to conservation. Notions of

⁵³ Ibid.

⁵⁴ Harrop (n 33) 450.

⁵⁵ Ibid.

⁵⁶ Ibid 442.

⁵⁷ Ibid 445.

⁵⁸ *World Charter for Nature*, GA Res 37/7, UN Doc A/RES/37/7 (28 October 1982).

⁵⁹ Ibid annex preamble.

⁶⁰ Ibid.

⁶¹ World Charter for Nature (n 58) preamble.

⁶² Harrop (n 33) 447.

⁶³ *Report of the United Nations Conference on Environment and Development (Rio De Janeiro, 3-14 June 1992)*, UN Doc. A/CONF.151/26/Rev.1 (Vol. I) (14 June 1992).

⁶⁴ Werner Scholtz, ‘Legal Protection of the Environment’, in H.A. Strydom (ed), *International Law* (Oxford University Press, 2015) 504, 511.

respect and protections of individual life forms are not revisited and are overshadowed by macro-level concerns for sustainable use and population levels.⁶⁵ The ‘Caring for the Earth’ Declaration (1991) is more effective in this regard, particularly by way of its contents in Chapter 2 (on ‘Respecting and Caring for the Community of Life’).⁶⁶ Following the World Charter for Nature as an updated version of the World Conservation Strategy, the ‘Caring for the Earth’ Declaration recognizes the responsibility of humans towards all life-forms, the value of nature in its own right and that all species and systems of nature deserve respect regardless of their utility to humankind.⁶⁷ It affirms animal welfare obligations including to protect all creatures from cruelty, avoidable suffering and unnecessary killing, while acknowledging that this obligation may conflict with the requirement that “no people should be deprived of its means of subsistence.”⁶⁸ This conflict reflects the tension between ‘instrumental’ and ‘intrinsic’ values of animals, as animal welfarists accept animals may be used for human purposes - provided such use is ‘necessary’ and does not result in unjustifiable suffering or cruelty.⁶⁹ The ‘intrinsic’ value of animals denotes their value in their own right and inability to be substituted or replaced, irrespective of their utility to humans, or ‘instrumental’ value.⁷⁰ Ideas articulated in the ‘Caring for the Earth’ Declaration have been described as founding principles for incorporating a ‘world ethic’ into all sectors of society.⁷¹ While its ethical dimensions have yet to resonate significantly with the international legal community, their existence may aid the creation of future treaties transforming animal ethics into binding legal obligations aiming to prevent animal cruelty.

The notion of intrinsic value of species is also integrated into the Convention on Biological Diversity (‘CBD’) (1993) preamble. It is fixed at a macro-level, stating Contracting Parties are “conscious of the intrinsic value of biological diversity.”⁷² The value of biological diversity in this context is premised upon its “importance ... for evolution and for maintaining life sustaining systems of the biosphere.”⁷³ The substantive text of the Convention does not revisit the concept of intrinsic value or recognize the value of individual biological units in creating biological diversity. The CBD preamble is framed in anthropocentric terms regarding the importance of biodiversity for “meeting the food, health and other needs of the growing world population.”⁷⁴ With its conservationist focus, the CBD excludes sentience and individual suffering from the ambit of protecting biodiversity.

While the CBD is disappointing in this regard, it is important to note the frequently underacknowledged role of international instrument preambles. While they

⁶⁵ World Charter for Nature (n 58); Harrop (n 33) 447.

⁶⁶ The World Conservation Union, United Nations Environment Programme and World Wide Fund for Nature, *Caring for the Earth: A Strategy for Sustainable Living* (Final Report, October 1991) <<https://portals.iucn.org/library/efiles/documents/cfe-003.pdf>> 13-14 (‘Caring for the Earth’).

⁶⁷ Ibid.

⁶⁸ Ibid 15.

⁶⁹ Harrop (n 22) 383.

⁷⁰ John A. Vucetich, Jeremy T. Bruskotter and Michael Paul Nelson, ‘Evaluating Whether Nature’s Intrinsic Value is an Axiom of or Anathema to Conservation’ (2015) 29(2) *Conservation Biology* 321, 322-323.

⁷¹ *Caring for the Earth* (n 66) 16.

⁷² CBD (n 6) preamble.

⁷³ Ibid.

⁷⁴ Ibid.

may appear to pay ‘lip service’ to ideas subsequently absent from their text, they can also be “useful vehicles for advocating ideas that are too controversial to be assumed as binding obligations by nations.”⁷⁵ Stuart Harrop argues that preambles provide a “safe location” for concepts that are not yet regarded by the international community as acceptable to include in the substantive text of treaties.⁷⁶ I therefore argue that inclusion of the concept of ‘intrinsic value’ in the CBD preamble should not be disregarded as a mere instance of ‘lip service’. The idea that natural entities have value independent from humans is a common thread within concepts of animal welfare and rights.⁷⁷ The World Charter for Nature (1982) and Caring for the Earth (1991) Declarations elevate this idea further, recognising the individual value of every form of life. Collectively, these instruments create a strong foundation for a system of international animal welfare norms from which other international instruments may derive influence. They provide a framework from which compassion and care can be extended to animals under international law.⁷⁸

Turning to codified international standards for animal welfare, the OIE has made important developments in this regard. The long-standing focus of the OIE is the prevention and control of animal diseases, with conspicuous efforts to develop policy influence in the area of animal welfare.⁷⁹ Since 2005, the OIE has adopted ten animal welfare standards in its *Terrestrial Code* and four animal welfare standards its *Aquatic Health Code* on issues including the transport of animals by land, the slaughter of animals for human consumption, the use of animals in research and education and the welfare of farmed fish during transport.⁸⁰ Most of these standards address animal health and relate to animal welfare to the extent it is perceived as impacting an animal’s overall health and propensity for disease. Notably, some chapters are specifically concerned with welfare.⁸¹

Noting the OIE’s truly global spectrum with 182 member states, it has been heralded as a global leader on animal welfare.⁸² While I commend the achievements of the OIE and do not doubt its global influence in developing animal welfare policy frameworks, it has several shortcomings which hinder its capacity in enforcing its animal health standards. The vague expression of its standards and its liberal use of the word ‘should’ suggest that its guidelines are un-enforceable.⁸³ They do not operate as enforceable standards obliging states to create domestic laws that limit or prohibit

⁷⁵ Harrop (n 22) 383.

⁷⁶ Ibid.

⁷⁷ See, for example, Robert Heeger and Frans Brom, ‘Intrinsic Value and Direct Duties: From Animal Ethics towards Environmental Ethics?’ (2001) 14(2) *Journal of Agricultural and Environmental Ethics* 241.

⁷⁸ Ibid.

⁷⁹ World Organisation for Animal Health, ‘About Us: OIE – World Organisation for Animal Health’, *World Organisation for Animal Health* (Web Page) <<https://www.oie.int/about-us/>>.

⁸⁰ World Organisation for Animal Health, ‘OIE Standards on Animal Welfare’, *World Organisation for Animal Health* (Web Page) <<https://oldrpawe.oie.int/index.php?id=280>>.

⁸¹ Ibid. See, for example, ‘Animal welfare and beef cattle production systems’, ‘Animal welfare and broiler chicken production systems’, ‘Introduction to recommendations for welfare of farmed fish’, ‘The welfare of farmed fish during transport’.

⁸² World Organisation for Animal Health, ‘The 182 OIE Members’, *World Organisation for Animal Health* (Web Page) <<https://www.oie.int/about-us/our-members/member-countries/>>; Steven White, ‘Into the Void: International Law and the Protection of Animal Welfare’ (2013) 4(4) *Global Policy* 391, 394.

⁸³ Ibid.

harmful practices to animals.⁸⁴ Rather, they often operate as trade restrictions and may be used by OIE members, who are also members of the World Trade Organisation ('WTO'), to distort *de jure* liberal trade operations. Animal health guidelines only have legal force through operation of the General Agreement on Tariffs and Trade ('GATT') and Agreement on the Application of Sanitary and Phytosanitary Measures ('AASPM') in circumstances where they are deemed "necessary to protect human, animal or plant life or health."⁸⁵

However, it remains unclear whether OIE guidelines on animal *welfare* are similarly enforceable since the WTO recognizes the OIE's authority with respect to animal health, but not necessarily welfare. This argument is reiterated by the Food and Agriculture Organisation ('FAO') who draw attention to the fact that neither the GATT nor the AASPM recognize animal welfare *per se* as a ground for trade restriction and therefore the OIE's "animal welfare standards cannot be referenced in the case of [inter-state trade] disputes."⁸⁶ In this context, the OIE welfare guidelines operate as non-binding trading standards and are not designed to promote animal welfare more comprehensively. The legal force of OIE guidelines flows from operation of the WTO trade exceptions, meaning they carry no inherent binding legal force. The prominence of the OIE's scientific welfare standards limits policy space for non-scientific and moral arguments in support of a more comprehensive animal protection regime.⁸⁷

4.2 REGULATION OF ANIMAL WELFARE UNDER INTERNATIONAL LAW

In the following paragraphs, I consider established, acceptable principles of animal welfare under international law. These have emerged in several conservation treaties and in the form of defences to breaches of trade law obligations.

Using the example of the GATT, there are several exceptions to general obligations of WTO members to engage in free trade.⁸⁸ Of importance are GATT paragraphs XX(a), (b) and (g) which permit trade restrictions "necessary to protect public morals", "necessary to protect human, animal or plant life or health" and "relating to the conservation of exhaustible natural resources."⁸⁹ Invocation of these provisions is typically permitted only when there is no less trade-restrictive method available protecting the interests in question.⁹⁰ In accordance with the Article XX chapeau, measures must not result in "arbitrary or unjustifiable discrimination" or a "disguised restriction on international trade."⁹¹ Despite the disparate interests that the provisions

⁸⁴ Favre (n 1) 252.

⁸⁵ GATT (n 14) art XX(b); *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995) annex 1A ('*Agreement on the Application of Sanitary and Phytosanitary Measures*') ('AASPM') preamble, art 2(2), art 3(2).

⁸⁶ Food and Agriculture Organization of the United Nations (FAO), *Capacity Building to Implement Good Animal Welfare Practices* (Report of the FAO Expert Meeting, 30 September – 3 October 2008) <<http://www.fao.org/3/i0483e/i0483e00.pdf>> 18.

⁸⁷ White (n 82) 395.

⁸⁸ GATT (n 14).

⁸⁹ *Ibid* art XX(a),(b),(g).

⁹⁰ Bowman (n 26) 61.

⁹¹ GATT (n 14) art XX.

XX(a),(b) and (g) protect, these exceptions have been used to protect animals across diverse contexts. For example, the cases *Tuna/Dolphin II*⁹² and *US – Tuna II (Mexico)*⁹³ have shown that trade restrictions on animal protection grounds have been permitted by the WTO. While they did not deal specifically with the issue of animal welfare, they espoused the ability of member-states to enact trade embargos protecting wildlife; demonstrating that animal welfare is not completely absent from the WTO agenda. Arguably, these cases, *inter alia*, collectively established the necessary precedent for invocation of animal welfare as a ground for trade restrictions under Article XX(a) in *EC-Seal Products*.⁹⁴

As exemplified by the more recent case *EC-Seal Products*, non-trade interests are assuming increased importance under WTO law. Although the Appellate Body held that the EU Seal Regime in question caused arbitrary and unjustifiable discrimination,⁹⁵ this case was a crucial development in international animal welfare jurisprudence in recognising animal welfare as a globally recognized phenomenon capable of invoking the public morality exception.⁹⁶ Importantly, *EC-Seal Products* explicitly acknowledged animal welfare as “a matter of ethical responsibility for human beings in general.”⁹⁷ More broadly, this case indicates that although animal welfare is high enough on the agenda of the WTO for it to be used to invoke trade exceptions, it does not permit animal welfare as a trade exception *per se*.⁹⁸ Trade distortions on animal welfare grounds are only permissible if the grounds fall under one of the enumerated exceptions under Article XX.⁹⁹ This reflects a broader, implied consensus of the WTO regime that animal suffering is not a substantive enough ground to interrupt the flow of open, international markets.¹⁰⁰

Turning to animal conservation treaties, the International Whaling Commission (‘IWC’) has indirectly integrated animal welfare into its agenda. The IWC creates rules pursuant to its parent convention, the International Convention for the Regulation of Whaling 1946 via alterations to the Schedule to that Convention (‘IWC Schedule’).¹⁰¹ Although both CITES and the IWC administer the IWC Schedule, these instruments were not designed with any sense of interrelationship or continuity.¹⁰² They demonstrate the lack of coherence under international environmental law and both

⁹² Report of the Panel, *United States – Restrictions on Imports of Tuna*, WTO Doc WT/DS29/R (June 16, 1994) (*Tuna/Dolphin II*).

⁹³ Appellate Body Report, *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, WTO Doc WT/DS381/AB/R (16 May 2012) (*US – Tuna II (Mexico)*).

⁹⁴ GATT (n 14) art XX(a); Appellate Body Report, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, WTO Doc WT/DS400/AB/R (22 May 2014) (*EC – Seal Products*).

⁹⁵ *Ibid* para 5.338.

⁹⁶ Report of the Panel, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, WTO Doc WT/DS401/R (25 November 2013) (*EC – Seal Products*) para 7.420.

⁹⁷ *EC – Seal Products* (n 94) para 7.409

⁹⁸ *Ibid*.

⁹⁹ GATT (n 14) art XX.

¹⁰⁰ Harrop (n 22) 385.

¹⁰¹ ICRW (n 14) schedule.

¹⁰² CITES, *Reaffirmation of the Synergy Between CITES and the IWC* (Report on Eleventh Meeting of the Conference of the Parties Gigiri (Kenya), Doc. 11.15.2, 10-20 April 2000) <https://cites.org/sites/default/files/eng/cop/11/doc/15_02.pdf>.

regulate animal welfare in very different ways.¹⁰³ The historical and constitutional framework of the IWC makes it clear that its primary objective is the conservation of stocks in order to “make possible the orderly development of the whaling industry.”¹⁰⁴ Arguments about whale populations are often intertwined with concern for whales struck but missed and therefore left to die slow and painful deaths, in addition to the slaughtering of female whales carrying unborn or newborn calves, the latter susceptible to slow death by starvation upon the death of mother whales.¹⁰⁵ The complexity of whale populations and their “phylogenetically sophisticated nature” creates the necessity for some welfare rules, which are minimal in regulating the type of weapon used in whale hunting.¹⁰⁶

Consequently, the IWC has created a small number of provisions that explicitly concern the welfare of hunted whales.¹⁰⁷ The welfare concerns of the provisions are identified by the debates surrounding their articulations, rather than by express welfare language in the provisions themselves.¹⁰⁸ An example of this are ongoing debates regarding use of the electric lance in whale killing, which is still permitted by virtue of a failed proposed ban in 1996.¹⁰⁹ This has been a regular item on the IWC agenda since 1992. Several Commissioners have raised concerns pertaining to its cruel and ineffectual killing method.¹¹⁰ This animal welfare focus is narrow, especially when compared to CITES, which regulates the welfare of numerous endangered animals brought under human control in the course of international trading activity. CITES deals very deliberately with animal welfare. In contrast, animal welfare has entered the framework of the IWC indirectly through Commission debates.

The above treaties indicate animal welfare is emerging on the international legal agenda, albeit in a sporadic and ad hoc manner. Although the case *EC – Seal Products* indicates that international trade law is making important and constructive contributions to global norms relating to animals,¹¹¹ these developments are currently restricted to the portfolio of international trade.¹¹² Furthermore, animal welfare is frequently subordinate to other objectives under international law, including those of conservation or maintaining a robust free trading regime. None of these instruments embodies a feasible way forward in creating a comprehensive, enforceable regime for animal protection. With the exception of some soft law instruments,¹¹³ the

¹⁰³ Harrop (n 22) 386.

¹⁰⁴ ICRW (n 14) preamble.

¹⁰⁵ Harrop (n 33) 458.

¹⁰⁶ *Ibid.*

¹⁰⁷ ICRW (n 14) schedule III ‘Capture’.

¹⁰⁸ Harrop (n 22) 386; See, for example, International Whaling Commission, *Resolution on Whale Killing Issues* (Annual Report of the International Whaling Commission, 56th Annual Meeting, 2004) 1 <<https://archive.iwc.int/pages/download.php?ref=2079&size=&ext=pdf&k=&alternative=2999&usage=-1&usagecomment=>>

¹⁰⁹ *Ibid.*

¹¹⁰ Stuart R. Harrop, ‘The Dynamics of Wild Animal Welfare Law’ (1997) 9(2) *Journal of Environmental Law* 287, 289.

¹¹¹ See Sykes (n 28).

¹¹² See *EC – Seal Products* (n 94).

¹¹³ For example, *Caring for the Earth* (n 66); OIE Standards on Animal Welfare (n 80).

disproportionate emphasis on conservation at the expense of welfare means that respect for the intrinsic value of individual animals is largely absent from international law.

5 CITES AND ANIMAL WELFARE

This section focuses on CITES and its references to animal welfare, and to interpretations and applications of those references. Although containing “numerous provisions in relation to animal welfare,”¹¹⁴ these are incidental in substance, narrow in their application and frequently disregarded in practice.¹¹⁵ Notwithstanding this, CITES affirms that a welfare dimension is critical in its objective of regulating and restricting trade of animals to ensure species survival. This notion is explored in detail, noting the exceptionalism of CITES in this regard. The interplay between animal welfare and species conservation present in CITES may foreshadow arguments for more integrative understandings of animal protection.

5.1 ORIGINS OF CITES

CITES is a multilateral environmental treaty with a principal aim to prevent wild animal and plant extinction as a result of international trade.¹¹⁶ Its origins lie in a resolution adopted by the International Union for the Conservation of Nature (‘IUCN’) in Nairobi, Kenya.¹¹⁷ The text of the Convention was subsequently agreed at a meeting of representatives of 80 states in Washington, D.C in 1973.¹¹⁸ CITES recognizes the importance of international cooperation in protecting regulated specimens, and regulating wildlife trade, mainly through a system of permits and certificates issued by Contracting States before specimens can enter or leave states engaged in international trade.¹¹⁹ This permit system is applied through a three-tiered classification system (Appendix I, II and III) which accords varying degrees of protection to listed species.¹²⁰ These appendices are the crux of the CITES compliance regime. The Convention relies heavily on national state efforts in creating national legislation to implement decisions. Its enforcement measures are also left to state parties.¹²¹ This dependence on national

¹¹⁴ Scholtz (n 7) 477; See CITES (n 4) art 3(2)(c); art 3(3)(b); art 3(4)(b); art 3(5)(b); art 4(2)(c); art 4(5)(b); art 4(6)(b); art 5(2)(b); art 7(7)(c); art 8(3); art 8(5).

¹¹⁵ Michael Bowman, ‘Conflict or Compatibility – The Trade, Conservation and Animal Welfare Dimensions of CITES’ (1998) 1(1) *Journal of International Wildlife Law and Policy* 9, 11.

¹¹⁶ CITES, ‘What is CITES?’, CITES (Web Page) < <https://cites.org/eng/disc/what.php>>.

¹¹⁷ International Union for Conservation of Nature and Natural Resources, *Eighth General Assembly Proceedings* (Report, 16-24 September 1963) < <https://portals.iucn.org/library/efiles/documents/NS-SP-001.pdf>> 130.

¹¹⁸ Peter H. Sand, ‘Whither CITES? The Evolution of a Treaty Regime in the Borderland of Trade and Environment’ (1997) 1(1) *European Journal of International Law* 29, 34.

¹¹⁹ David Brown and Erin Swalis, ‘The Convention on International Trade in Endangered Species’ (Comparative Case Study 3, VERIFOR: Options for Forest Verification, Overseas Development Institute, November 2005) 1.

¹²⁰ CITES (n 4) art 2.

¹²¹ Elisabeth M. McOmber, ‘Problems in Enforcement of the Convention in International Trade in Endangered Species’ (2002) 27(2) *Brooklyn Journal of International Law* 673, 678.

processes reflects CITES's active adoption of and support for "the principle that individual states are the best protectors of native species."¹²²

5.2 THE ANIMAL WELFARE DIMENSIONS OF CITES

Notwithstanding its conservationist origins, CITES contains various regulations protecting the welfare of individual specimens. Notably, it does not contain provisions for methods of hunting and capture which may endanger species entering trade, or other factors concerning the welfare of wild animals.¹²³ Its mandate is the conservation of species and biodiversity for endangered plant and animal species affected by international trade. While it deals with animal welfare in a peripheral manner as a supplement to its ultimate conservationist aim, it has been regarded as the "only truly international treaty (which is not regional, dormant, redundant or [simply ineffective]) which advances into this aspect of regulation."¹²⁴

Attempts have been made to drastically increase its welfare jurisdiction, such as the 1983 CITES meeting in Botswana. A resolution was tabled by representatives from The Gambia to extend the interpretation of the treaty words "prepared and shipped so as to minimize the risk of, *inter-alia*, cruel treatment" to reach further back into the life-cycle of animal trade to include activities such as capture, trapping and hunting. This proposal failed on the grounds that it was *ultra vires* as these issues did not fall within the scope of the Convention.¹²⁵ This decision confirms that CITES cannot be used as a tool to advance animal welfare generally, and is strictly limited to international trading activity.

In the text of CITES, there are approximately a dozen explicit references to the welfare of individual specimens, including others which may be interpreted as fusing welfarist and conservationist concerns.¹²⁶ The latter provisions especially relate to the use of the term 'protection' in the preamble and substantive text. The term 'protection' denotes a broader understanding of animal protection in embracing both conservation and welfare objectives. Bowman notes the expression 'protection of wildlife' has been used in international conventions to articulate instruments which embody animal welfare as their core focus,¹²⁷ or combine welfare and conservation goals.¹²⁸ CITES explicitly recognizes the distinct meaning of 'protection' since Article 11(7) permits participation in meetings of the Conference of Parties ('CoP') of bodies and agencies "technically qualified

¹²² Saskia Young, 'Contemporary Issues of the Convention in International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Debate over Sustainable Use' (2003) 14(1) *Colorado Journal of International Environmental Law and Policy* 167, 173.

¹²³ Harrop (n 110) 289.

¹²⁴ *Ibid.*

¹²⁵ Bowman (n 115) 28.

¹²⁶ See CITES (n 4) art 3(2)(c); art 3(3)(b); art 3(4)(b); art 3(5)(b); art 4(2)(c); art 4(5)(b); art 4(6)(b); art 5(2)(b); art 7(7)(c); art 8(3); art 8(5); art 11(7).

¹²⁷ See, for example, *European Convention for the Protection of Animals During International Transport*, opened for signature 6 November 2003, 887 UNTS 195 (entered into force 14 March 2006); *European Convention for the Protection of Animals Kept for Farming Purposes*, opened for signature 10 March 1976, 1138 UNTS 315 (entered into force 10 September 1978).

¹²⁸ See, for example, *International Convention for the Protection of Birds*, opened for signature 18 October 1950, 638 UNTS 186 (entered into force 17 January 1963); Bowman (n 115) 11.

in the *protection, conservation or management* of wild fauna and flora.”¹²⁹ This language indicates the word ‘protection’ is not synonymous with conservation and can include concern for the welfare of individual animals. However, this provision is not conclusive enough to mean that animal welfare is a principal concern of CITES, as argued by Bowman, but that it is merely a supplement to conservation.¹³⁰

5.3 IMPORT, EXPORT AND TRANSPORT OF ANIMALS

A crucial welfare provision of CITES is Article 3(2), which regulates the treatment of Appendix I specimens during shipment.¹³¹ It lists three conditions which must be satisfied before an export permit is issued. These conditions include satisfaction of a respective authority that (a) “... such export will not be detrimental to the survival of that species”; (b) “... the specimen was not obtained in contravention of the laws of that State for the protection of flora and fauna”; and (c) “... any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.”¹³² These conditions recur in variants throughout CITES in Articles 3 – 5.¹³³ The welfare criterion in (c) is articulated in a similar manner within provisions regulating the re-export of Appendix I specimens, export, re-export and introduction from the sea of Appendix II specimens, export of Appendix III specimens and travelling exhibitions.¹³⁴ It is important to note that CITES parties have not reached consensus as to what constitutes ‘cruel treatment’ in the context of these provisions.¹³⁵

The welfare criterion in (c) does not create an obligation to ensure the welfare of the specimens in question. It merely requires the satisfaction of the respective Management or Scientific Authority with respect to the prospective preparation and shipping conditions of the specimen. This could result in negative welfare consequences for animals if such conditions fall below their anticipated standard. The operation of this provision is thus dependent on speculative assessments regarding unproven conduct, albeit which must be undertaken in good faith in accordance with the Vienna Convention on the Law of Treaties (1980).¹³⁶

David Favre notes that the welfare criteria in the context of Articles 3 and 4 are normally met by exporters simply agreeing to abide by shipping standards adopted by the International Air Transport Association (‘IATA’).¹³⁷ Despite this, the legal status of both the IATA and CITES Guidelines remains ambiguous. For instance, a 2013 resolution adopted by the CoP merely *recommended* that suitable measures “be taken by the Parties to promote the full and effective use by Management Authorities [of the IATA and CITES

¹²⁹ CITES (n 4) art 11(7).

¹³⁰ Bowman (n 115) 11.

¹³¹ CITES (n 4) art 3(2).

¹³² Ibid art 3(2)(a)-(c).

¹³³ Ibid art 3-5.

¹³⁴ Ibid art 3(4)(b); art 4(2)(c); art 4(5)(b); art 4(6)(b); art 5(2)(b); art 7(7)(c); Bowman (n 115) 21.

¹³⁵ Favre (n 1) 246.

¹³⁶ *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) (‘*Vienna Convention*’) art 26, art 31.

¹³⁷ Favre (n 1) 246; CITES, *Conf. 10.21 (Rev. CoP16) Transport of Live Specimens* (Conference Report No 10.21 (Rev CoP16), 2013) <<https://cites.org/sites/default/files/document/E-Res-10-21-R16.pdf>>.

Guidelines].”¹³⁸ Further, Michael Bowman comments that there has never been any suggestion that such guidelines have been perceived as being mandatory.¹³⁹ Notably, Bowman’s comment was made in regards to the predecessor of the 2013 *CITES Guidelines for the non-air transport of live wild animals and plants*.¹⁴⁰ This nonetheless shows that CITES guidelines, historically, have not been treated with due seriousness, further illustrated by the fact that very few parties made efforts to implement previous guidelines.¹⁴¹

In the context of Appendix I specimens, a prerequisite to the granting of an export or re-export certificate is that an import permit has already been granted. One of the conditions for the grant of the permit is that (b) “a Scientific Authority of the State of import is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it.”¹⁴² This relates primarily to the appropriateness of accommodation facilities of the importer. Again, this provision imposes no duty to ensure that the animal in question is adequately cared for. Contracting parties have given little attention to its exact scope and purpose, meaning minimal clarification of its operation exists.¹⁴³

Despite their welfare concerns, this provision and Article 3(2) both adhere to the conservationist tradition of prioritising the protection of species endangered or threatened with extinction. Appendix I specimens are those “threatened with extinction.”¹⁴⁴ In this context, the close connection between conservation and welfare can be examined with greater rigour. CITES appears to accord additional welfare controls relating to Appendix I exports by virtue of this conservation status, primarily because the life, death and wellbeing conditions of each specimen becomes paramount for ensuring the survival of their species. The delegation of additional welfare controls to Appendix I specimens provides an example illustrating how international law concerning wild animals purports “to conserve them to prevent them becoming extinct as a species, not to conserve them because each individual animal can experience pain and/or pleasure.”¹⁴⁵

Regarding the transport of animals, Article 8(3) extends welfare regulations to species during transit by, firstly, requiring “that specimens shall pass through any formalities required for trade with a minimum of delay.”¹⁴⁶ The second aspect of this provision states that “the Parties shall ensure all living specimens, during any period of transit, holding or shipment, are properly cared for so as to minimize the risk of injury, damage to health or cruel treatment.”¹⁴⁷ This provision implicitly recognizes sentience in its aim to minimize animal suffering which may be caused by delays.¹⁴⁸ Consequently, it

¹³⁸ Ibid.

¹³⁹ Bowman (n 115) 17.

¹⁴⁰ CITES, ‘Guidelines for Transport: CITES Guidelines for the non-air transport of live wild animals and plants’, *CITES* (Web Page) < <https://cites.org/eng/resources/transport/index.php>>.

¹⁴¹ Bowman (n 115) 18.

¹⁴² CITES (n 4) art 3(3)(b).

¹⁴³ Bowman (n 115) 25.

¹⁴⁴ CITES (n 4) art 2(1).

¹⁴⁵ Alexander Gillespie, ‘Animals, Ethics and International Law’ in Peter J. Sankoff and Steven White (eds), *Animal Law in Australasia: a New Dialogue* (Federation Press, 2009) 333, 352.

¹⁴⁶ CITES (n 4) art 8(3).

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

contains two key aspects – the minimisation of delays and the enforcement of adequate welfare standards. These elements are analysed below.

In facilitating swift movement of specimens, the provision states “a Party may designate ports of exit and entry at which specimens must be presented for clearance.”¹⁴⁹ A practical benefit of this is that it facilitates the concentration of wildlife specialists into a minimal number of designated centres.¹⁵⁰ Consequently, this increases the likelihood of specialized animal handling and holding facilities being available, as recommended by Resolution Conference 9.23.¹⁵¹ A notable risk, however, is that concentrating such expertise into a few ports may consequently stimulate illegal trade via non-designated ports.¹⁵² It is clear this provision is merely permissive, however, and Contracting States have discretion to implement it in a manner minimising relevant risks.

The second aspect of this provision requiring specimens to be “cared for so as to minimize the risk of injury, damage to health or cruel treatment” has not received the attention from Contracting States it deserves.¹⁵³ Discussions of this aspect are virtually absent from documentation on transportation issues, or academic debate, and it appears to have been regarded as a mere re-statement of the welfare provisions of Articles 3 - 5.¹⁵⁴ The provision, in fact, has a much broader application in terms of its welfare obligations, which extend to “any period of transit, holding or shipment.”¹⁵⁵ It is this provision which creates party responsibility to ensure that humane standards of preparation and shipment are achieved. It does not merely require welfare standards to be determined, but *ensured*. This creates a strict obligation on *any* party under whose jurisdiction or control a living specimen falls in the course of international trade within the ambit of CITES, to *ensure* that such specimens are properly cared for.¹⁵⁶ Unfortunately, very few Contracting States have created domestic legislation to comply with this obligation.¹⁵⁷ This further undermines party enforcement obligations to ensure the welfare of live animals by enforcing national legislation they have adopted in this regard. This requirement is created by Article 8(1), which requires “Parties [to] take appropriate measures to enforce the provisions of the present Convention.”¹⁵⁸

It is clear the text of CITES contains several provisions replete with animal welfare elements. While this article has not covered all potential welfare dimensions of CITES, it is not necessary to explore every aspect of the regime to illustrate that animal welfare plays a substantive role in its operation. As a final note, I draw attention to the importance of the practice of ‘ranching’ and the manner in which it is regulated under CITES with respect to welfare.

¹⁴⁹ Ibid.

¹⁵⁰ Bowman (n 115) 30.

¹⁵¹ See CITES (n 137) (repealed Resolution Conf. 9.23); Ibid.

¹⁵² Ibid.

¹⁵³ CITES (n 4) art 8(3).

¹⁵⁴ Bowman (n 115) 31.

¹⁵⁵ CITES (n 4) art 8(3).

¹⁵⁶ Bowman (n 115) 33.

¹⁵⁷ Australia, for example, has implemented Article 8(3) through the *Environmental Protection and Biodiversity Conservation Regulations 2000* (Cth) regs 9A.05, 9A.09, 9A.10, 12.19C, 17.02.

¹⁵⁸ CITES (n 4) art 8(1).

5.4 RANCHING

The ‘ranching’ of animals includes the “rearing in a controlled environment of animals taken as eggs or juveniles from the wild, where they would otherwise have had a very low probability of surviving adulthood.”¹⁵⁹ It is used in relation to ‘populations of species’ contained in Appendix I that are transferred to Appendix II, subject to fulfillment of detailed criteria established by the CoP.¹⁶⁰ It permits the trade of down listed species from Appendix I to II for purposes of ranching, as species listed in the former are not permitted in trade.¹⁶¹ This transfer can only occur in relation to populations of species within the national boundaries of a Party, and that the CoP deems no longer endangered and will benefit from ranching with intent to later trade.¹⁶² Although there is no express provision regarding ranching in the CITES text, an authorisation was established under the terms of Resolution Conference 3.15, since repealed by Resolution Conference 10.18.¹⁶³

Of relevance is the requirement established by paragraph (e)(iii) of Resolution 10.18, which creates a prerequisite to the approval of any ranching operation: that a Party provides “assurance that the operation shall be carried out at all stages in a humane (non-cruel) manner.”¹⁶⁴ Since ranching represents an activity beyond the normative operation of CITES, it is therefore expected to attract stricter requirements. These requirements are with respect to welfare and are connected to the conservationist objective of ranching - namely that any duly considered proposal for the conduct of a ranching operation must “be primarily beneficial to the conservation of the local population.”¹⁶⁵ Upon request by the Secretariat, the Party concerned may be subject to monitoring and reporting requirements and requested to provide additional information including “the number of animals released and their survival rates estimated on the basis of surveys and tagging programmes” and “mortality rate in capture and causes of such mortality.”¹⁶⁶ These issues are relevant to the commercial and ecological viability of the ranching operations as well as welfare; underscoring the close connection between these issues in the context of animal confinement in controlled environments.

¹⁵⁹ CITES, *Conf. 11.16 (Rev. CoP15) Ranching and Trade in Ranches Specimens of Species Transferred From Appendix I to Appendix II* (Conference Report No 11.16 (Rev CoP15), 2010) <<https://cites.org/sites/default/files/document/E-Res-11-16-R15.pdf>>.

¹⁶⁰ *Ibid.*

¹⁶¹ Harrop (n 22) 387.

¹⁶² Werner Scholtz, ‘Trading Rhinoceros Horn for the Sake of Conservation: Dehorning the Dilemma Through a Legal Analysis of the Emergence of Animal Welfare’ in Werner Scholtz (ed), *Animal Welfare and International Environmental Law: From Conservation to Compassion* (Edward Elgar Publishing, 2019) 235, 245.

¹⁶³ CITES, *Resolutions of the Conference of Parties, CITES* (Collection of Resolutions of the 10th Meeting of the Conference of Parties) <<https://cites.org/sites/default/files/eng/cop/10/E10-Res.pdf>>.

¹⁶⁴ *Ibid* 88 at (e)(iii).

¹⁶⁵ *Ibid* 87 at (b)(i).

¹⁶⁶ *Ibid* 88 at (a)(iv)-(v).

6 PROPOSED INTERNATIONAL CONVENTION FOR THE PROTECTION OF ANIMALS

6.1 FAILURE OF CITES AND OTHER INSTRUMENTS TO PROTECT ANIMALS

The previous section illustrates that CITES contains several animal welfare provisions. However, important caveats apply, including the tendency for CITES' animal welfare dimensions to be neglected or misunderstood. This is in addition to the fact that its provisions are inapplicable to wild animal populations preceding their entry into wildlife trade. There has also been a notable failure to implement CoP Resolutions. At a doctrinal level, the Convention focuses on units of species as opposed to individuals and regulating the trade of such species. It conceives flora and fauna as merely 'objects' of value and references them as simply 'specimens'.¹⁶⁷ Accordingly, CITES does not possess the institutional framework to comprehensively govern animal welfare. Neither do parties possess the political will to govern animal welfare generally, illustrated by a failed proposal by Israel in 1985 at the fifth CoP. This proposal was to create a comprehensive international convention addressing the protection of animals. However, this was rejected as being outside the remit of the parties.¹⁶⁸ The limited protections CITES and previously discussed international environmental law instruments provide for individual animals indicate a void exists for a 'global animal protection regime'.

A key aspect of the problem of under-regulated animal welfare is that laws exist in variants across states, ranging from well-established, enforceable animal welfare regulations in some regions (for example, the EU) to a virtual absence of regulations in other countries (typically developing states).¹⁶⁹ Even in nations that have animal welfare laws, the laws may be heavily qualified and grant protections to some animals and not others. For example, the *Prevention of Cruelty to Animals Act 1979* (NSW) ('POCTA') s 9 excludes 'stock animals' from welfare regulations requiring that animals are given adequate exercise.¹⁷⁰ Furthermore, 'cruelty' has been interpreted in a heterogenous manner between states, ranging from narrow prohibitions on cruelty which is deemed 'unreasonable', 'unnecessary' or 'unjustified',¹⁷¹ to including the meeting of basic animal welfare needs, such as those articulated under the Five Freedoms.¹⁷² These problems are further complicated by the fact that federal jurisdictions, including the U.S and Australia, regulate animals at a state level, resulting in variations across states on matters as important as what constitutes an 'animal'.¹⁷³

It is clear that governance of animal welfare is fragmented and rudimentary. Both national and international laws have failed to give animals the protection they deserve by virtue of their intrinsic worth and capacity to suffer. CITES does not rectify

¹⁶⁷ Bilchitz (n 49) 210.

¹⁶⁸ Gillespie (n 145) 334.

¹⁶⁹ White (n 82) 391.

¹⁷⁰ *Prevention of Cruelty to Animals Act 1979* (NSW) s 9(1A)(a).

¹⁷¹ *Ibid* s 4(2).

¹⁷² White (n 82) 391.

¹⁷³ *Ibid*.

these jurisdictional irregularities and does little by way of bringing animal welfare to the forefront of international law.

6.2 RATIONALES FOR ADOPTION OF ICPA

A proposed solution to remedy the ambiguous place of animal welfare under international law is to create a specific treaty dedicated to animal welfare. It must be acknowledged that multiple solutions have been proposed by academics and animal welfare organisations addressing this problem, including the possibility of OIE regional and global animal welfare strategies,¹⁷⁴ a Universal Declaration on Animal Welfare ('UDAW') potentially lead by the World Society for the Protection of Animals ('WSPA'),¹⁷⁵ and a hybrid model fusing aspects of the OIE and UDAW frameworks.¹⁷⁶ This article endorses the adoption of ICPA as a preferable alternative, originally proposed by prominent animal law scholar David Favre.¹⁷⁷ This is because ICPA, if adopted, would be a legally binding instrument with a more sophisticated framework than the draft UDAW. It constitutes a step beyond UDAW since Contracting States will be liable to comply with treaty obligations, including monitoring and enforcement action in the event of a breach of a treaty obligation.¹⁷⁸

ICPA is designed in a form of an 'umbrella treaty', including the convention itself, establishing general principles for animal welfare protection, which are accompanied by detailed protocols. Its protocols concern companion animals, care of exhibited wildlife, taking of wild animals and international transportation of animals.¹⁷⁹ It fuses ethical, scientific and legal perspectives in emphasising human responsibility towards animals in reducing their suffering.¹⁸⁰ ICPA contains a three-tiered approach including a series of broadly-articulated substantive provisions and operational and implementation arrangements; a series of related protocols addressing particular animal welfare issues in enhanced detail; and annexures setting out, *inter alia*, particular welfare standards and a list of animals deemed inappropriate as companion animals and prohibited methods and techniques of killing. This multi-tiered approach of ICPA is modelled on relatively well-established frameworks for environmental protection treaties, which would likely aid ICPA's success.¹⁸¹

ICPA contains a comprehensive definition of 'animal' with provisions creating general obligations in various contexts (including capturing or killing of wildlife, wildlife management and habitat, captive wildlife care and companion animals) obliging

¹⁷⁴ OIE, *Third OIE Global Conference on Animal Welfare: Implementing the OIE Standards – Addressing Regional Expectations* (Report on Third OIE Global Conference on Animal Welfare, 6-8 November 2012) <https://www.oie.int/fileadmin/Home/eng/Conferences_Events/docs/pdf/recommendations/kuala_aquatic/A_Recommendations_Animal_Welfare_conference.pdf> 4.

¹⁷⁵ The 'World Society for the Protection of Animals' has since changed its name to 'World Animal Protection'; White (n 82) 395.

¹⁷⁶ Caley Otter, Siobhan O'Sullivan and Sandy Ross, 'Laying the Foundations for an International Animal Protection Regime' (2012) 2(1) *Journal of Animal Ethics* 53, 66-67.

¹⁷⁷ Favre (n 1) 237.

¹⁷⁸ White (n 82) 396.

¹⁷⁹ Favre (n 1) 259.

¹⁸⁰ Bill Clark, David Favre and Stanley Johnson (n 12) art 1.

¹⁸¹ Michael Bowman, 'The Protection of Animals Under International Law' (1989) 4(2) *Connecticut Journal of International Law* 487, 498.

contracting parties to take all appropriate steps to prevent animal cruelty and mitigate suffering.¹⁸² Importantly, it does not discriminate between rare, threatened or endangered species and common, domestic animals. Nor does it establish a hierarchy according endangered species greater protections than non-threatened species. The expansive definition of ‘animal’ is based upon the premise that all species are independent living beings deserving of dignity and care, regardless of their conservation status.¹⁸³

6.3 ICPA AND THE COVID-19 CONTEXT

Favre and a colleague initially proposed the ratification of ICPA through the UN in the 1980s. Favre cites the reason for this proposal was because “it became clear CITES was not interested in such a topic.” A proposal to put ICPA on the agenda of a Board meeting of the WSPA was rejected because the WSPA was not interested.¹⁸⁴ This was followed by subsequent failures to find a sponsor nation for the treaty.¹⁸⁵ Notwithstanding these setbacks, I suggest that efforts to progress ICPA can be revived in the context of COVID-19. The ongoing pandemic has increased awareness of the symbiotic relationship between human and animal health due to its suspected origins in a Chinese market selling wild animals.¹⁸⁶ As a result, conditions and practices relating to animals in captivity have come under scrutiny and require new standards of welfare and hygiene to prevent disease transmission.¹⁸⁷ Such concern extends not only to animal trading practices, but also slaughterhouse and factory farm environments, where animals are confined in close proximity and experience high levels of stress. I argue that COVID-19 should be an incentive for international law makers to reflect on human-animal relations, and better regulate human-animal interactions.¹⁸⁸ The increased concern for animal welfare precipitated by COVID-19 has arguably created the ‘political opening’ for ICPA envisioned by Favre.¹⁸⁹ Nonetheless, ICPA must be promoted by organisations of sufficient international stature and nation-states to ensure its success. Considering the intersection of welfare and health, the OIE could play a substantial role in this regard.

6.4 BENEFITS OF ICPA

At a practical level, ICPA creates an acceptable standard of animal treatment, which is immediately accessible to all states, organisations and individuals. Its adoption gives credibility to local efforts to protect animal welfare - and would ideally have the effect of harmonising regulatory instruments at state and sub-state level. Optimally, it would

¹⁸² Bill Clark, David Favre and Stanley Johnson (n 12) art 2, art 3-10.

¹⁸³ Bowman (n 181) 488.

¹⁸⁴ Favre (n 1) 256.

¹⁸⁵ Ibid 255-256.

¹⁸⁶ A. Alonso Aguirre et al, ‘Illicit Wildlife Trade, Wet Markets, and COVID-19: Preventing Future Pandemics’ (2020) 12(3) *World Medical and Health Policy* 256, 256.

¹⁸⁷ Dilys Roe et al, ‘Beyond Banning Wildlife Trade: COVID-19, Conservation and Development’ [2020] 136 *World Development* 1, 2-3.

¹⁸⁸ David Webster, ‘COVID-19 Should be a Warning to Prevent Illegal Animal Trade, Says Experts’, *The National News* (online, 27 July 2020) <<https://www.thenationalnews.com/uae/environment/covid-19-should-be-a-warning-to-prevent-illegal-animal-trade-say-experts-1.1055122>>.

¹⁸⁹ Favre (n 1) 264.

remove the need to argue about what animal welfare standards ‘should be’, and funnel efforts into implementation of standards acceptable under the Convention.¹⁹⁰ It is crucial to note that cultural differences pose an obstacle to global harmonisation of animal welfare standards. However, owing to the increasing ‘internationalisation’ of conservation and the existence of ‘international animals’ which do not adhere to national boundaries, there is some scope for international uniformity for animal welfare.¹⁹¹ I suggest that the existence of cultural differences does not outweigh the practical necessity for creating internationally-accepted animal welfare standards. A proposal to adopt ICPA would stimulate formal discussion in this regard – and precipitate efforts towards reaching a global consensus while recognising cultural differences.

The proposed implementation of ICPA would generate international discussion about the possibility of an animal welfare treaty. It would create policy space for conversation and discussion between citizens, non-governmental organisations, national and state governments on a variety of animal welfare issues. Additionally, it would impose obligations on national governments to modify their laws or create new laws, which would further stimulate such discussion.¹⁹² Under the Australian Constitution, the only jurisdiction for animal welfare issues is under the ‘external affairs’ power which permits Australia’s entry into international treaties or conventions.¹⁹³ The federal government is empowered to engage in treaty processes and has jurisdiction over the subject matter of the treaty for the purposes of implementation.¹⁹⁴ The adoption of ICPA would provide federal jurisdictions - including the U.S and Australia - with jurisdiction to legislate on animal welfare at a national level. This would ideally harmonize accepted animal welfare practices, which are regulated at a state level in both nations.

Adopting ICPA would assist in reducing negative economic incentives at an international level. If the ICPA protocols were adopted in the manner proposed, Contracting States would be obligated to implement protocol obligations into national law. One advantage of ICPA in contrast to UDAW and OIE frameworks is obligations under ICPA would be enforceable as trade restrictions between WTO members, since exceptions to liberalized trade include “when a nation state carries out the requirements of another multilateral treaty.”¹⁹⁵ Consequently, nations seeking to ban imports on animal welfare grounds, in adhering to ICPA obligations, would not be in violation of their WTO obligations. By operation of the Vienna Convention, ICPA would supersede the restrictions of the GATT and permit the use of import restrictions to enforce international animal welfare obligations.¹⁹⁶

Similarly, ICPA could operate to the benefit of economic users of animals by creating uniform global standards. Some corporate entities may adopt the policy position that they would improve conditions for animals under their care if their economic competition is required to meet the same standards. In this regard, ICPA would elevate

¹⁹⁰ Ibid 239.

¹⁹¹ Bruce A. Wagman and Matthew Liebman, *A Worldview of Animal Law* (Carolina Academic Press, 2011) 24.

¹⁹² Favre (n 1) 247-248.

¹⁹³ *Australian Constitution* s 51(xxix).

¹⁹⁴ *Commonwealth v Tasmania* (1983) 158 CLR 1 (*Tasmanian Dam Case*).

¹⁹⁵ Favre (n 1) 250; *Vienna Convention on the Law of Treaties* (n 135) art 30.

¹⁹⁶ Ibid 251; Ibid.

the economic playing field to a more ethical level.¹⁹⁷ Notably, corporations may advertise their compliance with ICPA as part of a marketing strategy illustrating their concern for animal welfare. Consequently, this could contribute to product differentiation based on welfare standards and increase the production of humanely produced animal products. For example, markets are already witnessing the differentiation in wool products from mulesed and non-mulesed sheep.¹⁹⁸ ICPA may stimulate the growth of market products differentiated by their welfare practices and consequently propel wide-spread change in industry production and livestock industries.

At a broader level, this article endorses ICPA as a comprehensive and considered animal welfare treaty with due regard for economic interests, cultural differences and state sovereignty. This instrument represents a compromise and genuine effort to broker international consensus on animal welfare. It is worth noting that ICPA would not require states to be a party to all protocols, just a minimum of one.¹⁹⁹ It is articulated with sufficient generality to facilitate flexible national implementation, such as by obliging Contracting States to “take all appropriate steps” to achieve articulated welfare outcomes. It does not contain “exacting substantive obligations” or subject its domestic implementation to close scrutiny; which are two factors that render states less willing to accept international instruments.²⁰⁰ It incorporates an expeditious amendment process in Article 20, which facilitates amendments based on advances in scientific knowledge and increased public interest for animal welfare issues.²⁰¹ Additionally, ICPA may benefit from a more robust, systematic framework for evaluating the implementation of treaty obligations, perhaps involving guidance from technically-qualified non-government bodies reminiscent of the model adopted under CITES.²⁰² Nonetheless, ICPA is drafted with an appropriate level of practicality and political acceptability to ensure ratification and implementation from multiple nations.

7 CONCLUSION

An international convention dedicated to the protection of animals is a necessity given the ambiguous place of animal welfare under international law. The lack of international consensus on the regulation of animal welfare, among other causes, has contributed to disparate treatment of animals around the world.²⁰³ International law’s disproportionate focus on conservation has resulted in incoherent instances of animal welfare regulation, which do little to advance animal welfare as a global issue requiring serious legal engagement. CITES does little to address this problem because it provides welfare

¹⁹⁷ Ibid 263.

¹⁹⁸ Norm Blackman, ‘Corporate Social Responsibility and Animal Welfare – A Global Perspective’ (2005) 83(5) *Australian Veterinary Journal* 250, 250.

¹⁹⁹ Favre (n 1) 258.

²⁰⁰ Bowman (n 181) 494.

²⁰¹ Bill Clark, David Favre and Stanley Johnson (n 12) art 20; Ibid 494.

²⁰² See CITES (n 4) art 11(7); Ibid 495.

²⁰³ David Favre, ‘An International Treaty for Animal Welfare’ in Deborah Cao and Steven White (eds), *Animal Law and Welfare – International Perspectives* (Springer International Publishing AG, 2016) 87, 87.

protections in a limited context concerning endangered species during international trade. These limited protections operate for the purpose of preserving endangered species with animal welfare as a secondary concern to this conservation agenda. International law must recognize the close connection between welfare and conservation, as conditions of life and death for individual animals ultimately affect overall species numbers and their survival.

This article has illustrated the unsatisfactory manner which CITES and other international instruments deal with animal welfare. Presently, ICPA represents the most feasible and effective strategy for integrating animal welfare into international law. It fuses ethical, scientific and philosophical perspectives which collectively emphasize the need to reduce animal suffering. At an ethical level, ICPA pursues animal welfare on the basis of solidarity with sentient beings. It expands human obligations to animals based on their own intrinsic value. This injection of ethics into law may assist in eroding the anthropocentric nature of international environmental law. The question remains as to whether COVID-19 has created the necessary political climate for a new treaty on animal welfare.

BIBLIOGRAPHY

A. ARTICLES/BOOKS/REPORTS

- Adam, Rachelle and Joan Schaffner, 'International Law and Wildlife Well-Being: Moving from Theory to Action' (2017) 20(1) *Journal of International Wildlife Law and Policy* 1
- Aguirre, A. Alonso et al, 'Illicit Wildlife Trade, Wet Markets, and COVID-19: Preventing Future Pandemics' (2020) 12(3) *World Medical and Health Policy* 256
- Bilchitz, David, 'Why Conservation and Sustainability Require Protection for the Interests of Animals' in Werner Scholtz (ed), *Animal Welfare and International Environmental Law: From Conservation to Compassion* (Edward Elgar Publishing, 2019) 207
- Blackman, Norm, 'Corporate Social Responsibility and Animal Welfare – A Global Perspective' (2005) 83(5) *Australian Veterinary Journal* 250
- Brown, David and Erin Swalis, 'The Convention on International Trade in Endangered Species' (Comparative Case Study 3, VERIFOR: Options for Forest Verification, Overseas Development Institute, November 2005)
- Bowman, Michael, 'The Protection of Animals Under International Law' (1989) 4(2) *Connecticut Journal of International Law* 487
- Bowman, Michael, 'Conflict or Compatibility – The Trade, Conservation and Animal Welfare Dimensions of CITES' (1998) 1(1) *Journal of International Wildlife Law and Policy* 9
- Bowman, Michael, 'Animals, Humans and the International Legal Order: Towards an Integrated Bioethical Perspective' in Werner Scholtz (ed), *Animal Welfare and International Environmental Law: From Conservation to Compassion* (Edward Elgar Publishing, 2019) 38
- CITES, *Resolutions of the Conference of Parties, CITES* (Collection of Resolutions of the 10th Meeting of the Conference of Parties) <<https://cites.org/sites/default/files/document/E-Res-10-21-R16.pdf>>
- CITES, *Conf. 11.16 (Rev. CoP15) Ranching and Trade in Ranched Specimens of Species Transferred From Appendix I to Appendix II* (Conference Report No 11.16 (Rev CoP15), 2010) <<https://cites.org/sites/default/files/document/E-Res-11-16-R15.pdf>>
- CITES, *Conf. 10.21 (Rev. CoP16) Transport of Live Specimens* (Conference Report No 10.21 (Rev CoP16), 2013) <<https://cites.org/sites/default/files/document/E-Res-10-21-R16.pdf>>
- CITES, *Conf. 17.8 Disposal of Illegally Traded and Confiscated Specimens of CITES-Listed Species* (Conference Report No 17.8, 2016) <<https://cites.org/sites/default/files/document/E-Res-17-08.pdf>>
- CITES, *Reaffirmation of the Synergy Between CITES and the IWC* (Report on Eleventh Meeting of the Conference of the Parties Gigiri (Kenya), Doc. 11.15.2, 10-20 April 2000) <https://cites.org/sites/default/files/eng/cop/11/doc/15_02.pdf>
- Favre, David, 'When Will Concern For Animal Welfare Become Part of International Law?' [2017] (Winter) *American Bar Association* 1

- Favre, David, 'An International Treaty for Animal Welfare *Symposium Article*' (2012) 18(2) *Animal Law* 237
- Favre, David, 'An International Treaty for Animal Welfare' in Deborah Cao and Steven White (eds), *Animal Law and Welfare – International Perspectives* (Springer International Publishing AG, 2016) 87
- Food and Agriculture Organization of the United Nations (FAO), *Capacity Building to Implement Good Animal Welfare Practices* (Report of the FAO Expert Meeting, 30 September – 3 October 2008) <<http://www.fao.org/3/i0483e/i0483e00.pdf>>
- Fraser, David et al, 'A Scientific Conception of Animal Welfare that Reflects Ethical Concerns' (1997) 6(3) *Animal Welfare* 187
- Harrop, Stuart R., 'The Dynamics of Wild Animal Welfare Law' (1997) 9(2) *Journal of Environmental Law* 287
- Harrop, Stuart R., 'The International Regulation of Animal Welfare and Conservation Issues through Standards Dealing with the Trapping of Wild Animals' (2000) 12(3) *Journal of Environmental Law* 333
- Harrop, Stuart R., 'Climate Change, Conservation and the Place for Wild Animal Welfare in International Law' (2011) 23(3) *Journal of Environmental Law* 441
- Harrop, Stuart R., 'Wild Animal Welfare in International Law: The Present Position and the Scope for Development' (2013) 4(4) *Global Policy* 381
- Heeger Robert, and Frans Brom, 'Intrinsic Value and Direct Duties: From Animal Ethics towards Environmental Ethics?' (2001) 14(2) *Journal of Agricultural and Environmental Ethics* 241
- Gillespie, Alexander, 'Animals, Ethics and International Law' in Peter J. Sankoff and Steven White (eds), *Animal Law in Australasia: a New Dialogue* (Federation Press, 2009) 333
- International Whaling Commission, *Resolution on Whale Killing Issues* (Annual Report of the International Whaling Commission, 56th Annual Meeting, 2004) <<https://archive.iwc.int/pages/download.php?ref=2079&size=&ext=pdf&k=&alternative=2999&usage=-1&usagecomment=>>
- International Union for Conservation of Nature and Natural Resources, *Eighth General Assembly Proceedings* (Report, 16-24 September 1963) <<https://portals.iucn.org/library/efiles/documents/NS-SP-001.pdf>>
- Jena, Nibedita Priyadarshini, 'Animal Welfare and Animal Rights: an Examination of some Ethical Problems' (2017) 15(4) *Journal of Academic Ethics* 377
- Learmonth, Mark James, 'Dilemmas for Natural Living Concepts of Zoo Animal Welfare' (2019) 9(6) *Animals* 318
- Martin, Jean-Louis et al, 'The Need to Respect Nature and its Limits Challenges Society and Conservation Science' (2016) 113(22) *Proceedings of the National Academy of Sciences* 6105
- McOmber, Elisabeth M., 'Problems in Enforcement of the Convention in International Trade in Endangered Species' (2002) 27(2) *Brooklyn Journal of International Law* 673
- OIE, *Third OIE Global Conference on Animal Welfare: Implementing the OIE Standards – Addressing Regional Expectations* (Report on Third OIE Global Conference on Animal Welfare, 6-8 November 2012) <https://www.oie.int/fileadmin/Home/eng/Conferences_Events/docs/pdf/>

[recommendations/kuala_aquatic/A_Recommendations_Animal_Welfare_conference.pdf](#)>

- Otter, Caley, Siobhan O'Sullivan and Sandy Ross 'Laying the Foundations for an International Animal Protection Regime' (2012) 2(1) *Journal of Animal Ethics* 53
- Paquet Paul C., and Chris T. Darimont, 'Wildlife Conservation and Animal Welfare: Two Sides of the Same Coin?' (2010) 19(1) *Animal Welfare* 177
- Peters, Anne, 'Global Animal Law: What It Is and Why We Need It' (2016) 5(1) *Transnational Environmental Law* 9
- Proulx, Gilbert, and Rodtka Dwight, 'Killing Traps and Snares in North America: The Need for Stricter Checking Time Periods' (2019) 9(8) *Animals (Basel)* 570
- Purdy, Jedediah, 'Our Place in the World: A New Relationship for Environmental Ethics and Law' (2013) 62(4) *Duke Law Journal* 857
- Roe, Dilys et al, 'Beyond Banning Wildlife Trade: COVID-19, Conservation and Development' [2020] 136 *World Development* 1
- Sand, Peter H., 'Whither CITES? The Evolution of a Treaty Regime in the Borderland of Trade and Environment' (1997) 1(1) *European Journal of International Law* 29
- Scholtz, Werner, 'Legal Protection of the Environment', in H.A. Strydom (ed), *International Law* (Oxford University Press, 2015) 504
- Scholtz, Werner, 'Injecting Compassion into International Wildlife Law: From Conservation to Protection?' (2017) 6(3) *Transnational Environmental Law* 463
- Scholtz, Werner, 'Trading Rhinoceros Horn for the Sake of Conservation: Dehorning the Dilemma Through a Legal Analysis of the Emergence of Animal Welfare' in Werner Scholtz (ed), *Animal Welfare and International Environmental Law: From Conservation to Compassion* (Edward Elgar Publishing, 2019) 235
- Sykes, Katie, 'Globalisation and the Animal Turn: How International Trade Law Contributes to Global Norms of Animal Protection' (2016) 5(1) *Transnational Environmental Law* 55
- The World Conservation Union, United Nations Environment Programme and World Wide Fund for Nature, *Caring for the Earth: A Strategy for Sustainable Living* (Final Report, October 1991) <<https://portals.iucn.org/library/efiles/documents/cfe-003.pdf>>
- Vrijenhoek, Robert, 'Natural Processes, Individuals and Units of Conservation' in Bryan G. Norton, Michael Hutchins. Elizabeth F. Stephens and Terryl L. Maple (eds) *Ethics on the Ark: Zoos, Animal Welfare and Wildlife Conservation* (Smithsonian Institution Press, 1995) 74
- Vucetich, John A., Jeremy T. Bruskotter and Michael Paul Nelson, 'Evaluating Whether Nature's Intrinsic Value is an Axiom of or Anathema to Conservation' (2015) 29(2) *Conservation Biology* 321
- Wagman, Bruce A., and Matthew Liebman, *A Worldview of Animal Law* (Carolina Academic Press, 2011)
- White, Steven, 'Shifting Norms in Wild Animal Protection and Effective Regulatory Design' in Werner Scholtz (ed), *Animal Welfare and International*

Environmental Law: From Conservation to Compassion (Edward Elgar Publishing, 2019) 180

White, Steven, 'Into the Void: International Law and the Protection of Animal Welfare' (2013) 4(4) *Global Policy* 391

World Animal Protection, *Global Review 2019: Moving the World* (Global Review 2019) <https://dkt6rvnu67rqi.cloudfront.net/sites/default/files/media/WAP_Global_Review_2019_v13_spreads.pdf>

Young, Saskia, 'Contemporary Issues of the Convention in International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Debate over Sustainable Use' (2003) 14(1) *Colorado Journal of International Environmental Law and Policy* 167

B. CASES

Appellate Body Report, European Communities – Measures Prohibiting the Importation and Marketing of Seal Products, WTO Doc WT/DS400/AB/R (22 May 2014)

Appellate Body Report, United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products, WTO Doc WT/DS381/AB/R (16 May 2012)

Commonwealth v Tasmania (1983) 158 CLR 1

Report of the Panel, European Communities – Measures Prohibiting the Importation and Marketing of Seal Products, WTO Doc WT/DS401/R (25 November 2013)

Report of the Panel, United States – Restrictions on Imports of Tuna, WTO Doc WT/DS29/R (June 16, 1994)

C. LEGISLATION

Australian Constitution

Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora [1992] OJ L 206/7

Environmental Protection and Biodiversity Conservation Regulations 2000 (Cth)

Prevention of Cruelty to Animals Act 1979 (NSW)

D. TREATIES

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)

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

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)

Convention Relative to the Preservation of Fauna and Flora in their Natural State, opened for signature 8 November 1933, 172 LNTS 241 (entered into force 14 January 1936)

- European Convention for the Protection of Animals During International Transport, opened for signature 6 November 2003, 887 UNTS 195 (entered into force 14 March 2006)
- European Convention for the Protection of Animals Kept for Farming Purposes, opened for signature 10 March 1976, 1138 UNTS 315 (entered into force 10 September 1978)
- 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)
- International Convention for the Protection of Birds, opened for signature 18 October 1950, 638 UNTS 186 (entered into force 17 January 1963)
- International Convention for the Regulation of Whaling, opened for signature 2 December 1946, 161 UNTS 72 (entered into force 10 November 1948)
- Marrakesh Agreement Establishing the World Trade Organization, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995)
- Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980)

E. OTHER

- CITES, 'Guidelines for Transport: CITES Guidelines for the non-air transport of live wild animals and plants', *CITES* (Web Page) <<https://cites.org/eng/resources/transport/index.php>>
- CITES, 'What is CITES?', *CITES* (Web Page) <<https://cites.org/eng/disc/what.php>>
- Pallotta, Nicole, 'Though Denied by New York Court of Appeals, Habeas Corpus Claim for Chimpanzees Prompts Reflection', *Animal Legal Defense Fund* (Blog Post, 7 September 2018) <<https://aldf.org/article/though-denied-by-new-york-court-of-appeals-habeas-corpus-claim-for-chimpanzees-prompts-reflection/>>
- Report of the United Nations Conference on Environment and Development (Rio De Janeiro, 3-14 June 1992)*, UN Doc. A/CONF.151/26/Rev.1 (Vol. I) (14 June 1992)
- Webster, David, 'COVID-19 Should be a Warning to Prevent Illegal Animal Trade, Says Experts', *The National News* (online, 27 July 2020) <<https://www.thenationalnews.com/uae/environment/covid-19-should-be-a-warning-to-prevent-illegal-animal-trade-say-experts-1.1055122>>
- World Charter for Nature*, GA Res 37/7, UN Doc A/RES/37/7 (28 October 1982)
- World Organisation for Animal Health, 'About us: OIE – World Organisation for Animal Health', *World Organisation for Animal Health* (Web Page) <<https://www.oie.int/about-us/>>
- World Organisation for Animal Health, 'OIE Standards on Animal Welfare', *World Organisation for Animal Health* (Web Page) <<https://oldrpawe.oie.int/index.php?id=280>>
- World Organisation for Animal Health, 'Strategic Plan: OIE – World Organisation for Animal Health', *World Organisation for Animal Health* (Web Page) <<https://www.oie.int/about-us/director-general-office/strategic-plan/>>

World Organisation for Animal Health, 'The 182 OIE Members', *World Organisation for Animal Health* (Web Page) <<https://www.oie.int/about-us/our-members/member-countries/>>