

**AMERICAN BAR ASSOCIATION**  
**INTERNATIONAL LAW SECTION**  
**TORT TRIAL AND INSURANCE PRACTICE SECTION**  
**REPORT TO THE HOUSE OF DELEGATES**

**RESOLUTION**

- 1 RESOLVED, That the American Bar Association urges all nations to negotiate an  
2 international convention for the protection of animals that establishes standards for the  
3 proper care and treatment of all animals to protect public health, the environment, and  
4 animal wellbeing; and  
5  
6 FURTHER RESOLVED, That the American Bar Association encourages the U.S. State  
7 Department to initiate and take a leadership role in such negotiations.

## REPORT

### Introduction

The failure of society to address animal welfare has grave consequences not just for animals,<sup>1</sup> but directly for humans in our shared existence with animals on the planet. As the One Health approach embraced by the United Nations (UN) and the US Center for Disease Control and Prevention (CDC) recognizes, the health of humans and the risk of diseases spilling over to humans from animals (zoonotic diseases)<sup>2</sup> *is directly related to the health of animals*.<sup>3</sup> Human use and mistreatment of animals, including the wildlife trade and human destruction of natural habitats, contribute significantly to the risk of diseases “spilling over.”<sup>4</sup> COVID-19 is one such disease,<sup>5</sup> creating a pandemic with devastating societal and economic impacts following a spillover in Wuhan, China (probably like SARS from unhealthy conditions in a live animal “wet” market<sup>6</sup>), to almost every other country in the world with a death toll of over 990,000 and over 32.6 million more infected<sup>7</sup> at last count. Yet COVID 19 is just one of a long list of such diseases that include AIDS, SARS, Nipah Virus, and Ebola,<sup>8</sup> the origins of which all point to inappropriate human treatment of animals. All offer stark evidence of the interconnectedness of human and animal life and the effects of our failure to ensure

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<sup>1</sup> The terms “animal” and “animals” as used in this report refer to nonhuman animals.

<sup>2</sup> JOINT REPORT OF THE UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP), INTERNATIONAL LIVESTOCK RESEARCH INSTITUTE (ILRI), COVID -19 RESPONSE AND CGIAR ON PREVENTING THE NEXT PANDEMIC: ZOO NOTIC DISEASES AND HOW TO BREAK THE CHAIN OF TRANSMISSION 15-16 (2020) <https://wedocs.unep.org/bitstream/handle/20.500.11822/32316/ZP.pdf?sequence=1&isAllowed=y> [hereinafter UN REPORT].

<sup>3</sup> CENTERS FOR DISEASE CONTROL AND PREVENTION, *One Health Basics*, <https://www.cdc.gov/onehealth/basics/index.html> (“One Health is an approach that recognizes that the health of people is closely connected to the health of animals and our shared environment.”).

<sup>4</sup> “Spillover” is the term used to describe the transmission of a disease-causing pathogen from an animal to a human. For further explanation of the “spillover” effect and causes of zoonotic diseases, see DAVID QUAMMEN, SPILLOVER: ANIMAL INFECTIONS AND THE NEXT HUMAN PANDEMIC (2012) (hereinafter QUAMMEN).

<sup>5</sup> Press Release, UN environment programme, Unite human, animal and environmental health to prevent the next pandemic--UN Report (July 6, 2020), <https://www.unenvironment.org/news-and-stories/press-release/unite-human-animal-and-environmental-health-prevent-next-pandemic-un> (“COVID-19 is just one example of the rising trend of diseases – from Ebola to MERS to West Nile and Rift Valley fevers – caused by viruses that have jumped from animal hosts into the human population.”).

<sup>6</sup> Dina Maron, “Wet markets” likely launched the coronavirus. *Here’s what you need to know*, NAT. GEO. (Apr. 15, 2020), <https://www.nationalgeographic.com/animals/2020/04/coronavirus-linked-to-chinese-wet-markets/>. The likelihood that the virus spilled over in a live animal market (part of a wet market) has caused bipartisan moves to shut down such markets. See letter from over sixty congressmen led by Senators Lindsey Graham and Corey Booker dated April 8, 2020 to Directors-General of the WHO, OIE, and FAO which states unequivocally “In order to help prevent the next pandemic, we write today to urge your organizations to take aggressive action toward a global shut down of live wildlife markets and a ban on the international trade of live wildlife that is not intended for conservation purposes. Live wildlife markets [...] were linked to the 2003 SARS outbreak and are believed to be the source of the current COVID-19.” Letter from Congressmen to Director-General of the WHO, OIE, and FAO (Apr. 8, 2020), <https://www.biologicaldiversity.org/programs/international/pdfs/04-08-20-Booker-Graham-Quigley-McCaul-Sblock.pdf>.

<sup>7</sup> See JOHNS HOPKINS CORONAVIRUS RESOURCE CENTER, *COVID-19 in the USA*, <https://www.coronavirus.jhu.edu> (last visited Sept. 26, 2020).

<sup>8</sup> See QUAMMEN, *supra* note 4, at 53-124, 167-208, 325-42, 385-489.

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animal welfare. Yet relatively little effort has been expended on how to minimize the risk of the next “spillover” disease.<sup>9</sup> Global cooperation to protect the welfare of animals is an obvious first step which will have a direct and positive public health and environmental impact and improve the lives of animals.

This resolution, urging the negotiation of an International Convention for the Protection of Animals (ICPA), promotes ABA Goal IV to “advance the rule of law” by “work[ing] for just laws,”<sup>10</sup> and the incorporated prior Goal III, by providing “ongoing leadership in improving the law to serve the changing needs of society.”<sup>11</sup> Moreover, ABA Goal I is to promote “members’ quality of life,”<sup>12</sup> and one of the ABA’s constitutional purposes is “to apply the knowledge and experience of the profession to the promotion of the public good.”<sup>13</sup> Given the recognized connection between animal wellbeing, public health and the environment, an ICPA would be “just” and promote quality of life and the public good in that it provides the missing link in that three-pronged relationship and will result in direct benefits to animals by improving their wellbeing and to humans by protecting their rights to life, security, and a safe, clean, healthy, and sustainable environment.<sup>14</sup> Further, the legal implications of the ICPA are far-ranging. Not only is the Convention itself an international legal instrument and, for signatory countries, will likely require changes to their national laws to come into compliance, but the consequences of not taking animal well-being seriously has legal implications in several substantive areas of the law, including tort law, insurance law, employment law, health law, and environmental law.

Existing international agreements do not adequately protect animal wellbeing globally.<sup>15</sup> A Universal Declaration on Animal Welfare (UDAW) acknowledges the importance of animal welfare to both humans and animals. Although supported by the World

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<sup>9</sup> On September 7, 2020, the Global Initiative to End Wildlife Crime, referred to the ‘One Health’ approach as a basis to reform wildlife trade laws that would help avoid future devastating wildlife-related pandemics. End wildlife crime, media outreach, *Global initiative outlines a “One Health” approach to reforming wildlife trade laws*, TAIWAN NEWS (Sept. 7, 2020), <https://www.taiwannews.com.tw/en/news/4003345>.

<sup>10</sup> AMERICAN BAR ASSOCIATION, *ABA Mission and Goals*, [https://www.americanbar.org/about\\_the\\_aba/aba-mission-goals/](https://www.americanbar.org/about_the_aba/aba-mission-goals/).

<sup>11</sup> AMERICAN BAR ASSOCIATION, *Resolution and Report 121*, at 3, 5 (Aug. 11-12, 2008), [https://www.americanbar.org/content/dam/aba/directories/policy/annual-2008/2008\\_am\\_121.pdf](https://www.americanbar.org/content/dam/aba/directories/policy/annual-2008/2008_am_121.pdf).

<sup>12</sup> AMERICAN BAR ASSOCIATION, *ABA Mission and Goals*, [https://www.americanbar.org/about\\_the\\_aba/aba-mission-goals/](https://www.americanbar.org/about_the_aba/aba-mission-goals/).

<sup>13</sup> AMERICAN BAR ASSOCIATION, *ABA Constitution*, § 1.2, [https://www.americanbar.org/groups/leadership/house\\_of\\_delegates/aba-constitution-and-bylaws/](https://www.americanbar.org/groups/leadership/house_of_delegates/aba-constitution-and-bylaws/).

<sup>14</sup> An ICPA would also be “just” in that it recognizes an ethical imperative to treat animals with proper care and respect. As the moral philosopher Jeremy Bentham observed when justifying the protection of animals: “The question is not, Can they reason? Nor Can they talk? But Can they suffer? JEREMY BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION 311 (1789).

<sup>15</sup> The Convention on International Trade in Endangered Species and Wild Fauna and Flora (CITES), (Mar. 3, 1973), 27 U.S.T. 1087, 993 U.N.T.S. 243 contains requirements for granting an export permit of protected live wildlife: “[T]he State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.” *Id.* art. III, para. 2(c), art. IV, para. 2(c) “The countries that are Parties to CITES have not explicitly defined what constitutes cruel treatment and attempts to extend this welfare concern to the capture and holding of wildlife during the domestic portions of travel, rather than solely relying on the broader international component to address more local concerns, have failed.” David Favre, *An International Treaty for Animal Welfare*, 18 ANIMAL L. 237, 246 (2012).

Organization for Animal Health (known by its French acronym, OIE), it has not been adopted by the UN, and, even if adopted, would not commit the signatories to take any action.<sup>16</sup> Similarly, the World Trade Organization (WTO) has recognized standards promulgated by the OIE, but those standards only apply to live animals that are sold and transported across borders, and are not binding.<sup>17</sup>

At the national level, laws regulating human interactions with animals—domesticated and wild—differ among nations and from state to state within the U.S. Some countries provide strong animal protection regimes, while others provide little or no protection.<sup>18</sup> Zoonotic diseases and pollution know no legal boundaries. Many animals, both feral and wild, move from one jurisdiction to another on their own volition. And, in this age of global trade, animals and animal products move internationally, pursuant to WTO free-trade rules designed to remove territorial barriers. Only an international agreement that addresses animal welfare and establishes binding standards and rules—an ICPA—will ensure a common international standard and protect human and animal interests alike. The COVID-19 global pandemic brought society to a virtual standstill and has affected every human being on the planet. It has taught us that all life is interconnected. It is now time to minimize the risk of a future pandemic and improve animal wellbeing.

This Resolution does not purport to endorse any specific details of an ICPA but rather urges nations to negotiate appropriate standards, taking into account diverse ethical, social, cultural, religious, economic, and political perspectives. Inclusive, fair, and reasonable dialogue with sensitivity to the diverse needs and perspectives of all nations and an appreciation for the benefits that will be attained will help to arrive at standards that are agreeable and achievable for all.

Given the urgency of better understanding and addressing COVID-19, and preventing future pandemics, there is a renewed interest and appetite to look at these issues at an international level as is clear from the recent UN Environmental Program report on Preventing the Next Pandemic.<sup>19</sup> As the UN noted in its introduction to the report: “At the heart of our response to zoonoses and the other challenges humanity faces should be the simple idea that the health of humanity depends on the health of the planet *and the health of other species*.”<sup>20</sup>

We set out below a brief description of an ICPA; the likely benefits of the ICPA to public health, the environment, and animal wellbeing; and how this resolution serves the goals of the ABA before addressing the current lacuna in international law.

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<sup>16</sup> WORLD ANIMAL PROTECTION, *Universal Declaration on Animal Welfare*, [https://www.worldanimalprotection.ca/sites/default/files/media/ca\\_-\\_en\\_files/case\\_for\\_a\\_udaw\\_tcm22-8305.pdf](https://www.worldanimalprotection.ca/sites/default/files/media/ca_-_en_files/case_for_a_udaw_tcm22-8305.pdf) (last visited July 6, 2020) [hereinafter *UDAW*].

<sup>17</sup> WORLD ORGANISATION FOR ANIMAL HEALTH, *Terrestrial Animal Health Code*, <https://www.oie.int/standard-setting/terrestrial-code/>; see also *infra* text accompanying notes 72-82.

<sup>18</sup> See *infra* text accompanying notes 59-63.

<sup>19</sup> UN REPORT, *supra* note 2.

<sup>20</sup> *Id.* at 4.

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## An International Convention for the Protection of Animals

Professor David Favre<sup>21</sup> and the Global Animal Law Association<sup>22</sup> have each proposed suggested language for an ICPA. Although the details of the two drafts differ, the general contours are similar. An ICPA would:

- Acknowledge fundamental principles laying the foundation for why the care and wellbeing of animals is important to both humans and animals including as part of the One Health concept. These principles would form the core convention.
- Articulate specific and enforceable obligations through the establishment of protocols each with standards and rules for human interaction with, and care for, categories of animals based upon their use by humans. The preliminary focus would be on a wildlife protocol as the area likely to have the most immediate impact on future pandemic risk.
- To accede to the ICPA, a country would subscribe to the ICPA and at least one protocol.
- To ensure appropriate surveillance and enforcement, a secretariat would be proposed to coordinate actions among member states and enforce terms of the Convention.

By way of example, and without endorsing any specific protocol standards, the following is the possible substantive content of a Wildlife Protocol of the ICPA:

- Restrict the capturing or hunting of high-risk wildlife;
- Regulate conditions of high-risk wildlife management, including limiting habitat incursion and maintaining separation of wildlife from commercial livestock;
- Regulate and restrict sale and use of wild animals for commercial, culinary, or medical purposes; and
- Regulate transit of wild animals.

Taking each of these in turn:

Capture and hunting: Identify high-risk species that have led to human spillover (e.g. bats, certain rodents, primates, civets, and pangolins) and ban (or subject to strict regulation) the capture, hunting or scavenging of such species. The list of species would be updated periodically based on scientific evidence without need for ICPA modification. Where such hunting is necessary for livelihood, survival, or tradition, states could sponsor alternative livelihoods, possibly funded by member states, since hunting often occurs in the poorest countries where funding for substitutes is a challenge.

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<sup>21</sup> Favre, *supra* note 15.

<sup>22</sup> GLOBAL ANIMAL LAW, *UN Convention on Animal Health and Protection* (UNCAHP), <https://www.globalanimallaw.org/gal/projects/uncahp.html>.

High risk wildlife management: Ensure no mixing of wild animals with commercial livestock to avoid viral transmission.<sup>23</sup> Buffer zones would be established to separate natural habitats from commercial farming operations to avoid transmission from reservoir animals (e.g. bats) to host livestock (e.g. pigs, chickens or horses). Guidelines would impose limits on habitat incursion of high-risk species into human habitats that increase the frequency of spillover.

Animal use for commercial purposes: Regulate and restrict the sale and use of wild animals for commercial purposes. Such regulations would include: Banning the sale of certain listed wild animals as exotic pets; setting standards for use of wild animals for medical testing (e.g. minimum sanitary and care conditions); restricting trade and consumption of wild animals, their parts, and/or their derivatives for medicinal or culinary purposes; controlling or banning live wildlife markets and bushmeat markets;<sup>24</sup> and controlling online markets for wildlife.

Transportation of wild animals: Limit transportation of high-risk species and strengthen border controls, including within custom unions or free trade zones to combat illegal trade in wild animals. Guidelines would be established to improve the enforcement capacity of national enforcement authorities (customs and border patrol) with specialist animal units and to coopt assistance of shipping lines and airlines. Further, the OIE universal system of permits might be considered to regulate transport; standardized forms adopted for approving transit; and standards would be established for sanitary conditions and safe and humane treatment of live wild animals while in transit.

### **The Benefits of an ICPA to Public Health, the Environment, and Animal Wellbeing**

There are at least three core benefits to an ICPA. First, a convention that properly addresses how and where humans interact with animals and how such animals are treated would have major benefits to public health and minimize the risk of a future viral spillover from animals to humans. Second, an ICPA could generate positive environmental impacts by limiting habitat encroachment and ensuring buffer zones between commercial farms and forests. Third, society has moved in recent decades from considering animals as mere movable property to affording them minimum standards of

<sup>23</sup> See e.g. INTERNATIONAL LIVESTOCK RESEARCH INSTITUTE, NAIROBI & ROYAL VETERINARY COLLEGE, LONDON, ZOOSES (PROJECT 1) WILDLIFE/DOMESTIC LIVESTOCK INTERACTIONS, A FINAL REPORT TO THE DEPARTMENT FOR INTERNATIONAL DEVELOPMENT, UK (Sept. 25, 2011), <https://core.ac.uk/download/pdf/132635912.pdf>.

<sup>24</sup> In particular, informal markets selling live domesticated animals, or live or dead wild animals, and those with poor hygiene are high risk from an epidemiological perspective (UN REPORT, *supra* note 2, at 26 (citing R.G. Webster, R.G., *Wet markets – a continuing source of severe acute respiratory syndrome and influenza?*, 363(9404) THE LANCET 234-36 (2004); Richard Kock, et al., *2019-nCoV in context: lessons learned?*, 4(3) THE LANCET PLANETARY HEALTH e87–e88 (2020)). Indeed, in light of the likelihood that the animal to human viral jump of COVID-19 occurred at the Wuhan live wildlife market, we have already seen China implement a temporary ban on trade of wild animals as food. James Gorman, *China's Ban on Wildlife Trade a Big Step, but has loopholes, Conservationists Say*, N.Y. TIMES, (Feb. 27, 2020), <https://www.nytimes.com/2020/02/27/science/coronavirus-pangolin-wildlife-ban-china.html>; *China suspends wildlife trade to curb novel coronavirus*, XINHUANET (Jan. 26, 2020), [http://www.xinhuanet.com/english/2020-01/26/c\\_138735496.htm](http://www.xinhuanet.com/english/2020-01/26/c_138735496.htm).

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treatment, but no global legal standard applies. An ICPA would correct this gap and provide minimal international standards of protection for animal wellbeing.

## Protecting Public Health

Zoonotic diseases have their roots in the way humans and animals interact. Human encroachment upon wild animal habitats and the exposure of wildlife to farmed animals risks the transmission of zoonotic diseases. Recent zoonotic viruses include COVID-19, SARS, MERS, H1N1 and Ebola.<sup>25</sup> Typically viruses originate in a “reservoir” species (often bats or rodents) who are often immune to their effects and who transmit the viruses to intermediate host species (wild animals such as pangolins, civet cats, chimpanzees and gorillas, or livestock such as camels, horses, cows, or birds) which may act as virus “magnifiers” and then pass the virus to humans. Once in the first human (Patient Zero), the impact of the novel virus depends on the ease of human to human transmission and the mortality rate. Zoonotic diseases have been at the center of the latest epidemics and pandemics, infecting about 2.5 billion people and causing 2.7 million human deaths every year.<sup>26</sup> Until effective vaccines are created, treatment for novel viruses is limited to the alleviation of symptoms.

A global response to the intertwined relationship between human health and animal welfare recognizes that public health requires a holistic approach encompassing humans, animals, and environments as recognized by the CDC, the WTO, the OIE, and the UN Food and Agriculture Organization (FAO) through the concept of One Health that covers all animal species.<sup>27</sup> Indeed, as Jimmy Smith, the Director General of the ILRI, states in the introduction to the UN Report:

In the past two decades, ‘One Health’—a holistic, inter-sectoral and interdisciplinary approach that focuses on where the health of people, animals and environments converge—has emerged as the most promising way to prevent and manage zoonotic diseases.<sup>28</sup>

An ICPA will embrace solutions to animal welfare that respect the One Health concept and will have a direct health impact on both humans and animals. In sum, a core benefit

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<sup>25</sup> *Id.* at 11. For example, there is a general scientific consensus that the virus SARS-CoV-2 originated from a bat and then transferred to an intermediate host species before evolving into the coronavirus responsible for COVID-19 and spreading to humans. See Jon Cohen & Kai Kupferschmidt, *NIH-Halted Study Unveils Its Massive Analysis of Bat Coronaviruses*, SCIENCE (Jun. 1, 2020) (quoting evolutionary biologist Edward Holmes), <https://www.sciencemag.org/news/2020/06/nih-halted-study-unveils-its-massive-analysis-bat-coronaviruses#>.

<sup>26</sup> CENTERS FOR DISEASE CONTROL AND PREVENTION, *Prioritizing and Preventing Deadly Zoonotic Diseases*, <https://www.cdc.gov/globalhealth/healthprotection/fieldupdates/winter-2017/prevent-zoonotic-diseases.html> (last visited July 12, 2020).

<sup>27</sup> One Health is an approach which is supported by conclusions of the FAO-OIE-WHO Tripartite Alliance as an optimal method for preventing as well as responding to zoonotic disease outbreaks and pandemics. Adopting a One Health approach, which unites medical, veterinary, and environmental expertise, will help governments, businesses and civil society achieve enduring health for people, animals and environments alike. See UN REPORT, *supra* note 2, at 7.

<sup>28</sup> *Id.* at 5.

of an ICPA would be to establish a set of enforceable international provisions that could help prevent the next zoonotic epidemic or pandemic.<sup>29</sup>

### Protecting the Environment

The second benefit of an ICPA is the enhancement of environmental protection as a direct consequence of protecting animal welfare. In 2015, the WHO published a seminal report on *Biodiversity and Human Health*.<sup>30</sup> Noting that “[a]pproximately two-thirds of known human infectious diseases are shared with animals, and the majority of recently emerging diseases are associated with wildlife,”<sup>31</sup> the WHO specified, as one of the Report’s “Key Messages,” that:

Land use change, pollution, poor water quality, chemical and waste contamination, climate change and other causes of ecosystem degradation all contribute to biodiversity loss and, can pose considerable threats to human health.<sup>32</sup>

These activities also pose considerable threats to animal welfare. International environmental agreements, however, have not expressly recognized the role of animal welfare as part of the broader concept of environmental protection or conservation.

An ICPA will balance the equation and protect the environment. A simple example suffices. Cutting down forests for logging and to convert to farmland is harmful to the environment but also destroys habitats which can impact the ability of particular species to survive. It also increases the interaction of long-isolated wild animals whose habitat has been destroyed with humans and farmed animals, thus creating a high risk of a spillover viral transmission.<sup>33</sup> Habitat protection can thus achieve a goal of animal welfare with positive environmental consequences. In other words, properly addressing the need to protect the wellbeing of animals will in turn have positive consequences for the

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<sup>29</sup> As noted by New York University’s Center for Environmental and Animal Protection (CEAP) “Successfully preventing future pandemics requires [...] an integrative disease surveillance system that recognizes the interdependence of human, animal, and environmental health.” See CEAP, *Research Brief #3: Integrating human and animal health can prevent pandemics* (May 27, 2020), [https://s18798.pcdn.co/ceap/wp-content/uploads/sites/11111/2020/06/CEAP\\_Research\\_Brief\\_3.pdf](https://s18798.pcdn.co/ceap/wp-content/uploads/sites/11111/2020/06/CEAP_Research_Brief_3.pdf).

<sup>30</sup> WORLD HEALTH ORGANIZATION [WHO] AND SECRETARIAT OF THE CONVENTION ON BIOLOGICAL DIVERSITY [CBD], *CONNECTING GLOBAL PRIORITIES: BIODIVERSITY AND HUMAN HEALTH – A STATE OF KNOWLEDGE REVIEW* (2015); [https://apps.who.int/iris/bitstream/handle/10665/174012/9789241508537\\_eng.pdf;jsessionid=50A629358511CF4391B8E870231B90EA?sequence=1](https://apps.who.int/iris/bitstream/handle/10665/174012/9789241508537_eng.pdf;jsessionid=50A629358511CF4391B8E870231B90EA?sequence=1).

<sup>31</sup> *Id.* at 10; see also WHO & CBD, *Connecting global priorities – biodiversity and human health – Key messages* at 1, <https://www.who.int/globalchange/publications/FIconnecting-key-message.pdf?ua=1> (last visited July 21, 2020).

<sup>32</sup> WHO & CBD, *supra* note 31, at 1.

<sup>33</sup> A number of deadly viruses have spilled over to humans as a consequence of habitat destruction leading to increased interaction with host wild animals. See e.g. Emily Gurley, et al., *Convergence of Humans, Bats, Trees, and Culture in Nipah Virus Transmission, Bangladesh*, 23 EMERGING INFECTIOUS DISEASES 1446-1453 (Sept. 2017); Gerardo Suzan, et al., *The Effect of Habitat Fragmentation and Species Diversity Loss on Hantavirus Prevalence in Panama*, 1149 ANN N.Y. ACAD. SCI. 80-83 (2008).

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environment.<sup>34</sup> For this reason, one of the key policy recommendations in the recent UN Report is to:

Reduce further destruction and fragmentation of wildlife habitat by strengthening the implementation of existing commitments on habitat conservation and restoration, the maintenance of ecological connectivity, reduction of habitat loss, and incorporating biodiversity values in governmental and private sector decision-making and planning processes.<sup>35</sup>

## Promoting Animal Wellbeing

The third benefit of an ICPA is to address animal wellbeing. It is important to acknowledge that animal welfare is an existing and recurring topic of international, regional, and national discussion. On the international stage, international organizations such as the OIE have conducted extensive work on animal protection/welfare related issues (beyond animal health).<sup>36</sup> The common intention of these initiatives is to promote animal welfare and more appropriate interaction between humans and animals.

On the regional level, the European Union and certain European institutions have actively advocated for animal protection and/or welfare (with varying degrees of protection for differing categories of animals).<sup>37</sup> Importantly, the Treaty of Amsterdam (1997) ratified by all EU member states included a simple protocol on animal welfare that recognized their status as sentient beings.<sup>38</sup> Regional initiatives are not limited to the west—the Gulf

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<sup>34</sup> As concluded in a policy paper of CEAP “our climate change adaptation efforts will be more effective and efficient if we consider humans and nonhumans together.” CEAP, *Research Brief #2: Centering animals in climate change adaptation* (2020), <https://s18798.pcdn.co/ceap/wp-content/uploads/sites/11111/2020/05/Jeff-Sebo-Centering-animals-in-climate-change-adaptation.pdf>. See also R García Pinillos, et.al., *One Welfare—a platform for improving human and animal welfare*, 179 J. BRITISH VETERINARY ASSOC., 412-13 (2016); Sara Place, *Animal Welfare and Environmental Issues in ADVANCES IN AGRICULTURAL ANIMAL WELFARE* 69-89 (Joy Mench ed. 2018).

<sup>35</sup> UN REPORT, *supra* note 2, at 53.

<sup>36</sup> For example, the OIE has worked on establishing the first Global Animal Welfare Strategy (adopted in May 2017 by Member States). See WORLD ORG. ANIMAL HEALTH, *Animal Welfare*, <https://www.oie.int/en/animal-welfare/oie-standards-and-international-trade/>

<sup>37</sup> For specific local regulations, see JESSICA VAPNEK AND MEGAN CHAPMAN, LEGISLATIVE AND REGULATORY OPTIONS FOR ANIMAL WELFARE, 35-84 (FAO, 2010), <http://www.fao.org/3/i1907e/i1907e00.pdf>. For the European Union regulation on protection of animals see Council Directive 92/43/EEC of May 21, 1992, Official Journal of the European Communities No. L206/7, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1992:206:0007:0050:EN:PDF>.

<sup>38</sup> European Union: Council of the European Union, *Treaty of Amsterdam Amending the Treaty on European Union, The Treaties Establishing the European Communities and Related Acts*, Nov. 10, 1997, 110, <https://www.refworld.org/docid/51c009ec4.html> (last visited July 13, 2020). The “Protocol on protection and welfare of animals” reads as follows: “THE HIGH CONTRACTING PARTIES, DESIRING to ensure improved protection and respect for the welfare of animals *as sentient beings*; HAVE AGREED UPON the following provision which shall be annexed to the Treaty establishing the European Community: In formulating and implementing the Community's agriculture, transport, internal market and research policies, the Community and the Member States shall pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.”

Cooperation Council passed an Animal Welfare Act in 2011 that is applicable in all of its six member states.<sup>39</sup>

On a national level, several countries have regulated the treatment and welfare of animals. For example, in 1966 the U.S. enacted the Animal Welfare Act (US AWA), regulating animal dealers and the treatment of animals by dealers, as well as in research, exhibition, and transport.<sup>40</sup> Just last year it also enacted the Preventing Animal Cruelty and Torture Act 2019, which makes certain intentional acts of animal cruelty a federal crime.<sup>41</sup> Another example is the 2006 U.K. Animal Welfare Act (UK AWA), which has a broader scope than the US AWA, and directly promotes general animal welfare<sup>42</sup> and regulates certain types of harmful practices.<sup>43</sup> The movement towards greater animal protection is universal and new regimes for the proper care and treatment of animals have emerged across the globe in the last decade.<sup>44</sup>

However, this piecemeal approach to animal welfare means that there are no uniform legal standards at an international level. An ICPA is a means to adopt negotiated good practices and standards from local animal welfare laws and build a set of binding international rules. As noted by Professor Peters: “In times of globalization, regulation at the domestic level is insufficient to address animal welfare and, to be effective, needs to be complemented by international rules.”<sup>45</sup> Research has shown that the impact of animal welfare on human society and the environment is broad and overarching. When taken holistically as part of a common global welfare strategy, animal welfare has positive effects in varied areas, from the reduction of child and domestic abuse<sup>46</sup> to food safety and quality.<sup>47</sup> Moreover, given that COVID-19 has disproportionately affected minority communities, a more robust animal welfare framework would benefit those human groups

<sup>39</sup> Animal Welfare Act of the Cooperation Council for the Arab States of the Gulf (2011). The Act applies to the six countries of the Gulf Cooperation Council—Saudi Arabia, Bahrain, Kuwait, UAE, Oman and Qatar.

<sup>40</sup> 7 U.S.C. §§ 2133-2143 (2020). The US AWA is limited to warm blooded animals, but farmed animals plus birds, rats, and mice bred for use in research are excluded from the protections of the Act. *Id.* § 2132 (g).

<sup>41</sup> In the U.S., the primary laws governing animal welfare are enacted at the state level.

<sup>42</sup> Animal Welfare Act of 2006, ch. 45, §§ 9-13 (UK).

<sup>43</sup> *Id.* §§ 4-8 (harmful practices include *e.g.* unnecessary suffering, mutilation, docking of dogs’ tails, etc.).

<sup>44</sup> *E.g.* Animal Protection Law of Colombia (Law 1774 of 2016) which recognized the concept of animals as sentient beings.

<sup>45</sup> Anne Peters, *Global Animal Law: What It Is and Why We Need It*, 5 TRANSNATIONAL ENVIRONMENTAL LAW 9-23 (2016),

[https://www.mpil.de/files/pdf5/Peters\\_GAL\\_What\\_it\\_is\\_and\\_why\\_we\\_need\\_it\\_20161.pdf](https://www.mpil.de/files/pdf5/Peters_GAL_What_it_is_and_why_we_need_it_20161.pdf).

<sup>46</sup> Where serious animal abuse has occurred in a household, research has shown that there may be an increased likelihood that some other form of family violence is also occurring, and that any children present may also be at increased risk of abuse. Moreover, cruelty to animals by children is an indicator of future violence against humans. See *generally* THE LINK BETWEEN ANIMAL ABUSE AND HUMAN VIOLENCE (Andrew Linzey ed. 2009). The connection between animal abuse and domestic abuse was highlighted as early as 1751 by William Hogarth in his famous print “The Four Stages of Cruelty” which shows the evolution of a young boy torturing a dog proceeding as a man to beat his dying horse and subsequently murdering his partner. Graphic Arts, *The Four Stages of Cruelty* (posted by Julie Mellby, Dec. 21, 2008), [https://www.princeton.edu/~graphicarts/2008/12/the\\_four\\_stages\\_of\\_cruelty.html](https://www.princeton.edu/~graphicarts/2008/12/the_four_stages_of_cruelty.html).

<sup>47</sup> See *e.g.* L.A. Boyle & K. O’Driscoll, *Animal welfare: an essential component in food safety and quality*, in FOOD CHAIN INTEGRITY 169-86 (2011), <https://www.sciencedirect.com/science/article/pii/B9780857090683500111>.

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most at risk.<sup>48</sup> As shown in the below graphic published in the article, *One Welfare – a platform for improving human and animal welfare*, there are a series of benefits associated with animal welfare as part of a global approach.

It has been observed that “[t]he separation between human, social, and animal welfare is an artificial compartmentalization. These disciplines rely on the same set of scientific measures and heavily depend on each other in an ecological context.”<sup>49</sup> Therefore, animal welfare brings a whole set of positive impacts not only to animals themselves but also to human wellbeing<sup>50</sup> and respect for the environment through discouraging inappropriate encroachment on habitat and encouraging sustainable commercial agricultural practices.<sup>51</sup>



FIG 1: A One Welfare approach helps to identify and recognise the links that exist between different sectors

<sup>48</sup> CENTERS FOR DISEASE CONTROL AND PREVENTION, *COVID-19 in Racial and Ethnic Minority Groups* (June 25, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html> (concluding that “age-adjusted hospitalization rates are highest among non-Hispanic American Indian or Alaska Native and non-Hispanic black persons”).

<sup>49</sup> See Tristan Colonius & Rosemary Earley, *One welfare: a call to develop a broader framework of thought and action*, 242 J. AM. VET. MEDICAL ASSOC. 309-10 (2013).

<sup>50</sup> See e.g. John McGlone, *Farm animal welfare in the context of other society issues: Toward sustainable systems*, 72 LIVEST. PROD. SCI. 75–81 (2001); Michelle Sinclair & Clive Phillips, *The Cross-Cultural Importance of Animal Protection and Other World Social Issues*, 30 J. AGRICULTURE. ENVIRON. ETHICS 439–55 (2017).

<sup>51</sup> UN REPORT, *supra* note 2, at 16.

## Urging the Negotiation of an ICPA Promotes ABA Goals and Purpose

Pursuant to ABA Goal IV, a key objective of the ABA is to “work for just laws.”<sup>52</sup> A “just law” is one that is fair, impartial, and/or reasonable and, more broadly, one that is morally and ethically sound.<sup>53</sup> ABA prior Goal III, which was incorporated and “retained in concept” as part of the adoption of the current Goal IV in 2008, calls on the ABA to “provide ongoing leadership in improving the law to serve the changing needs of society.”<sup>54</sup> Moreover, ABA Goal I seeks to promote “members’ quality of life,”<sup>55</sup> and one of the purposes stated in the ABA Constitution is “to apply the knowledge and the experience of the profession to the promotion of the public good.”<sup>56</sup>

Work toward a convention that seeks to move existing domestic and regional efforts on animal welfare towards a consolidated minimum set of international standards is work for just laws and would promote the public good. The current pandemic illustrates the need for ABA leadership to address the heightened public health and environmental risks arising from our relationship with animals, and to reflect the public’s evolving attitudes toward animals. There can be no better time to pursue these goals and purposes than a moment when nature has sent a “wake up call” through COVID-19. Unless humans reorganize our relationship with animals and the environment, we will be subject to ever increasing numbers of novel viruses with the potential of causing hundreds of thousands of deaths and unmeasurable economic disruption. An ICPA would recognize the ecological interdependence of human health, animal wellbeing, and the environment, and result in direct benefits to humans and their rights to life, security, and a safe, clean, healthy, and sustainable environment and to animals by improving their wellbeing. By supporting an ICPA, the ABA will consolidate its position as a leading voice on a project that would have a truly global impact on the most pressing issue facing the world today.

## The Need for an International Convention for the Protection of Animals (ICPA)

Although there is no international convention with a focus on the wellbeing of individual animals—wild or domesticated—the draft text of the Universal Declaration on Animal Welfare (“UDAW”) is relevant. It was first proposed in 2000 by a group of internationally recognized animal welfare organizations including Compassion in World Farming, the World Society for the Protection of Animals, the Royal Society for the Prevention of Cruelty to Animals, and Humane Society International.<sup>57</sup> The UDAW calls for, among

<sup>52</sup> AMERICAN BAR ASSOCIATION, *ABA Mission and Goals*, [https://www.americanbar.org/about\\_the\\_aba/aba-mission-goals/](https://www.americanbar.org/about_the_aba/aba-mission-goals/).

<sup>53</sup> USLEGAL.COM. *Just law and Legal Definition*, <https://definitions.uslegal.com/j/just/> (last visited July 6, 2020).

<sup>54</sup> AMERICAN BAR ASSOCIATION, *Resolution and Report 121*, 3, 5 (Aug. 11-12, 2008), [https://www.americanbar.org/content/dam/aba/directories/policy/annual-2008/2008\\_am\\_121.pdf](https://www.americanbar.org/content/dam/aba/directories/policy/annual-2008/2008_am_121.pdf).

<sup>55</sup> *Id.*

<sup>56</sup> AMERICAN BAR ASSOCIATION, *ABA Constitution*, § 1.2, [https://www.americanbar.org/groups/leadership/house\\_of\\_delegates/aba-constitution-and-bylaws/](https://www.americanbar.org/groups/leadership/house_of_delegates/aba-constitution-and-bylaws/).

<sup>57</sup> See Miah Gibson, *The Universal Declaration of Animal Welfare*, 16 DEAKIN L. REV. 539, 541 (2011), <https://ojs.deakin.edu.au/index.php/dlr/article/view/112/112>; HUMANE SOCIETY OF THE UNITED STATES, *HSI Supports “Animals Matter to Me” Campaign*, [https://web.archive.org/web/20081010134119/http://www.hsus.org/about\\_us/humane\\_society\\_internation](https://web.archive.org/web/20081010134119/http://www.hsus.org/about_us/humane_society_internation)

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other items, a recognition that "animals are living, sentient beings and therefore deserve due consideration and respect"; that "animal welfare includes animal health"; and calls for an awareness of the "Five Freedoms" and "Three R's," which govern humane animal care standards in the arenas of agriculture and testing, respectively.<sup>58</sup> The provisions of the UDAW call for animal welfare standards to be developed for the treatment of farmed, companion, research, draught, recreation, and wild animals. While the UDAW is an important step towards a global recognition of the importance of animal wellbeing, it is only a draft declaration and has not been adopted. Moreover, since it is not a convention, it would not require any action on the part of signatories.

## The International Movement of Animals

Animals move internationally, going from one jurisdiction and set of laws to another, from full protection in one country to little or no protection in another. For example, whales and sharks move globally on their own volition. Some countries, particularly in Asia, use the fins of a shark to make soup that is in high consumer demand as a prestige food.<sup>59</sup> To meet this demand, fishers cut off the fins of live sharks and throw the sharks' bodies back into the ocean, resulting in ecological devastation and the pain, suffering, and death of some 73 million sharks annually.<sup>60</sup> Other countries have judged that the consumption of the soup does not justify the pain, suffering, and death of the sharks and prohibit the practice. Depending on where sharks are swimming, they will either be protected or subjected to cruel deaths. In fact, the ABA House of Delegates approved Resolution 20A 102A in August 2020 urging federal, state, territorial and tribal governments to enact and enforce legislation that prohibits and penalizes the possession, sale, and trade of shark fins.<sup>61</sup>

In other contexts, animals are transported across borders. For example, the slaughter of horses in the U.S. for food has been effectively eliminated.<sup>62</sup> However, horses are now exported live from the U.S. for slaughter in Mexico. Thus, the laws of the U.S. for horse protection are meaningless to the American horse on a truck to Mexico. Stringent laws can be frustrated when other countries do not have similar protections. Another international issue is the live shipment of livestock from countries like Australia to the

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al\_hsi/international\_policy/united\_nations/hsi\_animals\_matter\_to\_me.html (archived site last visited July 8, 2020).

<sup>58</sup> Gibson, *supra* note 57, app. 1. The five freedoms include: freedom from hunger and thirst; freedom from discomfort; freedom from pain, injury, and disease; freedom to express normal and natural behavior; and freedom from fear and distress. See WORLD ORGANISATION FOR ANIMAL HEALTH, *What is animal welfare?*, <http://www.oie.int/animal-welfare/animal-welfare-key-themes/> (last visited Aug. 14, 2020). The 3Rs are: Replacement, Reduction, and Refinement. Nicole Fenwick, et al., *The welfare of animals used in science: How the "Three Rs" ethic guides improvements*, 50(5) CANADIAN VET. J. 523-30 (2009).

<sup>59</sup> See The University of Hong Kong, *Appetite for shark fin soup [is a] serious risk to threatened sharks*, SCIENCE DAILY (Sept. 13, 2018), <http://www.sciencedaily.com/releases/2018/09/180913113841.htm>.

<sup>60</sup> Shark Research Institute, *Ending the Shark Fin Trade in the USA*, <https://oceanconference.un.org/commitments/?id=19799> (Sept. 13, 2018).

<sup>61</sup> American Bar Association Resolution 20A102A.

<sup>62</sup> Phil Derfler, *Setting the Record Straight on Congress' Lifting of the Ban on Horse Slaughter*, U.S. DEPT. AGRICULTURE (Feb. 21, 2017), <https://www.usda.gov/media/blog/2011/12/09/setting-record-straight-congress-lifting-ban-horse-slaughter>.

Middle East, to satisfy a preference for local slaughter rather than frozen meat.<sup>63</sup> Even though Australia may have good laws for the welfare of livestock within its borders, those laws do not apply to conditions on the high seas or treatment in the import country. Such discrepancies would be eliminated by a single, negotiated international standard of animal treatment. Moreover, the imposition of appropriate standards for such transport and slaughter would reduce the risk of transmission of zoonotic diseases, which is imperiling human health globally.

### **Reducing Negative Economic Incentives**

A critical reason for an ICPA is the reality that global corporations operate internationally and profit from animals and animal products. To the extent that a single country seeks to enhance the welfare of agricultural animals, for example, corporations may seek to avoid the cost of increased animal welfare measures by raising animals in another country or relocating their entire operation to a jurisdiction of lower protection. The corporation that can identify and implement a policy of minimal animal protection by choosing its operational location will thrive and the one located in a high protection jurisdiction which requires humane treatment of animals, will likely be economically disadvantaged. Such discrepancies would be eliminated by the establishment of a single international standard, thereby encouraging greater fairness in trade.

### **Existing International Conventions Do Not Directly Address Individual Animal Wellbeing**

There are several conventions that address wildlife issues. The primary focus of these conventions is the preservation of endangered species<sup>64</sup> or the management of commercially valuable species so that they will not become endangered. Several conventions deal with migratory birds and fish<sup>65</sup> and the International Convention for the Regulation of Whaling deals with whales.<sup>66</sup> However, the wellbeing of individual wildlife is not the focus of these conventions.<sup>67</sup>

More representative of present conventions are the UN Framework Convention on Climate Change<sup>68</sup> and the Convention on Biological Diversity<sup>69</sup> that refer to an

<sup>63</sup> Richard Glover, *The Shame of Australia's Live Sheep Trade*, ENCYCLOPEDIA, BRITANNICA, <https://www.britannica.com/explore/savingearth/the-shame-of-australias-live-sheep-trade>.

<sup>64</sup> See e.g., Convention on International Trade in Endangered Species of Wild Fauna and Flora (Mar. 3, 1973), 27 U.S.T. 1087, 993 U.N.T.S. 243.

<sup>65</sup> See generally P. VAN HEIJNSBERGEN, INTERNATIONAL LEGAL PROTECTION OF WILD FAUNA AND FLORA (1997) (cataloging the international legal instruments which have their main goal as the protection of wild fauna or flora).

<sup>66</sup> International Convention for the Regulation of Whaling, art. IV (Dec. 2, 1946), <https://archive.iwc.int/pages/view.php?ref=3607&k=>.

<sup>67</sup> See *id.* art. VIII.

<sup>68</sup> United Nations Framework Convention on Climate Change (May 9, 1992), [https://treaties.un.org/doc/Treaties/1994/03/19940321%2004-56%20AM/Ch\\_XXVII\\_07p.pdf](https://treaties.un.org/doc/Treaties/1994/03/19940321%2004-56%20AM/Ch_XXVII_07p.pdf).

<sup>69</sup> Convention on Biological Diversity, art. 8 (May 21, 1992). (Article 8(d) lists as one of the commitments to “Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings.”).

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ecosystemic approach where animals are a part of the ecosystem which is the object of protection.<sup>70</sup> Animals are not provided any specific individual protection other than as part of the ecosystem. If animals benefit from environmental protection, it is a consequence and not an objective.<sup>71</sup> Thus, it is clear that while environmental treaties may focus on the importance of wildlife as part of ecosystems, the conditions of life and death of individual animals at the hands of humans around the world have not been addressed internationally. Yet there must be focus at the individual level because it is the individual animal that poses the risk for zoonotic disease.

The only international body that addresses international standards for animal welfare is the OIE, which focuses on international trade and the risk of disease transfer from one country to another.<sup>72</sup> The OIE collects and disseminates scientific veterinary data to its 182 member states to combat animal pathogens and diseases, including those transmittable to humans such as COVID-19. During its 75th General Session in 2007, the OIE entered into a cooperation agreement with the World Society for the Protection of Animals and declared its support of the UDAW.<sup>73</sup> In stating its rationale for support, the OIE underscored the ethical importance of the humane treatment of animals and also observed that the UDAW would "complement and promote the work of the OIE, and facilitate global acceptance of OIE standards and their application at a national, regional, and global level."<sup>74</sup> To that end, the OIE has aligned its work in preventing the transmission of zoonotic diseases with animal welfare standards.<sup>75</sup> Recognizing the close relationship between animal health and welfare,<sup>76</sup> the OIE has adopted a detailed and science-based process<sup>77</sup> for the adoption of sanitary standards through its Terrestrial and Aquatic Health Codes and accompanying Manuals.<sup>78</sup> Together, these documents prescribe rearing and transportation standards as well as guidance for the "early detection, reporting and control [of] agents that are pathogenic to animals or humans, and

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<sup>70</sup> For a study on the relationship between animal law and environmental law see Guillaume Futhazar, *Biodiversity, Species Protection, and Animal Welfare Under International Law in STUDIES IN GLOBAL ANIMAL LAW* (Anne Peters ed. 2020).

<sup>71</sup> Convention on Biological Diversity, art. 8 (May 21, 1992).

<sup>72</sup> See WORLD ORGANISATION FOR ANIMAL HEALTH, *The OI Global Animal Welfare Strategy*, <https://www.oie.int/animal-welfare/oie-standards-and-international-trade/> (last visited Aug. 14, 2020).

<sup>73</sup> Resolutions Adopted by the International Committee of the OIE during its 75th General Session, May 20-25, 2007, at 121, 126, [https://www.oie.int/fileadmin/Home/eng/About\\_us/docs/pdf/A\\_RESO\\_2007\\_webpub.pdf](https://www.oie.int/fileadmin/Home/eng/About_us/docs/pdf/A_RESO_2007_webpub.pdf).

<sup>74</sup> *Id.* at 126.

<sup>75</sup> WORLD ORG. FOR ANIMAL HEALTH, *Objectives*, <https://www.oie.int/about-us/our-missions/> (last visited Aug. 29, 2020).

<sup>76</sup> WORLD ORG. FOR ANIMAL HEALTH, *Objectives: Food Safety and Animal Welfare*, <https://www.oie.int/index.php?id=53#c203> (last visited Aug. 29, 2020).

<sup>77</sup> WORLD ORG. FOR ANIMAL HEALTH, *Procedures Used by the OIE to Set Standards and Recommendations for International Trade, with a Focus on the Terrestrial and Aquatic Animal Health Codes* 361 (July 2011), <https://www.oie.int/doc/ged/D11140.PDF>.

<sup>78</sup> WORLD ORG. FOR ANIMAL HEALTH, *International Standards*, <https://www.oie.int/standard-setting/overview/> (last visited Aug. 29, 2020) ("The codes traditionally addressed animal health and zoonoses, but they have, in recent years, expanded to cover animal welfare, animal production food safety, consistent with the expanded mandate of the OIE which is 'to improve animal health worldwide'.").

to prevent their transfer via international trade in animals and animal products.”<sup>79</sup> Although the OIE proposes substantive standards, member states are not required to implement them.<sup>80</sup> There are no prohibitions, no required inspections, and no limitations on operations. Rather, the standards create a checklist of issues that should be considered when live animals are transported which, whilst useful for policy makers, do not limit or prohibit practices harmful to animal welfare. As the OIE recognizes, the trade in animal and animal products represents a significant economic consideration for its member states,<sup>81</sup> which have a vested interest in producing animal products at the lowest prices. This economic incentive comes at the cost of animal welfare, and thus public health, through the increased risk of transmission of zoonotic diseases.<sup>82</sup>

### **A Timely Opportunity for the ABA to Advance Just Laws and Protect Human and Animal Lives**

As the COVID-19 pandemic has made clear, the spread of zoonotic diseases is not confined to countries where poor animal welfare conditions gave rise to the initial spillover to humans. Given the international spread of such diseases and the failure of the current international framework to adequately protect human health and animal wellbeing, an ICPA is critical to bridge the normative gap. While certainly regrettable, the present global crisis was also avoidable. Its impact has been felt far and wide yet also weighed heaviest on the most vulnerable in society. The creation of an ICPA and the international standards for animal care it would establish promises to inure to the benefit of not just animals but humans as well, thereby advancing the ABA’s mission to work for just laws and promote humans’ quality of life.

Respectfully submitted,

Joseph L. Raia  
Chair, International Law Section  
February 2021

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<sup>79</sup> *Terrestrial Animal Health Code*, *supra* note 17.

<sup>80</sup> See Hernán Rojas Olavarría, *Implementation of OIE International Standards by OIE Members*, CONF. OIE 2008 at 252 (noting how importing countries ultimately set their own animal health standards, which may be higher or lower than OIE guidelines, and that exporting countries document how their standards rise to the requisite level).

<sup>81</sup> *Terrestrial Animal Health Code*, *supra* note 17.

<sup>82</sup> Seeking to address this dangerous public health flaw in the global animal trade, the WTO integrated OIE standards into its framework under the auspices of the Sanitary and Phytosanitary (SPS) Agreement. *Id.* The SPS Agreement establishes universal standards pursuant to which contracting parties may discriminate against the import of animal products that fail to meet OIE animal health and welfare standards without violating their obligations under the WTO. That said, the SPS Agreement only creates an option and not an obligation to refuse the import of products that fail to meet the OIE standards. Furthermore, the SPS Agreement applies only to those animals and animal products subject to international trade and transport. It has no application to the domestic treatment of animals. As a consequence, there is no legal pressure on WTO member states to prevent conditions that increase the risk of zoonotic diseases.

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## GENERAL INFORMATION FORM

Submitting Entity: International Law Section

Submitted By: Joseph L. Raia, Chair, International Law Section

1. Summary of Resolution(s).

This Resolution urges all nations to negotiate an international convention for the protection of animals that establishes standards for the proper care and treatment of all animals to protect public health, the environment, and animal wellbeing; and encourages the U.S. State Department to initiate and take a leadership role in such negotiations.

This resolution promotes ABA Goals I and IV, that the ABA seeks to “work for just laws” and “promote members’ quality of life.” The negotiation of an ICPA is work towards just laws and will promote the public good by recognizing the ecological interdependence of human health, animal wellbeing, and the environment, and result in direct benefits to humans and their rights to life, security, and a safe, clean, healthy, and sustainable environment.

2. Approval by Submitting Entity.

ILS Council voted to support the resolution and report on October 23, 2020.

3. Has this or a similar resolution been submitted to the House or Board previously?

No

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

No existing ABA policy is directly relevant to this resolution. The ABA has adopted resolutions urging the adoption of national laws and/or policies that promote the interests of animals and humans. Resolution 20A102A (2020) concerning shark fins is perhaps the most closely relevant to this resolution.

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

Not applicable.

6. Status of Legislation. (If applicable)

Not applicable.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The resolution would be shared with a variety of international organizations that have been working to garner interest to negotiate an international convention for the protection of animals (ICPA). In addition, the resolution would be shared with the US State Department and select other nations, to help persuade such actors to begin negotiations on an ICPA.

8. Cost to the Association. (Both direct and indirect costs)

None.

9. Disclosure of Interest. (If applicable)

Not applicable.

10. Referrals.

This Report and Recommendation is referred to the Chairs and Staff Directors of all ABA Sections and Divisions.

11. Contact Name and Address Information. (Prior to the meeting)

Joan Schaffner  
[jschaf@law.gwu.edu](mailto:jschaf@law.gwu.edu)

12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

Gabrielle Buckley  
Gannon Center for Women & Leadership  
Loyola University Chicago  
Chicago, IL  
[gbuckley1@luc.edu](mailto:gbuckley1@luc.edu)

Michael Burke  
Arnall Golden Gregory LLP  
Washington, DC  
[mike.burke@agg.com](mailto:mike.burke@agg.com)

Steven Richman  
Clark Hill PLC  
Princeton, NJ  
[srichman@clarkhill.com](mailto:srichman@clarkhill.com)

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## EXECUTIVE SUMMARY

### 1. Summary of the Resolution

This Resolution urges all nations to negotiate an international convention for the protection of animals that establishes standards for the proper care and treatment of all animals to protect public health, the environment, and animal wellbeing; and encourages the U.S. State Department to initiate and take a leadership role in such negotiations.

This resolution promotes ABA Goals I and IV, that the ABA seeks to “work for just laws” and “promote members’ quality of life.” The negotiation of an ICPA is work towards just laws and will promote the public good by recognizing the ecological interdependence of human health, animal wellbeing, and the environment, and result in direct benefits to humans and their rights to life, security, and a safe, clean, healthy, and sustainable environment.

### 2. Summary of the Issue that the Resolution Addresses

As the recent pandemic has demonstrated, the failure of society to address animal welfare has grave consequences not just for animals, but directly for humans in our shared existence with animals on the planet. As the One Health approach embraced by the United Nations (UN) and the US Center for Disease Control and Prevention (CDC) recognizes, the health of humans and the risk of diseases spilling over to humans from animals (zoonotic diseases) *is directly related to the health of animals*. Human use and mistreatment of animals, including the wildlife trade and human destruction of natural habitats, contribute significantly to the risk of diseases “spilling over. In addition, certain uses and the destruction of habitat threaten the environment.

Existing laws do not adequately protect animal wellbeing. While there are several international conventions that address wildlife and environmental issues, the wellbeing of individual animals is not the focus of these instruments. At the national level, some countries provide strong animal protection regimes, while others provide little or no protection.

Zoonotic diseases and pollution know no legal boundaries. Many animals move from one jurisdiction to another on their own volition. And, in this age of global trade, animals and animal products move internationally, pursuant to WTO free-trade rules designed to remove territorial barriers. Thus, only an international agreement that addresses animal welfare and establishes binding standards and rules will ensure a common international standard and protect human interest in public health, the environment, and animal well-being.

### 3. Please Explain How the Proposed Policy Position will address the issue

This resolution urges the negotiation of an international agreement that will define international standards to protect human and animal interests. Such a global convention that properly addresses how and where humans interact with animals and how such animals are treated would have three core benefits to address the issue:

First, to public health, by minimizing the risk of a future viral spillover from animals to humans.

Second, to the environment, by limiting habitat encroachment and ensuring buffer zones between human activity and wild environments.

Third, to animals, by affording them minimum standards of treatment. By supporting an ICPA, the ABA will consolidate its position as a leading voice on a project that would have a truly global impact on the most pressing issue facing the world today.

4. Summary of Minority Views

None.