

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

Sophie Riley and Steven White

Abstract

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

1 Introduction

The idea that people should be protective of animals is one that can be traced to antiquity. It was not until the nineteenth century, however, that it gathered enough political momentum to begin to be translated into effective law and policy, first nationally and then internationally.¹ At the beginning of the nineteenth century, social movements influenced national governments to create criminal offences for animal cruelty;² and by the latter part of that century non-government organisations (NGOs) as well as international non-government organisations (INGOs) against animal cruelty, had become established in almost every jurisdiction in the world.³

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

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

³ Andrew Linzey. “Introduction, Histories and Global Perspectives”, above 1, 7.

International law was slower to take up the mantle of animal protection, but this was not for want of trying on the part of NGOs and INGOs. As will be discussed in Part 2.3 of this article, they saw an opportunity in the first three decades of the twentieth century, in the newly minted (but short-lived) League of Nations, to promote an area of law that was traditionally reserved for states. These proposals were significant and although they did not succeed, they indicated the types of principles and institutional mechanisms that were important for the development of animal protection measures. Indeed, these sorts of mechanisms are still being pursued today.

States themselves were chiefly interested in protecting animals with instrumental value, including for hunting, or those useful or beneficial for agricultural production.⁴ Where concern endured in an international context, it centred on the likelihood of cross-border trade introducing and spreading animal disease, leading to the negotiation of numerous bilateral and regional treaties dealing with animal quarantine.⁵ In addition, the resurgence of cattle plague (by that time known as *rinderpest*) in Belgium in 1920 acted as the catalyst for the creation in 1924 of a specialist agency, the World Organisation for Animal Health (OIE).⁶ Over the course of the twentieth century, the OIE expanded its remit to the drafting of international standards for animal health, while other treaties dealt with animal protection from an

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

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

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

environmental perspective.⁷ Yet, in total, there was little binding law dealing with individual animal wellbeing.

NGOs, have however, continued to press for the latter throughout the twentieth and twenty first centuries as they promote their campaign for an effective international approach to animal protection. Specific proposals have included the Universal Declaration of Animal Rights (UDAR),⁸ the Universal Charter on the Rights of Other Species (2000),⁹ and the Declaration of Rights for Cetaceans: Whales and Dolphins, 2010.¹⁰ One of the latest and substantial additions to this list includes the draft United Nations Convention for Animal Health and Protection (UNCAHP), sponsored by the Global Animal Law Association.¹¹

The purpose of this article is to identify and analyse key themes in the history of efforts to make international law a significant and effective instrument for protecting animals and their health, given the political context in which it operates. The central argument is that despite persistent, even valiant efforts to make animal protection more than just a secondary consideration, at best, in international relations, advocates of change have never had a strong institutional basis from which, and within which, they could engage collectively and effectively with state parties. The adoption of UNCAHP could mitigate this deficiency.

Part 2 examines how the political terrain of international law has frustrated meaningful engagement by NGOs and INGOs on matters related to animal protection, with particular attention to the origins and persistence of the idea that states are the most appropriate parties to deal with animal protection issues and problems. Part 3 argues that, notwithstanding this difficult terrain, the growing international strength

⁷ OIE, *Aquatic Animal Health Code*, OIE, *Terrestrial Animal Health Code*, available from <https://www.oie.int/en/what-we-do/standards/codes-and-manuals/>. For a discussion of environmental instruments see Part 3.1 of this article.

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

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

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

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

of the animal protection movement has now put NGOs and INGOs in a position to challenge the priority previously given to state solutions and to make an international animal protection regime seem plausible. Part 4 explains why the adoption of a framework convention, such as UNCAHP, holds more promise for effectively reconfiguring the law and policy terrain of animal protection than expanding the remit of existing specialist agencies, such as the OIE.

2 Political Terrain of International Law

Ample literature already delves into the strengths and weaknesses of international law, including discussion on whether it amounts to a system of law, in any conventional or widely understood sense.¹² For present purposes, the assumption is that international law is indeed a system of law and the question of principal interest is whether and how NGOs and INGOs with a primary interest in animal protection can effectively navigate and exercise influence within it.

2.1 Nature of International Law

International law has long been understood as the primary domain of states or nations. Private actors, therefore, can never play more than a secondary role. In the nineteenth century, for example, one text described international law as comprising

[T]hose rules of conduct which reason deduces, as *consonant to justice*, from the nature of the society existing among *independent nations*; with

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

such definitions and modifications as may be established by *general consent* (emphasis added)).¹³

The highlighted terms emphasise the importance of consensus among nations as a basis for making advances in international law and for doing so in ways that are consistent with principles of justice and the social tenor of nations. The latter of course could include a variety of activities and points of view, including those held by private actors as well as the NGOs and INGOs who have spearheaded reform movements focused on animal protection.

Unsurprisingly, the preamble to the Covenant of the League of Nations reflected this nineteenth century view of international law when it described it “as the actual rule of conduct among Governments... [based on] the maintenance of justice and a scrupulous respect for all treaty obligations...”¹⁴ More recently, international law has been characterised as an “international legal process of rule creation, interpretation and enforcement,” which leads to “a series of rules governing state and non-state action”.¹⁵ While the mention of non-state action is interesting, the role of states still takes centre stage because it is primarily their interactions with each other that are regulated.¹⁶ States dominate the terrain of international law in three important ways. First, the fact that they are the primary actors makes it difficult and complex for other interested parties, like NGOs and INGOs, to be meaningful and effective participants in decision making.¹⁷ Second, international law is largely reactive, because states are unlikely to begin exploring and negotiating international solutions to problems until and unless other parties have convincingly made the case that state initiatives are inadequate.¹⁸ And third, the process of making international law is political. So, before

¹³ Henry Wheaton, *Laurence's Wheaton Elements of International Law*, (second annotated edition by William Beach Lawrence) Little, Brown and Company, Boston (1863), 26, <https://play.google.com/store/books/details?id=To4zAQAAAMAAJ&rdid=book-To4zAQAAAMAAJ&rdot=1>.

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

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

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

¹⁷ Malcolm N Shaw, *International Law*, above 12, 156.

¹⁸ There are exceptions, for example, the global mobilisation against ozone depleting substances, that led to the negotiation of the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, [1989]

they act, states have to be convinced that an international initiative will be responsive to problems they regard as both important and consistent with their national interests.¹⁹

This state domination of the international lawmaking process has fashioned an institutional terrain in which problems are recognised and dealt with (or at least responded to) on a case-by-case basis, with a consequent multiplication and fragmentation of legal regimes. This is clearly evident in the case of animal law where, over time, a proliferation of treaty regimes have dealt with limited aspects of animal protection as it relates, for example, to disease, trade in endangered species, and protection of biodiversity, but has never managed to focus on the individual wellbeing of the animals themselves.²⁰ This is an appreciable gap in global animal protection²¹ that derives from the fact that while international law can address and is designed to address “questions of governmental conduct” it has a hard time reaching and coping effectively with animal wellbeing problems that are created by private conduct.²² It is important to ask, then, whether and how the adoption of an international treaty that imposes obligations on states might be able to influence and even to some extent manage the behaviour of private actors.²³

Although the League of Nations did not last long and is no longer with us, the complications we have just recounted were evident when it made the first formal attempts to make multi-lateral treaties effective instruments for animal protection. Their history is worth revisiting.

ATS 18; the Protocol opened for signature on 16 September 1987 and entered into force on 1 January 1989. It has 197 ratifications, ascensions, acceptances and successions. Discussion, Karen N Scott, “Managing Fragmentation Through Governance: International Environmental Law in a Globalized World” in Andrew Byrnes, Mika Hayashi and Christopher Michaelsen (ed) *International Law in the New Age of Globalization*, 207, 209, Brill (2013), https://doi.org/10.1163/9789004228818_010.

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

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

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

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

²³ *Ibid.*

2.2 Animal Protection, States and the League of Nations

Over the period between the inception of the League of Nations in 1920 and its demise in 1946, international concern with and interest in animal issues ebbed and flowed. The reactive and political nature of international law was clear when the government of Great Britain, with the prompting of NGOs, tried to introduce a convention to protect seabirds affected by oil pollution.²⁴ Although initially there was some progress, the matter had stalled by 1936. The convention proposal could not have succeeded unless the other maritime powers of the day, apart from Great Britain, namely Germany, Japan and Italy, could have been persuaded to sign.²⁵ But Germany and Japan had already withdrawn from the League of Nations in 1933. Italy followed suit in 1937. And by that time national interests in being a great maritime power had pretty much eclipsed interest in protecting seabirds from oil pollution. Other attempts at the time by NGOs and INGOs to introduce broad animal protection treaties, discussed in Part 2.3 below, also ultimately failed.

Further work on animal issues begun under the auspices of the League of Nations, predominantly on trade matters, met with more success. These efforts which focused on the development and adoption of treaties related to animal diseases in international trade, yielded three agreements, all drafted by the Economic Committee of the League of Nations: the 1935 International Convention for the Campaign Against Contagious Diseases of Animals;²⁶ the 1935 International Convention Concerning the Transit of Animals, Meat and Other Products of Animal Origin;²⁷ and, the 1935 International Convention Concerning the Export and Import of Animals, Meat and Other Products of Animal Origin.²⁸

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

²⁵ *Ibid.*

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

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

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

But why would the League of Nations be interested in developing and adopting international legal instruments to deal with a narrow range of issues associated with the use of animals in the human food chain? The answer lies in earlier international activities that preceded the creation of the OIE, most notably the convening of an International Conference for the Study of Epizootics (Conférence Internationale pour l'Etude des Epizooties) in May 1921 in Paris.²⁹ The Conference was triggered by the reappearance of *rinderpest* in Belgium³⁰ and anticipated the creation of an international office for animal health. This all happened outside the purview of the League of Nations, although the League took a keen interest in these developments, even contacting the French Minister for Agriculture, on 16 June 1921, for preliminary information on the establishment of the OIE.³¹ This request was made notwithstanding the fact that there is no specific reference to animal health in the Covenant of the League of Nations. Rather, Article 23 simply stated that:

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

And Article 25 of the Covenant provided that:

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

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

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

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

Although these references in the League Covenant to disease and health could have been interpreted narrowly as only being relevant to human health, the League chose to interpret them as an opportunity to engage with what eventually came to be termed “veterinary questions,” of interest to the League’s Economic Committee.³² This committee was part of the Economic and Financial Organization of the League and its remit included discussion of agricultural matters. Hence the League’s willingness to sponsor the negotiation and entry into force of the three 1935 conventions referred to above.³³

Between the 1921 conference in Paris on epizootics and 1928, the League made little progress with its interest in veterinary questions. But in 1928 the Economic Committee of the League appointed a Sub-Committee of Experts on Veterinary Questions.³⁴ The main impetus for this was an attempt to settle questions that had arisen about the extent to which veterinary questions could effectively function as restraints on trade in animals and animal products. At a meeting on 21 September 1928 the sub-committee noted it was vital to determine what veterinary measures could appropriately restrict trade, so that national regulations could “be cleared from all suspicion of veiled protectionism, and promote the greater freedom of trade.”³⁵ The reality was, then, that it was trade interests rather than veterinary requirements that dominated these discussions, as evidenced by commentary from Czechoslovakia, Australia,³⁶ and Yugoslavia, all of whom thought that the work of the sub-committee was intended to enable trade in cattle and animal products, whilst also protecting importing countries from the “dissemination of disease.”³⁷ The focus, in other words,

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

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

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

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

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

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

was on the advancement of commercial objectives, with individual animal wellbeing being a decidedly secondary issue.

The 1935 International Convention Concerning the Transit of Animals, Meat and Other Products of Animal Origin did engage with some facets of animal wellbeing. It proscribed the overloading of cattle cars and stipulated that animals had to be loaded and fed properly to “avoid unnecessary suffering.”³⁸ Correspondence between the League of Nations and NGOs, such as the RSPCA, indicates that NGOs saw the negotiation of the three 1935 conventions as an opportunity to influence outcomes for animals. But, unless specific proposals to improve their conditions and treatment were sponsored and undertaken by a member state, there was little the League itself could do.³⁹

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

NGOs and INGOs, which had been active on animal protection and wellbeing issues long before the League of Nations came into existence in 1919, were persuaded that the League would provide them with an opportunity to tap into diplomatic and institutional structures that, as non-state participants, had previously been unavailable to them.⁴⁰ Moreover, the League would be an international platform for garnering greater international attention to their work.

This work has a rich history. In the United Kingdom (UK), for example, animal protection took institutional form with the establishment of the Society (later the Royal Society) for the Prevention of Cruelty to Animals in 1824 and of the British and Foreign Society for the Promotion of Humanity and Abstinence from Animal Food in 1843.⁴¹ Among the INGOs that began work some five decades later are the World

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

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

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

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

League for the Protection of Animals (WPA), originally known as the the World League Against Vivisection and for the Protection of Animals, created in Germany in 1898; the International Vegetarian Union (IVU), also created in Germany, in 1908; and the International Bureau of Societies for the Protection of Animals and Plants and Anti-Vivisection Societies (the Bureau), established in France, in 1925.⁴²

INGOs such as the WPA had branches in western jurisdictions,⁴³ while others such as the IVU, brought together national vegetarian societies from the United Kingdom (formed 1843), the United States (formed 1850), Australia (formed 1886), India (formed 1899), Chile (formed 1891) and Greece (formed 1906).⁴⁴ INGOs also typically held international conferences or congresses to further their objectives, including a push for improved regulation on a global scale.⁴⁵

Beginning in the 1920s, groups such as the RSPCA, the Federation of Belgian Societies for the Protection of Animals, the Iberian Federation of Animal and Plant Protection Societies, and the International Bureau for the Protection of Animals regularly petitioned the League of Nations to create an “Animal Charter” to protect animals.⁴⁶ The concept of an “Animal Charter” had been suggested by André Géraud, in his

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

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

⁴⁴ IVU, “History of the International Vegetarian Union”, above 42.

⁴⁵ Andrew Linzey. “Introduction, Histories and Global Perspectives”, above 1, 7.

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

Déclaration des Droits de l'Animal, based on ideals of animal happiness.⁴⁷ Géraud also considered that such a charter should be underpinned by law and policy and advanced globally under the auspices of the League of Nations.⁴⁸ INGOs put forward differing proposals, with one of the strongest being the scheme proffered by the International Bureau of Animal Societies, which is discussed in more detail in the next three paragraphs, and envisaged the creation of an Office for Animals as part of the League of Nations.

The resolve of NGOs and INGOs to make the protection of animals effective on an international basis was perhaps never more apparent than in 1932, when the International Bureau for the Protection of Animals in Geneva⁴⁹ sent a formal deputation to the League of Nations in April of that year, supported by 1,400 societies for the protection of animals from across the globe,⁵⁰ to press for redress of the wrongs inflicted on animals, not only for the sake of the animals themselves but also for the sake of humanity's moral health.⁵¹ The International Bureau for the Protection of Animals had been established in 1928 to "promote international unity between societies all over the world and to deal with practical questions, including the transport of animals, slaughter reform, protection of birds and methods of trapping."⁵² It saw the League of Nations as an appropriate institution for realizing its objectives but beyond sending a delegation to the League, it did not explain how its objectives might be achieved. This challenge had already been tackled prior to 1932 by the International

⁴⁷ André Géraud, in *Déclaration des Droits de l'Animal*, second edition, (Bibliothèque André Géraud 1924), 99, 141, 142, 155, The League of Nations, Archives 1928-1932, Classification: General and Miscellaneous, Registry No 50, 26882, 1615.

⁴⁸ Jean-Marc Neumann, "The Universal Declaration of Animal Rights or the Creation of a New Equilibrium between Species" (2012) 19 *Animal Law*, 91, 94.

⁴⁹ The International Bureau for the Protection of Animals was named as such, in correspondence with the League of Nations. Its French name was the Bureau International Humanitaire Zoophile, but it was also known as the International Humanitarian Bureau. LONSEA, International Humanitarian Bureau, <http://www.lonsea.de/pub/org/780>. LONSEA is the League of Nations Search Engine, a database on international organisations created at the University of Heidelberg.

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

⁵¹ Ibid, The National Council for Animals' Welfare, London, The Humane Education Society of Manchester.

⁵² LONSEA, International Humanitarian Bureau, <http://www.lonsea.de/pub/org/780>. LONSEA is the League of Nations Search Engine, a database on international organisations created at the University of Heidelberg.

Bureau of Societies for the Protection of Animals and Anti-Vivisection Societies (International Bureau of Animal Societies).

The International Bureau of Animal Societies was formed in Paris in 1925, and in common with other INGOs at the time it aimed at harmonising national legislation with international standards.⁵³ One of its objectives, for example, was to ensure that animals were treated with kindness and humanity, which in 1929 led it to devise a proposal to create an Office for the Protection of Animals, to be established as a branch of the League of Nations.⁵⁴ The proposal stemmed from a declaration adopted by an international congress arranged by the International Bureau of Animal Societies and held in Vienna in 1929. It was also formally presented to the League of Nations in March 1931 in a carefully worded brochure.⁵⁵

The idea behind the proposed Office for Animals (1931) was that it would act as a clearing house for information about national laws affecting animals and advise of new developments in animal protection, which could then be disseminated in a regular bulletin.⁵⁶ In addition, the proposed office would have four sections – one for the general protection of animals, a legal section, a technical section to deal with matters such as reform of slaughter practices, and a media relations section.⁵⁷ It was also anticipated that the Office would have a secretariat within the League of Nations and an Advisory Commission, consisting of representatives from Member states of the League, each state being represented by one delegate.⁵⁸ These were concrete, detailed and ambitious proposals, but for the same reasons discussed in the next paragraph, unfortunately did not bear fruit.

In addition to the work of the International Bureau of Animal Societies, other attempts to make the League of Nations an effective focus for international initiatives to

⁵³ LONSEA, International Bureau of Societies for the Protection of Animals and Anti-Vivisection Societies, <http://www.lonsea.de/pub/org/801>.

⁵⁴ Proposal for the creation of an Office for the Protection of Animals within the League of Nations, annexure to correspondence by the International Bureau of Societies for the Protection of Animals and Anti-vivisection Societies to Eric Drummond, Secretary-General of the League of Nations, 11 March, 1931, The League of Nations, Archives 1928-1932, Classification: General and Miscellaneous, Registry No 50, 26882, 1615.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*, 5, 6.

⁵⁷ *Ibid.*, 6.

⁵⁸ *Ibid.*, 6, 7.

advance animal protection were made through the 1920s and into the mid-1930s.⁵⁹ Although these efforts had the potential to persuade the League that it could be an effective actor in this field,⁶⁰ after 1932 interest in this possibility petered out.⁶¹ This was partly attributable to the growing number of NGOs and INGOs, increased workloads at the League and also because of increasing hostilities in Europe.⁶² The League steered clear of issues it regarded as politically fraught.⁶³ Furthermore, even when the League was sympathetic to the objectives of INGOs, international law required proposals to be brought forward officially by member states.⁶⁴

3 Animal Protection: International Law, NGOs and INGOs

The international law that protects animals consists largely of instruments negotiated to address specific issues, such as regulating hunting to preserve game animals as a resource or implementing measures to protect threatened species or biodiversity at large. Domestic animals enjoy very limited protection through the non-binding standards adopted by OIE and are otherwise not protected by hard international law.

3.1 The Gap

The gap in global animal protection⁶⁵ primarily arises from international law's limited coverage and treatment of animals. While some law does exist for some wild animals, notably charismatic megafauna, it is far from comprehensive and states have made no binding commitments with respect to domestic animals.⁶⁶ Moreover, even where

⁵⁹ Thomas Davies, *NGOs, A New History of Transnational Civil Society*, Hurst and Company, London (2013), 81-82.

⁶⁰ Steve Charnovitz, "Two Centuries of Participation: NGOs and International Governance" (1997) 18 *Michigan Journal of International Law*, 183, 246-247, <https://repository.law.umich.edu/mjil/vol18/iss2/1>.

⁶¹ *Ibid.*

⁶² Anna-Katharina Wöbse, "Oil on Troubled Waters? Environmental Diplomacy in the League of Nations", above 24, 521-2, 525, discussing analogous issues with respect to pollution control.

⁶³ *Ibid.*, 247.

⁶⁴ United Nations Archives Geneva, League of Nations Archives, *General and Miscellaneous*, – correspondence dated 25 April 1932, between between the League of Nations and the International Bureau for the Protection of Animals, Registry No 50, 9063, 1615.

⁶⁵ Steven White, "Into the Void: International Law and the Protection of Animal Welfare", above 21, 391.

⁶⁶ Anne Peters, *Animals in International Law*, above 20, 85.

treaty regimes take wild animal wellbeing into account, this is typically subordinate and incidental to other treaty objectives.⁶⁷

The 1900 Convention for the Preservation of Wild Animals, Birds and Fish in Africa⁶⁸ was an early instrument that ostensibly dealt with the protection of animals. The Convention limited the use of nets and pitfalls to capture land animals and banned the use of explosives and poisons to catch marine and aquatic animals.⁶⁹ While these provisions might be said to be broadly related to animal wellbeing, the Convention never came into force, because Great Britain did not sign it, and its principal purposes were to restrict unsustainable hunting methods and preserve animals as a game resource. There were analogous laws in Australia, for example, where the use of destructive and indiscriminate hunting methods, such as poisons and punt guns, were prohibited.⁷⁰

The regulation of hunting methods also featured in later treaties, including the 1950 Protection of Birds Convention, which amongst other things prohibited mass capture or killing, the use of nets, poisons, blinded decoy-birds, automatic guns and firearms other than shoulder arms.⁷¹ The 1979 Berne Convention on the Conservation of European Wildlife and Natural Habitats had a similarly narrow focus on protecting animals in the context of capture and hunting.⁷²

⁶⁷ Francesca Nyilas, "CITES And Animal Welfare: The Legal Void For Individual Animal Protection" (2021) 9 [S.1] *Global Journal of Animal Law*, 1, 6, <https://ojs.abo.fi/ojs/index.php/gjal/article/view/1720>.

⁶⁸ 1900 Convention for the Preservation of Wild Animals, Birds and Fish in Africa, above 4.

⁶⁹ 1900 London Convention, Articles 8 and 9.

⁷⁰ *Birds and Animals Protection Act 1918* (NSW), section 24.

⁷⁰ *Animals Protection Act 1879* (NSW), section 3; *Birds Protection Act 1881* (NSW), section 9; *Birds Protection Act 1893* (NSW), section 9; *Birds Protection Act 1901* (NSW), section 8; *Birds and Animals Protection Act 1918* (NSW), section 2; Mark Cioc, *The Game of Conservation: International Treaties to Protect the World's Migratory Animals*, Athens: Ohio University Press (2009), 61; Edward Golding, *A History of Technology and Environment: From Stone Tools to Ecological Crisis*, Routledge (2017), 10; F. I. Norman & A D Young, "Short-sighted and Doubly Short-sighted are they: A brief Examination of the Game Laws of Victoria, 1858-1958", (1980) 4 (7), *Journal of Australian Studies*, 2, 11.

⁷¹ 1950 Protection of Birds Convention, (1968) *UNTS* 1 86, Article 5. The Convention opened for signature on 18 October 1950 and entered into force 17 January, 1963, it had 16 members.

⁷² 1979 Berne Convention on the Conservation of European Wildlife and Natural Habitats, (1979) *ETS* 104, Appendix IV. The convention opened for signature the 19 September, 1979 and entered into force on 1st June 1982, it has 50 contracting parties.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)⁷³ has a broader focus, although it is much more concerned with regulating trade in wild species than it is in protecting their wellbeing.⁷⁴ CITES does stipulate that animals being traded should “pass through any formalities...with a minimum of delay” and otherwise be cared for properly to reduce injury, or cruel treatment.⁷⁵ Parties should establish rescue centres where confiscated specimens can receive care.⁷⁶ On their face, these provisions evince an interest in animal wellbeing but almost nothing is known about compliance with them, because it is not monitored.⁷⁷

A gap between rhetoric and reality also plagues the work of the OIE, which in 2017 adopted a Global Animal Welfare Strategy.⁷⁸ The Strategy claims that it wants to promote “a world where the welfare of animals is respected, promoted and advanced, in ways that complement the pursuit of animal health, human well-being, socioeconomic development and environmental sustainability.”⁷⁹ This is a welcome, big picture acknowledgement of the links between animal welfare standards, animal health, and human health.⁸⁰ The Strategy also argues that the development of animal welfare standards and their implementation will require capacity development and effective programs of communication and collaboration, including civil society.⁸¹

The fact of the matter is, however, that OIE is a specialist international agency with a remit limited to animals traded internationally in commerce. It has no mandate to address the ethics or practices of wildlife management or the wellbeing of animals used domestically as companions or in experimentation, or of animals used in tourism and

⁷³ Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), (1976) 993 *UNTS*, 243. The Convention opened for signature 3 March 1973 and entered into force on 1 July, 1975, the convention has 183 parties.

⁷⁴ CITES, Articles III(2)(a), IV(2)(a).

⁷⁵ CITES, Articles III(2)(c), IV(2)(c), V(2)(b), VIII(3).

⁷⁶ CITES, Article VIII(5); also CITES, Conference of the Parties, Disposal of Illegally Traded and Confiscated Specimens of CITES-Listed Species, Conf. 17.8, Johannesburg (South Africa), 24 September-04 October 2016.

⁷⁷ Michael Bowman, “Conflict or Compatibility? The Trade, Conservation and Animal Welfare Dimension of CITES”, (1998) 1 (1) *Journal of International Wildlife Law and Policy*, 9, 9.

⁷⁸ OIE, Global Animal Welfare Strategy, May 2017, adopted at the 85th OIE General Session and meeting of the OIE Regional Commission for Africa, Paris, France, 21-26 May 2017, <https://www.oie.int/app/uploads/2021/03/en-oie-aw-strategy.pdf>.

⁷⁹ *Ibid*, 2.

⁸⁰ *Ibid*, 3.

⁸¹ *Ibid*, 4.

entertainment. So, while the OIE's grand strategy is couched in commendably broad and ambitious terms, the agency's actual ability to affect the wellbeing of animals is seriously constrained, a point we return to in Part 4.

A similar difficulty arises with respect to the 1992 Convention on Biological Diversity (CBD).⁸² The Preamble to the Convention refers to the intrinsic value of biodiversity. But elsewhere, and in fact throughout the operative provisions of the treaty, the value of biodiversity is associated with its human uses.⁸³ And the CBD does not treat all species equally. It is especially hostile to invasive alien species, which are to be prevented, controlled and eradicated with little attention paid either to their value or to the impacts on their wellbeing of control and eradication methods.

Some of the other instruments associated with the CBD and adopted since 1992 do refer to animal wellbeing. Principle 12 of the Guiding Principles for the Prevention, Introduction and Mitigation of Impacts of Alien Species that Threaten Ecosystems, Habitats or Species, for example, says that mitigation measures should be "ethically acceptable to stakeholders."⁸⁴ But it is hard to see what this would mean in practice. In Australia, model codes of practice for the management of invasive alien species have been developed but only in a few cases do they entertain the notion that there might be alternatives to killing.⁸⁵ The Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity adopted in 2004 say that human uses of components of biodiversity should be ethical and humane, but there is no implementation guidance to explain how this should be done.⁸⁶

⁸² Convention on Biological Diversity 1992 (CBD) [1993] ATS no 32. The Convention opened for signature on 5 June 1992, and entered into force 29 December 1993, the convention has 196 parties

⁸³ Sophie Riley, "Sustainable Development and the United Nations Dialogues: Living in Harmony with Nature", (2019) 9 (1) Victoria University Law and Justice Journal, 31, 32-33, DOI: <https://doi.org/10.15209/vulj.v9i1.1152> .

⁸⁴ Guiding Principles for the Prevention, Introduction and Mitigation of Impacts of Alien Species that Threaten Ecosystems, Habitats or Species, Guiding Principles 2, 7 and 10. Adopted April 2002 as part of Decision VI/23 of the Conference of the Parties. Report of the Sixth Meeting of the Conference of the Parties to the Convention on Biological Diversity, UNEP/CBD/COP/6/20 (23 September 2002).

⁸⁵ Generally, Sophie Riley, "Model Codes for the Humane Treatment of Animals: Australian Law and Policy on Lethal Control of Pests", (2015) 18(4) *JIWLP* 276.

⁸⁶ Conference of the Parties to the Convention on Biological Diversity, 13 April 2004, Decision VII/12 on Sustainable Use, under the heading of Practical principle 11: "Users of biodiversity components should seek to minimize waste and adverse environmental impact and optimize benefits from uses". Discussion in Alexander Gillespie, "An Introduction to Ethical Considerations in International Environmental Law", in *Research Handbook on International Environmental Law*, Malgosia Fitzmaurice, David M. Ong and Panos Merkouris (Eds), chapter 6, 117, 128, Edward Elgar (2010).

It is important to acknowledge, here, the time and effort required to develop meaningful and effective international approaches to improving animal wellbeing even if they originate outside the complex institutional context of a multilateral treaty regime.

3.2 Addressing the Gap: NGOs and INGOs

The inherent limitations in expanding protection of animal well-being in treaty regimes where this is not a central focus prompted NGOs and INGOs to look for opportunities outside these settings. This can be a long path to reform but is illustrative of the capacity of NGOs and INGOs to stimulate change. As a case in point, we can consider the 1999 Bologna Declaration on the use of animals in experimentation. It was adopted at the 3rd World Congress on Alternatives and Animal Use in the Life Sciences and recommended that practices should be consistent with the three Rs -- reduction of animal use, refinement of how animals are used, and replacement of animals with alternative methods.⁸⁷ The Declaration is not, of course, formally binding. It has nonetheless become influential both in international scientific circles and in domestic law and policy documents. In Australia, for example, the National Health and Medical Research Council has produced various iterations of the *Australian Code for the Care and Use of Animals for Scientific Purposes*,⁸⁸ one paragraph of which deals with the responsibilities of investigators and highlights the importance of implementing the three Rs. Although the Code is a policy document, animal ethics committees must review applications for the use of animals in experimentation in accordance with the Code, including whether there is application of the three Rs. The difficulty, however, not only for Australian researchers and animal

⁸⁷ Text of declaration available from European Commission, “Life Scientists Adopt Declaration of Bologna” news release 27 September 1999, record number 13695, <https://cordis.europa.eu/article/id/13695-life-scientists-adopt-declaration-of-bologna>; General discussion - Executive Committee of the Congress, “Background to the Three Rs Declaration of Bologna, as Adopted by the 3rd World Congress on Alternatives and Animal Use in the Life Sciences, Bologna, Italy, on 31 August 1999: Prepared by the Executive Committee of the Congress”, (2009) 37 (3) *Alternatives to Laboratory Animals*, 285, <https://doi.org/10.1177/026119290903700310>.

⁸⁸ NHMRC, *Australian Code for the Care and Use of Animals for Scientific Purposes*. Commonwealth of Australia (2013) <https://www.nhmrc.gov.au/about-us/publications/australian-code-care-and-use-animals-scientific-purposes>.

ethics committees but also for researchers and committees in other jurisdictions lies in interpreting the Code in real world situations.⁸⁹

Although the Bologna Declaration was adopted in 1999, it had its genesis much earlier in the work of NGOs, most notably the Universities Federation for Animal Welfare (UFAW),⁹⁰ a British organisation originally established under the patronage of Major Charles Westley Hume, an animal activist.⁹¹ UFAW started campaigning for the three Rs in the 1950s, after which time national regulation was introduced in jurisdictions such as the United States of America and the European Union, eventually leading to wide acceptance of the three Rs and the adoption of the Bologna Declaration.⁹²

The important point to take away from the story is that the campaign by UFAW lasted for four decades. This certainly demonstrates the tenacity and perseverance of this NGO, and its allies. But it also shows that the process of giving animal wellbeing a higher international profile cannot be understood by looking only at what has been accomplished and what might be possible in the context of treaty regimes and international organisations. Giving animal wellbeing in scientific research a higher profile and more substantive consideration than had previously been the case required that someone take the initiative to start discussion and broaden understanding of the issues involved. The history of the Bologna Declaration shows that NGOs and INGOs can be key actors in that process.⁹³ Importantly, for this article, the focus by NGOs and INGOs on placing animal wellbeing at the centre of the conversation and building consensus over time is equally relevant to building an appetite for more formal legal protection for animals in international law.

3.3 NGO and INGO International Law Proposals

⁸⁹ Catherine A Schuppli, “Decisions about the Use of Animals in Research: Ethical Reflection by Animal Ethics Committee Members”, (2011) 24 (4) *Anthrozoös*, 409, 409-411, 413-419, <https://doi.org/10.2752/175303711X13159027359980>.

⁹⁰ Executive Committee of the Congress, “Background to the Three Rs Declaration of Bologna, above 87, 286-287.

⁹¹ The original name of the organisation was the University of London Animal Welfare Society, it was changed to UFAW in 1926; S M Wickens, (compiler and editor) *Science in the Service of Animal Welfare, A Chronicle of Eighty Years of UFAW*, UFAW, Wheathampstead, (2007), 6, 7.

⁹² Executive Committee of the Congress, “Background to the Three Rs Declaration of Bologna, above 87, 286-287.

⁹³ George Cameron, Coggins and Parthenia Blessing Evans, “Predators’ Rights and American Wildlife Law”, (1982) 24 *Arizona Law Review*, 821, 830-831.

In 1988, David Favre and others drafted a proposed International Convention for the Protection of Animals (ICPA).⁹⁴ Although the proposal was never put forward, due to the lack of a state sponsor, it did start a conversation, which is still continuing, about whether and how the drafting and adoption of a global animal protection treaty might best proceed. In subsequent decades, other ideas and proposals entered the lists, including a Universal Declaration of Animal Rights (UDAR), a Universal Charter on the Rights of Other Species (2000), a Declaration of Rights for Cetaceans: Whales and Dolphins, 2010, and a draft UN Convention on Animal Health and Protection. Most recently, a draft Convention on Animal Protection for Public Health, Animal Welfare, and the Environment (CAP) has been developed by a group affiliated with the American Bar Association. The draft is published in full on the CAP website.⁹⁵

Table 1 provides a basis for comparing the several key initiatives and proposals made since 1931, when OIE was created as a specialist agency.

Table 1: Comparison of Proposed Instruments

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

⁹⁴ David Favre, “An International Treaty for Animal Welfare” (2012) 18 *Animal Law*, 237, 255-6.

⁹⁵ Rajesh K Reddy and Joan Schaffner, “The Convention on Animal Protection: The Missing Link in a One Health Global Strategy for Pandemic Prevention” (2022) 10 *Global Journal of Animal Law* 1.

Binding or not	Treaty would have been binding	Standards not binding, but accept as such in the WTO	Not binding	Framework Convention
Institutional Frameworks	An Office within the League of Nations	Taps into existing OIE systems	None	Treaty Secretariat, Conference of the Parties, Protocols

The three main points to bear in mind about the table are, first, that the OIE mechanism has a welfare orientation but does not apply to all animals, only to animals entered into commercial trade; second, that the OIE standards are not binding; and third that the orientation of the UDAR is towards rights, rather than welfare, and implicates all animals, not just those that are commercially traded.⁹⁶ The rights enumerated in the UDAR are not, however, absolute and can transmute in practice to welfare-like considerations; as in the article that states if an “animal has to be killed this must be instantaneous and without distress” (Article 3.2). The remainder of this article, though, focusses on the draft UNCAHP, a recent proposal to implement treaty protection for animals. It is acknowledged there are significant challenges for such a proposal. The lessons from historical efforts to effect better protection for animals internationally, addressed earlier in this article, point to some of these challenges, including building the necessary political consensus for change and ensuring animal interests are not subverted to pragmatic concerns about trade or health. These challenges are directly reflected in arguments that an existing international agency, the OIE, is best placed to move the international protection of animals forward.

3.4 What does UNCAHP offer?

UNCAHP is a self-conscious attempt both to draw on new ideas about the interdependency of human, animal and environmental health and welfare⁹⁷ and to

⁹⁶ UDAR, Articles 2 (generally), 2.1, 12.1 and 14.2.

⁹⁷ UNCAHP, Preamble.

correct for the deficiencies and limitations of existing regimes focused principally on wild animals.⁹⁸

The first half of the draft Convention addresses the substance of what is due to animals. It explicitly draws on well-established welfare protections such as the Five Freedoms and the 3Rs⁹⁹. The draft Convention then extends these by explicitly recognising the sentience of animals, their intrinsic value and dignity.¹⁰⁰ Article 5 sets out fundamental interests of animals, including to live, to be free and to be well-treated, or at least not harmed. Article 6 makes it a priority to find alternatives to the use of animals in scientific research.

Significantly, the second half of the draft Convention is focused on the procedural dimensions of animal protection, including implementation and enforcement of animal interests. UNCAHP anticipates the creation of associated institutional mechanisms, notably a periodic conference of the parties and transparent reporting to secretariat.¹⁰¹ Importantly, Article 5(d) of the draft stipulates that “non-human animals have an interest to be [legally]represented... [and therefore] civil procedures should be clearly established at a national level, entitling state authorities and precisely described elements of civil society to plead for the fundamental interests of animals”. Although this does not amount to a licence for the full-scale legal recognition and prosecution of animal rights, it does touch on the important issue of standing and the ability of animal interests to be heard effectively in legal fora. This is difficult terrain, as we know from the story of Steven Wise’s battles to expand legal personhood beyond its attachment to humans.¹⁰² But UNCAHP, if it were adopted, would be a significant step towards protecting animal interests by providing access to the courts and the litigation process. There is also provision for protocols to elaborate the basic requirements of UNCAHP.¹⁰³ These institutional mechanisms set out in the second half of UNCAHP would be critical for NGOs and INGOs. They would provide

⁹⁸ UNCAHP, Articles 1, 2, 3, 4, 5, 6.

⁹⁹ UNCAHP, Articles 1 and 2.

¹⁰⁰ UNCAHP, Article 3.

¹⁰¹ UNCAHP, Articles 7, 11, 12, 13.

¹⁰² Generally, Steven M Wise, “The Struggle for the Legal Rights of Nonhuman Animals Begins - the Experience of the Nonhuman Rights Project in New York and Connecticut” (2018-19) 25 *Animal Law*, 367, <https://animallawconference.org/wp-content/uploads/2019/10/Steven-Wise-The-Struggle-for-the-Legal-Rights-of-Nonhuman-Animals-Begins-Animal-Law-Vol.-25.3.pdf>.

¹⁰³ UNCAHP, Articles 12.3(b), 12.3(d) and 11.1(b).

the regulatory space and opportunity for these organisations to advocate, to contribute to setting an agenda for standards development and implementation, in both formal and informal settings.

Compared to a conference declaration, a framework convention has clear advantages. To start with, a treaty will have binding provisions, creating a base from which further domestic and international initiatives can evolve.¹⁰⁴ Furthermore, the ability to adopt protocols with specific commitments and institutional arrangements allows for fine-tuning and development over time, as needed, including specific obligations regarding, for example, animal transportation, animals in experimentation, wild animals, domesticated animals, and companion animals.¹⁰⁵

The initiatives summarized in Table 1 all have a pragmatic, animal welfare orientation. This is the case with UNCAHP, notwithstanding the fact that Article 3 refers to respect for animal dignity as a fundamental principle. Elsewhere, the draft Convention contains 20 references to animal welfare, including in the Preamble and the Convention's objectives.

On the one hand, this approach can be considered an advantage in as much as UNCAHP uses welfare terminology familiar to regulators. It makes UNCAHP more politically palatable than terminology that asserts animal rights. On the other hand, however, the welfare paradigm has been extensively critiqued for its entrenched anthropocentrism, "treating animals instrumentally...as long as certain 'safeguards' are employed."¹⁰⁶ The welfare paradigm does not require humanity to (re)examine and challenge the utilitarian constructs that have long shaped animal law and policy, and it therefore lacks what has been called conceptual responsibility.¹⁰⁷ We would argue that political palatability is important, as the history of early international efforts set out earlier in this article show. The way in which the articles of the draft Convention

¹⁰⁴ Steven White, "Into the Void: International Law and the Protection of Animal Welfare", above 21, 396; Francesca Nyilas, "CITES And Animal Welfare: The Legal Void For Individual Animal Protection" above 67, 21.

¹⁰⁵ Steven White, "Into the Void: International Law and the Protection of Animal Welfare", above 21, 396.

¹⁰⁶ Gary Francione, "Animal Rights and Animal Welfare", (1995-1996) 48 (2) *Rutgers Law Review*, 397, 397-8.

¹⁰⁷ Johan Hattingh, "Human Dimensions of Invasive Alien Species in Philosophical Perspective: Towards an Ethic of Conceptual Responsibility", in Jeffrey A McNeely (ed) *The Great Reshuffling, Human Dimensions of Invasive Alien Species*, IUCN Publications Services Unit (2001), 183, 192.

are framed – emphasising sentience, inherent value, dignity, non-cruelty and good treatment, buttressed by fundamental principles such as the interest to live, be free, not be harmed and to be represented – creates a very broad interpretative canvas for animal protection advocates to work with.

Overall, the inclusive nature of the draft UNCAHP in protecting all animals, the centrality of animal well-being, and the mechanisms for implementation recommend the proposal as an effective means to establish substantive protection for animals in international law. The establishment of a secretariat and conference of the parties, as well as accountability mechanisms such as national reporting, provide the institutional framework for creating pressure to improve animal protection standards internationally, including by NGOs and INGOs.

4 Specialist Agency or Framework Convention: Does the OIE Render UNCAHP Unnecessary?

International law and institutions are critical to achieving effective governance for animal health and protection, particularly in establishing international standards and regulations. An important question, and potential challenge for a framework treaty proposal like the draft UNCAHP, is the institutional architecture through which those standards and regulations should be developed. There is nothing new about this. The point was made cogently in 1931 by the International Bureau of Societies for the Protection of Animals and Anti-vivisection Societies (International Bureau) in correspondence with the League of Nations.¹⁰⁸ The International Bureau noted that moving animals across international boundaries subjects them to differing levels of protection, depending on diverse domestic laws and regulations, and it emphasised the need for stronger international regulation.¹⁰⁹

The practical problem was, and still remains, how the many civil society organisations, such as the International Bureau in 1931, advocating better animal protection can use

¹⁰⁸ Proposal for the creation of an Office for the Protection of Animals within the League of Nations, annexure to correspondence by the International Bureau of Societies for the Protection of Animals and Anti-vivisection Societies to Eric Drummond, Secretary-General of the League of Nations, above 54, 2.
¹⁰⁹ Ibid.

their personal and organisational networks to exercise effective leverage on the multiple state actors without whose support positive change cannot be accomplished.

In the days of the League of Nations, INGOs in particular had ambitious plans to achieve high standards for animal protection on a global scale. They painted on a broad canvas, with proposals for restricting or abolishing vivisection, regulating the international trade in animals and animal products, and controlling the use of animals such as dogs, oxen, horses and mules, in agricultural, industrial and mining production.¹¹⁰ They faced an uphill battle because in areas where international standards may have been useful, such as the cross-border trade in farm animals and their products, governments were primarily concerned with the economic benefits of trade, and only interested in subjects such as disease management and prevention to the extent that disease might pose an obstacle to trade.¹¹¹ What mattered most, well into the twentieth century, was the commercial viability of shipments, not the individual wellbeing of the animals being shipped.¹¹²

What was true about the way states perceived the value and benefits of international trade in animals and animal products in the 1930s is still very largely true today. And for that reason, it is useful to ask whether animal protection might better be advanced by an existing specialised agency, such as the OIE.¹¹³

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

¹¹¹ Sophie Riley, *The Commodification of Farm Animals*, Springer (2022) 144-148.

¹¹² Examples include: 1887 *Convention Designed to Remove the Danger of Epizootic Diseases in the Territories of the Two Countries*, 7 December, 1887, reprinted in Bernd Ruster and Bruno Simma (eds) Vol IV *International Protection of the Environment: Treaties and Related Documents*, Dobbs Ferry: Oceana Publications Inc, New York, (1975) 1586; 1924, *International Agreement for the Creation at Paris of an International Office for Dealing with Contagious Diseases of Animals and Annex*, above 6; 1952, *Agreement Concerning Epizootic Diseases Between the Kingdom of Greece and The Federal people’s Republic of Yugoslavia* 2 February 1952, above 5, 1833; discussion, Sophie Riley, *The Commodification of Farm Animals*, above 111, 144-148.

¹¹³ The role of international trade instruments, such as those of the World Trade Organization, in addressing animal protection is outside the scope of this article. For a consideration see, eg, Katie Sykes, *Animal Welfare and International Trade Law* (Edward Elgar, 2021). We would note that whatever has or might be achieved for animal protection in the context of international trade treaty regimes, the fundamental limitation remains that animal protection is not a primary, constitutive principle of those regimes.

As discussed in Part 3.1 of this article, the OIE has taken a keen interest in animal welfare since the beginning of the twenty first century. It has a high profile in the realm of animal welfare and that has undoubtedly helped to shift the politics of animal welfare from the national to the international arena.¹¹⁴ If states find a treaty unpalatable, OIE could be an alternative platform for change.¹¹⁵ The expansion of the OIE's interest in animal welfare is reflected in a recent resolution of the United Nations Environment Assembly (UNEA), 'Animal welfare–environment–sustainable development nexus'.¹¹⁶ This resolution focusses on the interconnectedness of animal welfare, human health and the environment and sustainable development. It calls for the Executive Director of the UNEA to prepare a report on the 'nexus' between animal welfare, the environment and sustainable development, working 'in close collaboration' with the UN's Food and Agriculture Organization, the World Health Organization and the OIE. A major INGO, World Animal Protection (WAP), has welcomed this development, reflecting the role it played in the Technical Team supporting the seven sponsor countries.¹¹⁷

When the possibility of a prominent role for OIE has previously been rehearsed the objection has been that, although OIE standards have a sound technical and scientific basis, they are not mandatory. For practical purposes they do not amount to much more than "non-enforceable guideline(s)".¹¹⁸ Favre has pointed out, for example, that the OIE standard on live animal transport standards has:

no prohibitions, no required inspections, and no limitations on operations... [it reads] like a checklist of issues that should be considered if you are going to engage in live animal transport...it is not an actual standard that limits or prohibits practices that are harmful to animal

¹¹⁴ Steven White, "Into the Void: International Law and the Protection of Animal Welfare", above 21, 394.

¹¹⁵ Ibid.

¹¹⁶ UNEA, Animal welfare–environment–sustainable development nexus (Resolution adopted by the United Nations Environment Assembly on 2 March 2022, UNEP/EA.5/Res.1).

¹¹⁷ WAP, 'United Nations resolution places animal welfare at the heart of sustainable development' (4 March 2022) <<https://www.worldanimalprotection.org.au/news/united-nations-resolution-places-animal-welfare-heart-sustainable-development>> accessed 29 July 2022. WAP states that the Resolution marks 'the beginning of a critical global conversation regarding the inevitable interlinkages across animal welfare, the environment and sustainable development'.

¹¹⁸ Ibid.

welfare, nor can it be expected to do so as [the OIE does not have oversight of this]...important responsibility.¹¹⁹

Although this critique was made ten years ago, and since then the OIE has become increasingly concerned with animal welfare, Favre's criticisms regarding the non-binding nature of the standards and the fact that the OIE's remit does not extend to wider animal welfare are still valid. At its core, the OIE remains an agency focused on facilitating trade in animals and their products by trying to ensure that shipments are disease-free.¹²⁰ This approach improves animal wellbeing in a limited way. But it is very far removed from filling the gap in global animal law that animal protection advocates have complained about, and it certainly does not effectively protect all animals or do much for commercially traded animals except perhaps to ensure that in the words of Anne Peters they are killed softly.¹²¹ Favre's conclusion, and one that the authors agree with, is that the existence of the OIE does not materially weaken the need for a broad-based treaty with animal protection as the focus.¹²² OIE's increasing involvement in international initiatives which include animal welfare, such as the UNEA Resolution, should be cautiously welcomed, while recognising that they continue to approach animal welfare as something only to be addressed in purely instrumental terms (whether for trade, human health or the environment).

Other commentators are impressed with the possibility that animal health, safety and comfort are becoming part of the common concern of humankind, much as the conservation of biodiversity did when it was articulated in the preamble to the CBD.¹²³ Sykes, for example, points to the emergence of a "sustained international discourse" on the importance of animal wellbeing, with contributions from case law, domestic codes and statutes, and the legal advocacy of NGOs and INGOs.¹²⁴ The discourse

¹¹⁹ David Favre, "An International Treaty for Animal Welfare", (2012) 18 *Animal Law*, above 94, 252.

¹²⁰ Steven White, "Into the Void: International Law and the Protection of Animal Welfare", above 21, 395.

¹²¹ Anne Peters, *Animals in International Law*, above 20, 85; Werner Scholtz, "Killing Them Softly? Animal Welfare and the Inhumanity of Whale Killing", (2017) 20 (1) *Journal of International Wildlife Law and Policy*, 18, 18, 21-23.

¹²² David Favre, "An International Treaty for Animal Welfare", above 94, 252.

¹²³ Francesca Nyilas, "CITES And Animal Welfare: The Legal Void For Individual Animal Protection", above 67, 12; Katie Sykes, "Nations Like Unto Yourselves: An Inquiry into the Status of a General Principle of International Law on Animal Welfare", (2011) 49 *Canadian Yearbook of International Law*, 3, 10, 22, <https://doi.org/10.1017/S0069005800010316>.

¹²⁴ Katie Sykes, "Nations Like Unto Yourselves: An Inquiry into the Status of a General Principle of International Law on Animal Welfare", above 123, 22, 26-27.

arguably represents a common understanding that animals deserve better treatment than they currently receive. And perhaps it signifies that, notwithstanding the absence of a binding multi-lateral treaty, there is already a “system of global law”¹²⁵ for the protection of animals. What could a new framework convention, like UNCAHP, add to the mix?

One good answer to this question is that a framework convention would lay the groundwork for the practical implementation of national measures, not only by requiring the parties to the treaty to conform their domestic law and policy to the requirements of the treaty but also by making explicit provision for the monitoring and enforcement of treaty commitments.¹²⁶ These are precisely the outcomes UNCAHP has in mind when it requires contracting parties to adopt national strategies and plans for animal health, welfare and protection. It further obligates them to take appropriate measures to end cruelty to animals and “promote compassionate and humane treatment” of animals. The UNCAHP mechanisms for enforcing these requirements are ‘soft’ and rely chiefly on voluntary cooperation and reporting.¹²⁷ Nevertheless, as just indicated, the proposed convention is a step in the right direction. By contrast with the approach of the OIE, and as argued in Part 3.4, the UNCAHP places animal well-being at the centre of legal consideration, rather than as an adjunct to an agenda primarily focused on protecting the health of some animals to better facilitate their trade as commodities.

5 Conclusion

The sustained efforts of NGOs and INGOs over the last century have put them in a strong position to advocate for meaningful institutional change; change that would advance animal welfare on a worldwide basis and potentially close the gap in animal protection that has long existed in international law. The gap is a product of the way international law and policy pertaining to animals have evolved, through the multiplication over time of narrowly focused regimes and an overriding, we might even

¹²⁵ Saba Pipia, “Emergence of Global Animal Law as a Separate Branch of International Law” (2020) *XVI Animal and Natural Resource Law Review*, 171, 171.

¹²⁶ Steven White, “Into the Void: International Law and the Protection of Animal Welfare”, above 21, 396.

¹²⁷ UNCAHP, articles 4.1, 7(a), 9, 13.

say an overwhelming, interest in sustaining the use of animals in international trade. Both CITES and the OIE are products of this evolution. From the perspective of animals, issues about their wellbeing have been relegated to the economic benefits states expect from trade. And from the perspective of people the opportunity to consider animal wellbeing in a context that links it to related problems, like climate change, zoonotic pandemics and international conflict, has been missed. These perspectives make the case for a global treaty on animal wellbeing compelling. And history teaches, as this article has tried to show, that a new framework convention, such as the proposed UNCAHP, makes more sense than the retrofitting of existing agencies, like OIE, to make them capable of managing a wider range of animal protection issues than they have dealt with in the past.