10

The Universal Recognition of Animal Welfare and its Dark Sides

Régis Bismuth

The fate of animals in factory farms, slaughterhouses, and laboratories—and more generally of all animals under human control—has become a challenge of our time and one which has gained momentum in the last two decades, notably among the civil society and policymakers. It has also become an interdisciplinary field of scholarly interest, also known as the 'animal turn' which, to some extent, 'has made its way into international law'.[1] This has given rise to the 'Global Animal Law' project that includes a transnational perspective in addition to the classical public international law angle.[2] One of the key dimensions of this animal turn is the concept of 'animal welfare' which, unlike animal rights or abolitionist doctrines, has gained some form of recognition at the international level. Widely recognized in national legal systems, 'animal welfare' is also regarded by some as a universal value,[3] and even a general principle of law.[4] However, there is a striking dissonance between on the one hand its alleged universal reach and on the other hand the actual cruel treatment of most animals under human control. The question then arises as to whether animal welfare, despite its wide recognition, is simply disregarded in practice.

Although 'animal welfare' seemingly pertains to the protection of animals' individual interests as sentient beings, this contribution aims to highlight that it has been actually, perhaps counterintuitively, the conceptual vehicle that has eventually allowed for the perpetuation and social acceptance of animal exploitation. Indeed, as practised in international institutions such as the World Organisation for Animal Health (also known as OIE for *Office International des Epizooties*), the

[1] Katie Sykes, 'Globalization and the Animal Turn: How International Trade Law Contributes to Global Norms of Animal Protection' (2016) 5 Transnational Environmental Law 55, 79.

[2] For a broader perspective, see Anne Peters' *magnum opus* 'Animals in International Law' (2020) 410 Recueil des Cours 95.

[3] Michael Bowman, Peter Davies, and Catherine Redgwell, *Lyster's International Wildlife Law* (2nd edn, CUP 2011) 678.

[4] 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, 35–36; Charlotte E Blattner, *Protecting Animals within and across Borders: Extraterritorial Jurisdiction and the Challenges of Globalization* (OUP 2019) 76–80. See also Peters, *Animals in International Law* (n 2) 505–07.

Régis Bismuth, *The Universal Recognition of Animal Welfare and its Dark Sides* In: *International Law and Universality*. Edited by: Işıl Aral and Jean d'Aspremont, Oxford University Press. © Régis Bismuth 2024.
DOI: 10.1093/oso/9780198899419.003.0011

Downloaded from academic.oup.com/book/56325/chapter/445429679 by New York University Libraries user on 21 November 2026

concept of 'animal welfare' is deprived of any ethical dimension and is mostly an economic- and efficiency-driven technical tool that legitimizes the industrial exploitation of animals (Section 2). Moreover, the universal issue of animal welfare recognized in the context of the *Seals* dispute at the World Trade Organization (WTO)—a precedent rapidly canonized by the Global Animal Law project—could be analysed under a more critical lens to highlight that its loose application is tainted with anthropocentrism, and eventually allows for the continuing discrimination between animal species (Section 3). Beforehand, these issues deserve to be explored in light of a broader context in which animal protection has also been perceived as one of the many manifestations of cultural imperialism and Western-centrism (Section 1).

1. Animal Protection in International Law and the Temptation of Western-Centrism

Leaving aside five Council of Europe conventions (on the protection of animals during transport, of animals kept for farming purposes, of animals for slaughter, of animals used for scientific purposes, and of pet animals)[5] and certain provisions of the Convention on International Trade of Endangered Species (CITES),[6] international law does impose direct and explicit obligations upon states for the protection of animals' individual interests as sentient beings.[7] In very general terms, international law mainly deals with animals to the extent they belong to species in conservation treaties (the environmental law perspective) or it regards them as commodities (the trade law perspective).[8]

The environmental law perspective and the ethical dimension underlying the protection of animals as sentient beings are sometimes intertwined. This was demonstrated with respect to the protection of whales in Chopra and d'Amato's

[5] The European Convention for the Protection of Animals during International Transport (No 65, 13 December 1968), its additional Protocol (No 103, 15 May 1979) and its revised version (No 193, 6 November 2003); the European Convention for the Protection of Animals Kept for Farming Purposes (No 87, 10 March 1976) and its Protocol of Amendment (No 145, 6 February 1992); the European Convention for the Protection of Animals for Slaughter (No 102, 15 May 1979); the European Convention for the Protection of Pet Animals (No 125, 13 November 1987); and the European Convention for the Protection of Vertebrate Animals Used for Experimental and other Scientific Purposes (No 123, 18 March 1986) and its Protocol of Amendment (No 170, 22 June 1998).

[6] eg its Article III(2)(c) refers to the minimization 'of the risk of injury, damage to health or cruel treatment'. See also Michael Bowman, 'Conflict or Compatibility? The Trade, Conservation and Animal Welfare Dimensions of CITES' (1998) 1 Journal of International Wildlife Law & Policy 9.

[7] See also Denys-Sacha Robin, 'Statut et bien-être des animaux: quelques remarques sur les balbutiements d'un droit international animalier' (2016) 143 Journal du droit international 455.

[8] This is clearly reflected in the *Max Planck Encyclopedia of Public International Law*. To date, it does not include an entry on 'Animals', but the word appears in the sections 'Sanitary and Phytosanitary Measures', 'GMOs', and 'Codex Alimentarius', 'like products' (trade perspective) as well as 'Migratory Species', 'Endangered Species', 'Fisheries', 'fish stocks', and 'marine mammals' (environmental perspective).

Downloaded from academic.oup.com/book/56325/chapter/445429679 by New York University Libraries user on 21 November 2026

prescient article published more than thirty years ago about whales' 'emerging right to life'.[9] This blurred frontier came to the fore in the International Court of Justice case *Whaling in the Antarctic*. Japan argued that Australia's stance with regard to the protection of whales was not grounded in scientifically based conservation objectives but rather 'on the fundamental belief in Australian public opinion that, unlike other inferior members of the animal kingdom, whales are unique, sacred, charismatic mammals that should never be killed'[10]—echoing a former Australian Prime Minister's statement in 1979 which mentioned that 'the harpooning of these animals is offensive to many people who regard killing these special and intelligent animals as inconsistent with the ideals of mankind'.[11]

Japan even went further, accusing Australia of misusing international law with the purpose of imposing its moral values on other states: 'the days of civilizing missions and moral crusades are over. In a world with diverse civilizations and traditions, international law cannot become an instrument for imposing the cultural preference of some at the expense of others.'[12] In other words, Japan intended to use international law as a shield against an international animal rights doctrine seemingly targeting non-Western cultural traditions.

The emerging field of 'global animal law' is aware of the risk that 'international animal rights protection face[s] the critique of cultural imperialism, … mirroring the critique against the Western human rights movement'.[13] Besides, there is a general perception—and preconception—that Europe is the model student of animal protection. Even the Parliamentary Assembly of the Council of Europe declared some time ago that 'the humane treatment of animals is one of the hallmarks of Western civilization'.[14]

The pervasive penchant for Eurocentrism in this area not only ignores the more progressive stances adopted in some jurisdictions (Argentina, Colombia, India) where courts have recognized habeas corpus or other fundamental rights for certain animals,[15] but is also not a true depiction of the European reality. The five Council of Europe conventions on animal welfare protection have been ratified only by a minority of Council of Europe Member States. It is also in Europe that anyone can attend some of the cruellest practices on animals (eg bullfighting in Spain and France, *grindadráp* in the Faroe Islands). Moreover, while Article 13 of

[9] Anthony D'Amato and Chopra K Sudhir, 'Whales: Their Emerging Right to Life' (1991) 85 American Journal of International Law 21.

[10] *Whaling in the Antarctic (Australia v Japan: New Zealand intervening)* (Oral Proceedings) CR2013/12 (2 July 2013) 42 <https://icj-cij.org/files/case-related/148/148-20130702-ORA-01-00-BI.pdf> accessed 6 January 2024.

[11] Cited in D'Amato and Sudhir (n 9) 22.

[12] *Whaling in the Antarctic* (n 10) 63.

[13] Anne Peters, 'Toward International Animal Rights' in Anne Peters (ed), *Studies in Global Animal Law* (Springer 2020) 115; Peters, *Animals in International Law* (n 2) 493–500. See also Sykes (n 4) 35–36.

[14] Council of Europe, Parliamentary Assembly, International Transit of Animals, Recommendation 287 (1961).

[15] Peters, 'Toward International Animal Rights' (n 13) 110–11.

Downloaded from academic.oup.com/book/56325/chapter/445429679 by New York University Libraries user on 21 November 2026

the Treaty on the Functioning of the European Union (EU) recognizes animals as 'sentient beings' and provides that the EU and Member States 'shall … pay full regard to the welfare requirements of animals' in relevant EU policies, animals are also treated as 'products' in EU law, and the moral standards underlying the EU animal welfare policy appear to be flexible depending on species and economic imperatives.[16]

But the anti-imperialist critique targeting animal rights advocates should not eclipse the fact that, above all, animals have universally experienced all modes of domination which, in some, way echo, replicate, or inspire existing ones targeting individuals or minorities.[17] It is thus not a surprise that studies on systems of oppression and discrimination such as on imperialism, colonialism, slavery, racism, and sexism have found some resonance in animal ethics[18]—while bearing in mind that processes of human and animal exploitation and domination have sometimes worked hand in hand.[19]

And, paradoxically, it is under the cover of an 'animal welfare' concept that the exploitation and domination of animals under human control has been legitimized and eventually perpetuated.

2. Animal Welfare as a Technical Legitimization of Animal Exploitation by the OIE

Leaving aside stances based on animal rights doctrines seeking the abolition of animal use, improvement in 'animal welfare' has become the cornerstone objective of the global animal law movement.[20] But animal welfare is not a monolithic concept. There are significant gaps between, on the one hand, an ideal of animal welfare in which moral considerations would prevail and, on the other hand, animal

[16] See Section 3. See also Katy Sowery, 'Sentient Beings and Tradable Products: The Curious Constitutional Status of Animals under Union Law' (2018) 55 Common Market Law Review 55.

[17] In his novel *The Unbearable Lightness of Being*, just after pointing out that Tereza was obliged to behave lovingly because she needed him, Milan Kundera wrote: 'We can never establish with certainty what part of our relations with others is the result of our emotions—love, antipathy, charity, or malice—and what part is predetermined by the constant power play among individuals. True human goodness, in all its purity and freedom, can come to the fore only when its recipient has no power. Mankind's true moral test, its fundamental test (which lies deeply buried from view), consists of its attitude towards those who are at its mercy: animals. And in this respect mankind has suffered a fundamental debacle, a debacle so fundamental that all others stem from it' (Milan Kundera, *The Unbearable Lightness of Being* (Harper & Row 1984) 289).

[18] See eg Marjorie Spiegel, *The Dreaded Comparison—Human and Animal Slavery* (rev edn, Mirror Books 1997); Carol J Adams, *The Sexual Politics of Meat: A Feminist-Vegetarian Critical Theory* (Continuum 2010).

[19] See eg Mathilde Cohen, 'Animal Colonialism: The Case of Milk' in Peters (n 13) 35.

[20] Anne Peters, 'Global Animal Law: What It Is and Why We Need It' (2016) 5 Transnational Environmental Law 9, 10; Anne Peters, 'Introduction to Symposium on Global Animal Law (Part I): Animals Matter in International Law and International Law Matters for Animals' (2017) 111 AJIL Unbound 252, 254.

Downloaded from academic.oup.com/book/56325/chapter/445429679 by New York University Libraries user on 21 November 2026

welfare as practised on a daily basis, in factory farms but also within international institutions. The former is based on values while the latter is mainly a technique subordinated to economic considerations.

Animal welfare could first be regarded as a multidisciplinary field encompassing different areas of expertise with their own concepts and methodological tools (biology, neurobiology, veterinary medicine, immunology, psychology, cognitive sciences, etc). The goals of animal welfare are multiple: improving the life of animals (health, environment, etc); satisfying social demands (of consumers, non-governmental organizations, etc); and/or addressing economic constraints (productivity, quality of final products, etc).

The field of animal welfare faces a fundamental epistemological problem stemming from the different underlying cultural and ethical representations of the various actors involved. As such, it is not possible to precisely define what animal welfare is without determining what constitutes a 'good life for animals'.[21] To the extent that the definition does not only rely on facts (objective scientific assessments), but also on values, animal welfare should be understood as both a natural and moral science.[22] It is within this framework that David Fraser has identified three dimensions of animal welfare—which are not mutually exclusive and which often go hand in hand—that must be taken into account: basic health and functioning (function well), affective states (feel well), and natural living.[23]

Prima facie, the Terrestrial Animal Health Code of the OIE echoes, albeit through a more scientific taxonomy, the three dimensions of animal welfare as envisaged by Fraser.[24] In its section on 'Guiding Principles for Animal Welfare',[25] the Code has endorsed the 'internationally recognized "five freedoms"' which were first adopted by the UK Farm Animal Welfare Council in 1979: freedom from hunger, thirst, and malnutrition; freedom from fear and distress; freedom from physical and thermal discomfort; freedom from pain, injury, and disease; and freedom to express normal patterns of behaviour.

But words should not be misleading. The inherent flaws of the 'Five Freedoms' do not lie in the non-legally binding nature of the Code but lie, rather, in their content. These 'freedoms' are not construed as rights[26] and the animal welfare dimension they promote presents significant ethical shortcomings, mainly because

[21] David Fraser, *Understanding Animal Welfare—The Science in Its Cultural Context* (Wiley-Blackwell 2008) 41.

[22] See generally Marian Stamp Dawkins, 'Animal Suffering: The Science of Animal Welfare' (2008) 114 Ethology 937; Fraser (n 21) 238. See also Nicolas Delon, 'La Sensibilité en éthique animale, entre faits et valeurs' in Régis Bismuth and Fabien Marchadier (eds), *Sensibilité animale—Perspectives juridiques* (CNRS Editions 2015) 61.

[23] Fraser (n 21) 241.

[24] ibid 233–34.

[25] OIE Terrestrial Animal Health Code, art 7.1.2.

[26] For an attempt to analyse the Five Freedoms through a rights-based framework, see Clare McCausland, 'The Five Freedoms of Animal Welfare Are Rights' (2014) 27 Journal of Agricultural and Environmental Ethics 649.

Downloaded from academic.oup.com/book/56325/chapter/445429679 by New York University Libraries user on 21 November 2026

they fail to question what is a 'life worth living' and how the negative experiences of animals might be minimized while providing them opportunities to have positive experiences.[27] The—mainstream and prevalent in practice—approach to animal welfare promoted by the OIE through the Five Freedoms is mostly economic- and efficiency-driven. The OIE Terrestrial Animal Health Code even specifies that 'improvements in farm animal welfare can often improve productivity and food safety, and hence lead to economic benefits'.[28]

Indeed, contrary to generally accepted ideas, animal welfare is an essential component of factory farming, but with a technical and managerial dimension, leaving aside major ethical concerns and focusing on how animals could be adapted to industrial conditions. Chicken debeaking, cattle dehorning, or pig castration are painful procedures, but which also minimize the harm these animals inflict on each other in factory farms (freedom from injury). Optimization of processes in slaughterhouses is a strategy for reducing stress of livestock animals awaiting slaughter (freedom from fear and distress) and to preserve the quality and economic value of meat. Nest areas enclosed with plastic curtains help laying hens to hide themselves while laying their eggs and to replicate conditions of a natural nesting behaviour (freedom to express normal patterns of behaviour). In this light, the Five Freedoms endorsed by the OIE are obviously less an international Bill of Rights for animals than an instrument to perpetuate their exploitation on a large scale and make it more socially acceptable.

Eventually, the great divide is not the one between Fraser's and the OIE's conceptions of animal welfare which—even if one is more tainted with ethical considerations—do not call into question but rather legitimize the industrialized and intensive farming paradigm.[29] The genuine divide appears to be between a zootechnician conception (zootechnics being defined as the scientific art of maintaining and improving animals under domestication) and a peasant approach to animal welfare, deeply rooted in a traditional know-how of how farmers live with animals on a daily basis. As explained in the writings of Jocelyne Porcher, this latter dimension does not envisage farming solely as pure economic activity but also as an experience in which both farmers and animals could share a common pleasure in living together.[30]

Eventually, animal welfare, as defined and practised at the international and transnational level, is more likely to legitimize rather than to call into question a

[27] David Mellor, 'Updating Animal Welfare Thinking: Moving beyond the "Five Freedoms" towards "A Life Worth Living"' (2016) 6 Animals 1. See also Steven P McCulloch, 'A Critique of FAWC's Five Freedoms as a Framework for the Analysis of Animal Welfare' (2013) 26 Journal of Agricultural and Environmental Ethics 959; Sowery (n 16) 77–78.

[28] OIE Terrestrial Animal Health Code, art 7.1.7.

[29] On this aspect, see Régis Bismuth and others, 'La concurrence des normativités au coeur de la labellisation du bien-être animal' (2018) XXXII Revue internationale de droit économique 369, 379–81.

[30] Jocelyne Porcher, *Vivre avec les animaux—Une utopie pour le XXIe siècle* (La Découverte 2011); Jocelyne Porcher, 'Le "bien-être animal" existe-t-il?' [2005] Économie rurale 1.

Downloaded from academic.oup.com/book/56325/chapter/445429679 by New York University Libraries user on 21 November 2026

system of domination as well as the industrial dimension of current farming activities and their integration in global production networks.

3. A Recognition of Animal Welfare Tainted with Anthropocentrism in the WTO Context

In practice, animal welfare is a loose concept whose contours depend mainly on the person or entity implementing it. Despite its intrinsic vagueness, the concept of animal welfare has received some form of universal acceptance. In that regard, another milestone was achieved in 2013–14 when a WTO panel recognized, in the *Seals* dispute, that 'animal welfare is a matter of ethical responsibility for human beings in general',[31] 'a globally recognized issue',[32] as well as 'an important value and interest'.[33] It is thus not a surprise that some have considered that 'something momentous happened in 2014 in the evolution of global animal law' as 'for the first time, an international tribunal recognized animal welfare as normative matter that has status at the international level'.[34]

The *Seals* dispute is an iconic precedent for global animal law, just as the *Trail Smelter* arbitration is for international environmental law.[35] But iconic precedents are often misunderstood or distorted and sometimes magnified more than they deserve. This is true for the *Trail Smelter* arbitration.[36] It is also true for the *Seals* dispute. Its canonization should not indeed eclipse more questionable aspects of that precedent, which indirectly endorses the perpetuation of discrimination between species and emphasizes the prevalence of economic values over moral ones.

In the *Seals* dispute, Canada and Norway challenged an EU regulation prohibiting the importation and the placing on the European market of seal products—except where these products result from hunts traditionally conducted by indigenous communities, where these products contribute to indigenous communities' subsistence, where the import of such products is occasional and consists exclusively of goods for personal use, and where these products result from by-products of hunting conducted for the sole purpose of the sustainable management of marine resources.[37] As an explanation for the adoption of the regulation, the preamble refers to the 'concerns of citizens and consumers about the animal

[31] *European Communities: Measures Prohibiting the Importation and Marketing of Seal Products—Panel Report* (25 November 2013) WT/DS400/R, WT/DS401/R [7.409].
[32] ibid [7.420].
[33] ibid [7.632].
[34] Sykes (n 4) 55.
[35] David D Caron, 'Foreword' in Rebecca M Bratspies and Russell A Miller (eds), *Transboundary Harm in International Law—Lessons from the Trail Smelter Arbitration* (CUP 2006).
[36] Duncan French, 'Trail Smelter (United States of America/Canada) (1938 and 1941)' in Eirik Bjorge and Cameron Miles (eds), *Landmark Cases in Public International Law* (Hart 2017) 159.
[37] Art 3(1) and (2) of Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products [2009] OJ L286/36.

Downloaded from academic.oup.com/book/56325/chapter/445429679 by New York University Libraries user on 21 November 2026

welfare aspects of the killing and skinning of seals' and 'the possible presence on the market of products obtained from animals killed and skinned in a way that causes pain, distress, fear and other forms of suffering'.[38]

Without going into detail on the panel and Appellate Body reports, it is important to note that, for the first time, animal welfare concerns such as those underlying the EU regime have been recognized as falling within the scope of the 'public morals' exception of General Agreement on Tariffs and Trade Article XX(a) and potentially justifying a trade restriction. Canada questioned the consistency of the EU approach to animal welfare, leading to very stringent trade restrictive measures for seal products, while being significantly more flexible with respect to slaughterhouses and wildlife hunts. In other words, Canada argued that a member state 'must regulate similar public moral concerns in similar ways for the purposes of satisfying the requirement "to protect" public morals under Article XX(a)'.[39] The Appellate Body rejected Canada's contention and stressed that 'Members may set different levels of protection even when responding to similar interests of moral concern',[40] and that the EU was not required 'to address such public moral concerns in the same way'.[41] The Appellate Body stressed that such an objective of consistency is only explicitly mentioned in the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).[42] Therefore, consistency in domestic regulation is required for measures relating to animal killing only to the extent they have a sanitary or phytosanitary dimension. Moreover, WTO member states are free to implement a trade restrictive measure to address animal welfare concerns to the extent that the rationale behind the measure at stake is a matter of public morals, but regardless of animal welfare regulations applicable to other species.

According to Howse, Langille, and Sykes, this is a positive development that 'allows for the gradual evolution of domestic law on issues with a moral aspect'[43] since it would be impossible to regulate animal welfare 'in a perfectly simultaneous and consistent fashion'.[44] They added that 'there is a wide range of differences in the ways different societies value different animals, and it is not the WTO's place to second guess the appropriate level of protection for each species'.[45]

[38] ibid, Preamble, para 5.

[39] *European Communities—Measures Prohibiting the Importation and Marketing of Seal Products*, Appellate Body Report (22 May 2014) WTO Docs WT/DS400/AB/R, WT/DS401/AB/R, [5.200].

[40] ibid.

[41] ibid.

[42] ibid, fn 1254. (Art 5.5 of the SPS Agreements provides: 'With the objective of achieving consistency in the application of the concept of appropriate level of sanitary or phytosanitary protection against risks to human life or health, or to animal and plant life or health, each Member shall avoid arbitrary or unjustifiable distinctions in the levels it considers to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on international trade.')

[43] Robert Howse, Joanna Langille, and Katie Sykes, 'Pluralism in Practice: Moral Legislation and the Law of the WTO After Seal Products' (2015) 48 George Washington International Law Review 81, 114.

[44] ibid.

[45] ibid 115.

Downloaded from academic.oup.com/book/56325/chapter/445429679 by New York University Libraries user on 21 November 2026

The argument could, however, be examined under a more critical lens, highlighting the anthropocentric dimension of the WTO ruling. The Appellate Body's position implies that member states preserve their 'discretion … to protect the same general moral concern about animal welfare at a higher level for some animals compared to others'.[46] It is thus more a 'discretionary' standard that applies (states have the discretion to apply divergent animal welfare standards across species depending on their preferences) rather than a 'margin of appreciation' standard that would enable WTO panels and the Appellate Body to assess, not the absolute and perfect consistency of animal welfare measures that would be impossible to reach, but at least their overall convergence. A closer look at the broader context clearly indicates that the EU approach to animal welfare is more subordinated to economic imperatives than grounded on sincere moral concerns. A caveat: the following should not at all be interpreted as a defence of seal hunting but rather as an attempt to highlight the insincerity, or at least the morally deficient dimension, of the EU animal welfare policy—an element which ought to be taken into account to temper the anthropocentric dimension of the public morals exception in the WTO context.

The most stringent trade measure (prohibition of placing on the market) has been applied to seal products for the 'pain, distress, fear and other forms of suffering' that seal hunting actually causes. Obviously, the EU has a far less rigorous approach when it comes to animals raised and/or killed on EU territory. Seals experience an intense and cruel suffering at the moment of their killing, but they are wild animals and have at least enjoyed a life of freedom without human intervention and restrictions. This is not the case of millions of animals in European factory farms, living a miserable existence as well as an often too short life, and rarely experiencing a 'humane killing',[47] if any. This is also the case for fur farming where animals (foxes, minks, chinchillas, etc) that are reproduced, raised in small cages, killed—sometimes gassed in killing boxes—and skinned solely for the production of clothes. While the necessary purpose of every animal use should be at the heart of a genuine ethical animal welfare assessment, this dimension is clearly missing in the EU framework. Besides, a report of the European Commission on that matter even admitted that its objective was not 'to recommend whether or not continued fur farming is ethically acceptable'[48] but to carry out 'only a scientific assessment of the welfare of animals kept for fur production'.[49] The EU has perhaps an animal

[46] Simon Lester, Bryan Mercurio, and Arwel Davies, *World Trade Law: Text, Materials and Commentary* (3rd edn, Hart Publishing 2018) 394.

[47] Referring here to the vocabulary of the OIE Terrestrial Animal Health Code, ch 7, General Considerations ('Good animal welfare requires … humane slaughter or killing').

[48] European Commission, 'The Welfare of Animals Kept for Fur Production—Report of the Scientific Committee on Animal Health and Animal Welfare' (2001) 6 <https://food.ec.europa.eu/system/files/2020-12/sci-com_scah_out67_en.pdf> accessed 6 January 2024.

[49] ibid.

Downloaded from academic.oup.com/book/56325/chapter/445429679 by New York University Libraries user on 21 November 2026

welfare policy but its allegedly moral dimension is obviously superseded by economic considerations,[50] a dimension ignored by WTO courts.

Far from an animal welfare policy with a genuine moral compass, some EU Member States also allow some of the cruellest practices on animals. An example of this is bullfighting, which is still practised in France and Spain. This is not an activity taking place out of sight on the ice floes of Canada, but a show open to the public and families that intends to magnify the aesthetics of violence and suffering, and that certain municipalities in Spain have declared as protected cultural heritage. The UN Committee on the Rights of the Child recommended to Spain that it should 'prohibit the participation of children under 18 years of age as bullfighters and as spectators in bullfighting events'[51] in order to prevent the harmful effects of this practice on the youngest. Admittedly, there is no EU competence to prohibit such activities, but it is noteworthy that a share of Common Agricultural Policy funds is knowingly allocated to breeders of fighting bulls,[52] thereby showing the EU's contribution to this practice.

Ultimately, several animal species in the EU experience as much—and perhaps sometimes even more—pain, distress, fear, and other forms of suffering as seals do, not only during their killing but also during their entire lives, and in some cases for the satisfaction of recreational activities. The moral standards behind the EU animal welfare policy are of variable geometry and suddenly appear to become inflexible when it comes to the treatment of other species on a foreign soil. It is thus hard to explain the EU animal welfare policy from a moral standpoint. Some have suggested that the Seal regulation scrutinized by WTO courts is based on emotional motives (the 'cuteness' of baby seals).[53] It is also true that some EU animal welfare regulations are based on the subjective preferences of the population more than on a genuine and consistent assessment of the suffering and pain they experience. Another example is the EU directive on the protection of animals used for scientific purposes which intends to limit the use of great apes, the latter being described 'as the closest species to human beings with the most advanced social and behavioural skills'.[54] The EU probably has an animal welfare policy but its moral dimension varies in intensity according to species and is tainted with emotional or anthropocentric motivations, which are mostly superseded by economic considerations, particularly when it comes to factory farming.

[50] See also Sowery (n 16).

[51] UN Committee on the Rights of the Child, 'Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Spain' (2018) CRC/C/ESP/CO/5-6, 7, para 25.

[52] Eurogroup for Animals , 'Spanish Bullfighting Financed with €130 Million from the EU's CAP' (24 June 2020) <www.eurogroupforanimals.org/news/spanish-bullfighting-financed-eu-130-million-eus-cap> accessed 6 January 2024.

[53] Tamara Perišin, 'Is the Seal Products Regulation a Sealed Deal? EU and WTO Challenges' (2013) 62 International and Comparative Law Quarterly 373, 375.

[54] Directive 2010/63/EU of the Parliament and of the Council of 22 September 2010 on the protection of animals used for scientific purposes [2010] OJ L276/33, Preamble, para 18.

Downloaded from academic.oup.com/book/56325/chapter/445429679 by New York University Libraries user on 21 November 2026

While the WTO Appellate Body's stance in the *Seals* dispute leaves some room for a gradual improvement of animal welfare—a development that should not be overlooked—it also may have the effect of structurally preserving discriminatory treatments between species, even in the same country. It might also reinforce the impression of cultural imperialism[55] and the impression that some economically powerful states or groups of states have the capacity to impose on other states animal welfare standards that are more stringent than those they impose on themselves with regard to the treatment of other animal species.

4. Concluding Remarks

As counterintuitive as it may seem, the concept of animal welfare—as practised in the OIE and as a universal value recognized by the WTO Appellate Body—is also in the international arena an instrument of legitimization and perpetuation of animal exploitation. Experts at the OIE have indeed developed a zootechnician conception of animal welfare as the cornerstone of factory farming and one which is aimed at the optimization of animal use for industrial production in the upstream of the food chain. Downstream, the predominance of the concept seemingly having an ethical dimension in the discourse of producers and distributors has constituted an instrument of consumer acceptance. In the same vein, in the *Seals* dispute at the WTO, animal welfare has been used by the EU as a public moral defence to justify trade restrictive measures targeting cruel practices on certain animals occurring abroad while the EU model of factory farming relies on the same zootechnician conception and one which is more oppressive on other sentient beings. Far from guaranteeing interspecies justice, the way the animal welfare justification is used at the WTO may exacerbate the feeling that the protection of animals may lead to a sense of cultural domination.

Ultimately, the concept of animal welfare is just another illustration among many of how a universally recognized issue, paved with good intentions from the outside but with at best fragile moral foundations from the inside, subordinated to economic interests and subject to manipulation by experts, could be perceived by others as an instrument of hegemony and could perpetuate deeply rooted modes of domination on the weakest. Perhaps, at some point, the Global Animal Law movement will burn some of its old idols.

[55] Anne Peters, 'Liberté, Égalité, Animalité: Human–Animal Comparisons in Law' (2016) 5 Transnational Environmental Law 25, 37.

Downloaded from academic.oup.com/book/56325/chapter/445429679 by New York University Libraries user on 21 November 2026