

**Legislative and
regulatory options
for animal welfare**



Legislative and regulatory options for animal welfare

by

Jessica Vapnek

Megan Chapman

for the

Development Law Service

FAO Legal Office

The designations employed and the presentation of material in this information product do not imply the expression of any opinion whatsoever on the part of the Food and Agriculture Organization of the United Nations (FAO) concerning the legal or development status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries. The mention of specific companies or products of manufacturers, whether or not these have been patented, does not imply that these have been endorsed or recommended by FAO in preference to others of a similar nature that are not mentioned.

ISBN 978-92-5-106711-6

All rights reserved. FAO encourages reproduction and dissemination of material in this information product. Non-commercial uses will be authorized free of charge, upon request. Reproduction for resale or other commercial purposes, including educational purposes, may incur fees. Applications for permission to reproduce or disseminate FAO copyright materials, and all other queries concerning rights and licences, should be addressed by e-mail to copyright@fao.org or to the Chief, Publishing Policy and Support Branch, Office of Knowledge Exchange, Research and Extension, FAO, Viale delle Terme di Caracalla, 00153 Rome, Italy.

© FAO 2011

TABLE OF CONTENTS

PREFACE	v
I INTRODUCTION	3
II INTERNATIONAL AND REGIONAL CONTEXT	11
III NATIONAL REGULATION OF ANIMAL WELFARE	25
IV ESSENTIAL ELEMENTS OF ANIMAL WELFARE LEGISLATION	35
V CONCLUSION	83
VI REFERENCES	85

PREFACE

In countries around the world, the demand for animal protein inexorably rises as the level of development increases. Animal welfare concerns also garner more attention as consumers recognize the links between animal health and animal welfare, and animal welfare and human well-being. The challenge is to increase food animal production while simultaneously ensuring good animal welfare and protecting food security.

Animal welfare is not a new subject for regulation in most developed countries, owing to a sophisticated consumer base and greater exposure to animal welfare issues. Growing international trade is generating more interest in animal welfare elsewhere in the world, in particular in countries seeking to increase trade with Europe. To date, countries wishing to update their existing veterinary legislative frameworks have had little comprehensive guidance on the options for regulating animal welfare.

In this text, Jessica Vapnek and Megan Chapman (formerly Legal Officer and Volunteer, respectively, in the Development Law Service), review the ways in which countries can choose to legislate on animal welfare. They outline the philosophy behind animal welfare, as well as the main trends in animal welfare science. Against the backdrop of international developments, they review national options for the regulation of animal welfare, summarizing the main elements of animal welfare legislation and the regulatory choices available to law-makers. It is hoped that this text will prove useful to researchers, government policy-makers and animal welfare advocates in search of a window onto animal welfare legislation.

The authors would like to thank Fulvia Basile, Charles Gardner, Valerio Poscia and Meagan Wong for research and editorial assistance; Daniela Battaglia, Carmen Bullón Caro, Charlotta Jull, Mateus Paranhos, Gloria Mintah and especially the extremely knowledgeable and patient David Fraser for useful comments on various versions of the text; and the always professional Jane O'Farrell for editorial expertise.

Blaise Kuemlangan,
Officer-in-Charge,
Development Law Service

I

INTRODUCTION

Contents

1.1	Overview	3
1.2	Philosophical bases of animal welfare	5
1.3	Evolution of basic animal welfare principles	6
1.4	Animal welfare science	8

1.1 Overview

In addition to the various religious, ethical and philosophical bases for animal welfare, there is increasing recognition of the ties between animal welfare indicators and animal health.¹ Disregard for animal welfare often leads to poor animal health – increased susceptibility of animal populations to disease and injury and poor quality or contaminated animal-based food products – with resulting economic losses (Broom, 2001). Animal welfare is thus intrinsically related to other government concerns such as public health, food safety and long-term economic development.

Consumers increasingly link animal welfare indicators with food safety and quality (Harper and Henson, 2001), in addition to ethical or socially responsible preferences. These consumer preferences create economic incentives for producers to meet animal welfare standards, as established by legislation or voluntary certification programmes. In addition, mobilized citizens and animal welfare advocates may exert pressure on governments to set and enforce animal welfare standards.

Because food animals are important to human welfare – as a source of nutrition and income – concern for animal welfare is inextricable from concern for human needs. This is particularly the case in countries with developing economies, where current and expected population increases are putting pressure on food security and economic growth (FAO, 2002). Increased food animal production is often a necessary part of attaining both goals. In newly industrialized countries, a growing middle class means increasing domestic demand for meat and animal by-products (Delgado, 2003), even where these may cost more due to compliance with animal welfare standards. The key challenge is to find ways to increase food animal production while simultaneously improving or ensuring good animal welfare and protecting food security.

In Europe, animal welfare has been the subject of national legislation and regional agreements for more than a generation, largely due to more exposure to and discomfort with the treatment of animals in industrialized farms and slaughterhouses. In light of increased international trade,

¹ For example, the World Organisation for Animal Health (OIE) recognized the "essential link between animal health and welfare" (Resolution No. XIV, 29 May 2002).

globalization of animal health concerns and pressure for harmonization of food safety standards, many other countries are also choosing to regulate animal welfare (Mitchell, 2000). To improve their legislative frameworks, some countries use or adapt pre-existing legislation on the prevention of cruelty to animals, while others draft new animal welfare laws, blending national and local concerns with international animal welfare principles.

Because the earliest animal welfare legislation was developed in countries where industrialized production is the norm, these legislative instruments tend to focus on farm animals housed, transported and slaughtered in high-technology environments designed to intensify production. However, animal welfare legislation need not be limited to industrialized production. Well-drafted legislation can and should apply to other types of production such as subsistence farming and small-scale commercial production. Different scales of production raise different concerns (FAO, 2009), but the basic animal welfare principles are common to all.

This text aims to provide practical information to legislators and policy-makers wishing to revise, update or draft animal welfare legislation. This chapter begins by reviewing the philosophical bases for animal welfare (Section 1.2), and then the basic principles (Section 1.3) and developing science (Section 1.4) of animal welfare. It then surveys the international and regional context for the regulation of animal welfare, discussing the types of international and regional standards and agreements developed over time and currently in force (Chapter II). Next, the text outlines the main tools with which countries can regulate animal welfare (Chapter III). Finally, it outlines the subjects covered in most animal welfare legislation – institutions, transport, slaughter, housing and management – offering a summary of key animal welfare issues and choices facing regulators (Chapter IV). The text then provides a brief conclusion (Chapter V). Throughout the publication, but especially in Chapter IV, the issues and options for national policy- and law-makers are outlined against the context of international standards and animal welfare science, and examples are provided from a range of national legislation.

1.2 Philosophical bases of animal welfare

What people understand by "animal welfare" depends in part on values that differ between cultures and individuals. These differences lead people to emphasize different elements of animal welfare that can be summarized under three broad headings (Fraser, 2008). The first is an emphasis on the physical health and biological functioning of animals. There is almost universal agreement that such elements are important for animal welfare, hence disease, injury and malnutrition are more or less universally regarded as animal welfare problems. The second is concern about the "affective states" of animals, especially negative states such as pain, distress and hunger. These are common concerns in many cultures, but in some cases they are de-emphasized by certain people – often animal producers and veterinarians – who may, for example, regard the short-term pain of castration as not important enough to warrant pain management interventions. The third is a belief that the welfare of animals depends on their ability to live in a reasonably "natural" manner, either by being free to perform important elements of their natural behaviour or by having natural elements (daylight, fresh air) in their environment. This last belief arises especially in industrialized countries and is common in critiques of industrialized forms of animal production. It generally has less currency in cultures that have not undergone industrialization of their economies or animal production systems.

These different elements of animal welfare help explain why animal welfare objectives are pursued although they are sometimes favourable and sometimes unfavourable for the cost of production and other economic concerns. In general, improvements in animal welfare that are achieved by improving basic health and biological functioning – for example by reducing disease, injury, malnutrition and death – will improve the efficiency of animal production and help reduce production costs. In contrast, measures to allow natural behaviour and natural environments generally require that animals in confinement systems be given more space and other amenities; they may also require animals to be kept partly outdoors, potentially compromising control over pathogens and harsh weather effects. In such cases, conforming to animal welfare standards may increase production costs. Measures to mitigate pain and distress may either reduce production costs by reducing stress-related losses in animal growth or health, or else may increase costs when the expense of pain-reduction measures is greater than any related production increase (Fraser, 2006). Depending on the balance of these cost

factors and the philosophical bases for animal welfare most prevalent in a given society, different aspects of animal welfare will be accorded greater or lesser priority.

1.3 Evolution of basic animal welfare principles

In 1965, the British Government commissioned an investigation into the welfare of farmed animals and thereafter proposed that all animals should have freedom to stand up, lie down, turn around, groom themselves and stretch their limbs. These became known as the "Five Freedoms"² (Farm Animal Welfare Council, 2009). In 1993, the United Kingdom Farm Animal Welfare Council (FAWC) decided that the original definitions concentrated too much on space requirements and on the comfort-seeking aspects of behaviour, to the exclusion of other relevant elements of animal welfare such as good food, good health and safety. The expanded Five Freedoms now established by the FAWC are:

1. freedom from hunger and thirst – by ready access to fresh water and a diet designed to maintain full health and vigour;
2. freedom from discomfort – by the provision of an appropriate environment including shelter and a comfortable resting area;
3. freedom from pain, injury or disease – by prevention or through rapid diagnosis and treatment;
4. freedom to express normal behaviour – by the provision of sufficient space, proper facilities and company of the animal's own kind; and
5. freedom from fear and distress – by the assurance of conditions that avoid mental suffering.

The Five Freedoms have been widely accepted as a statement of fundamental principles of animal welfare. Although they do not provide detailed guidance on the treatment and care of animals, they serve as a useful framework for the assessment of whether animals' basic welfare needs are being met on farms, in markets, during transport, in lairages (holding pens for animals awaiting slaughter) and during slaughter. They have been included or referred to in national legislation, for example in New Zealand's

² These are also known as Brambell's Five Freedoms, a reference to the author of the commissioned investigation report (Professor Roger Brambell).

Animal Welfare Act (1999) where they were used as part of the definition of animals' "physical, health and behavioural needs" (sec. 4), and Costa Rica's Animal Welfare Act (1994) where they are considered the "basic conditions" for animal welfare (art. 3). The Five Freedoms have also been adapted and incorporated into regional agreements such as the European Convention for the Protection of Animals Kept for Farming Purposes (1976), although there they were expanded to include far broader animal welfare provisions.

As a complement to the Five Freedoms, 12 criteria for the assessment of animal welfare have been identified by the Welfare Quality Project (WQP), a research partnership of scientists from Europe and Latin America funded by the European Commission. The WQP aims to develop a standardized system for assessing animal welfare – a system that would be implemented in Europe – and more generally to develop practical strategies and measures to improve animal welfare (Welfare Quality, 2009).

The WQP criteria for the assessment of animal welfare are:

1. Animals should not suffer from prolonged hunger, i.e. they should have a sufficient and appropriate diet.
2. Animals should not suffer from prolonged thirst, i.e. they should have a sufficient and accessible water supply.
3. Animals should have comfort around resting.
4. Animals should have thermal comfort, i.e. they should neither be too hot nor too cold.
5. Animals should have enough space to be able to move around freely.
6. Animals should be free from physical injuries.
7. Animals should be free from disease, i.e. farmers should maintain high standards of hygiene and care.
8. Animals should not suffer pain induced by inappropriate management, handling, slaughter or surgical procedures (e.g. castration, dehorning).
9. Animals should be able to express normal, non-harmful social behaviours (e.g. grooming).
10. Animals should be able to express other normal behaviours, i.e. they should be able to express species-specific natural behaviours such as foraging.
11. Animals should be handled well in all situations, i.e. handlers should promote good human-animal relationships.

12. Negative emotions such as fear, distress, frustration or apathy should be avoided, whereas positive emotions such as security or contentment should be promoted.

The WQP emphasizes that these 12 criteria are animal-centred, aimed at assessing an animal's experience of its own situation. Although resource-based and management-based criteria are also relevant to assessing the entire animal welfare situation, according to the WQP such criteria are secondary to those assessing the animal's experience. Since they reflect a wide consensus, the WQP criteria provide a powerful framework for the development of legislation in line with international animal welfare principles. Moreover, relative to the Five Freedoms, the WQP criteria are more concrete and specific and may therefore be more easily measured in practice. Finally, because these criteria may eventually underpin an integrated and standardized animal welfare labelling system for European consumers, they should be increasingly important to producers in countries exporting animal products to Europe.

1.4 Animal welfare science

In the development of legislation on animal welfare, many national governments and international organizations rely on multi-disciplinary animal welfare science in addition to broad animal welfare principles such as those just reviewed. Animal welfare science combines disciplines such as the study of animal behaviour, stress physiology, nutrition, genetics and veterinary medicine to determine, for instance, how various farming practices affect animal welfare. This scientific foundation helps to move animal welfare legislation away from reliance on "common sense" or the tendency to equate "traditional" or "natural" husbandry practices with animal welfare (Fraser, 2005). It also reinforces the connection between animal welfare and animal health.

The World Organisation for Animal Health (OIE) (discussed further in Chapter II) is the primary international standard-setting organization for veterinary matters and takes a strong science-based approach, beginning with its definition of animal welfare:

"Animal welfare" means how an animal is coping with the conditions in which it lives. An animal is in a good state of welfare if (*as indicated by scientific evidence*) it is healthy,

comfortable, well nourished, safe, able to express innate behaviour, and if it is not suffering from unpleasant states such as pain, fear, and distress (OIE, 2008) (emphasis added).

Chapter 7.1 of the OIE Terrestrial Animal Health Code (the principal source of international standards on animal health and recommendations on animal welfare for farm animals), states that its recommendations have a scientific basis (art. 7.1.3). In addition, all nine members and two observers of the OIE Working Group on Animal Welfare have a background in veterinary medicine or another relevant science (OIE, 2009).

Many national governments take an active role in both funding the development of animal welfare science and implementing the results in legislation. For example, in the United Kingdom (UK), the Department for Environment, Food and Rural Affairs (DEFRA) has an animal welfare research and development programme with a large annual budget. One of its stated objectives is to "provide the evidence base to support regulatory policies to improve standards of animal welfare in the UK and across the [European Union]" (DEFRA, 2009). In countries with developing economies, one concern is how to leverage limited resources to adapt the findings of animal welfare science (often focused on industrialized production) to local production conditions, rather than simply "parachuting in" outside expertise (FAO, 2009).

The establishment of a strong and dynamic institutional relationship between animal welfare scientists and regulatory agencies is an important precursor to good animal welfare legislation. An important related factor is the ability to update legislation to keep pace with scientific developments; for that reason, principal national legislation may be kept more basic, with the more detailed requirements set out in implementing regulations and other subsidiary legislation which can more easily be changed.

II

INTERNATIONAL AND REGIONAL CONTEXT

Contents

2.1	World Organisation for Animal Health	13
2.2	World Trade Organization	15
2.3	Universal Declaration on Animal Welfare	18
2.4	Regional agreements	19
	2.4.1 Council of Europe	19
	2.4.2 European Union	20
	2.4.3 Non-binding instruments	24

2.1 World Organisation for Animal Health

The World Organisation for Animal Health (OIE³), an intergovernmental organization that had grown to include 176 member countries by 2010, was created in 1924 to fight animal diseases at the global level. The OIE has increased in prominence and influence in recent years, especially since it was identified in the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) as the source of international standards for animal health.

The original goal of the OIE was to work towards international cooperation and the creation of a communication network among countries in case of an animal disease outbreak; today, the organization also provides sanitary and scientific information and develops guidance on various aspects of animal health. OIE's codes, guidelines and science-based standards are intended to be used by the veterinary authorities of member states. The OIE has devised a variety of guidelines to address the treatment of animals used for scientific research or kept for companionship, and has elaborated health standards for intensive farming. These standards are found in the OIE Terrestrial Animal Health Code (the Code).

The Code aims to ensure the health of terrestrial animals and the safety of animal products in international trade. It establishes detailed measures to be implemented by the veterinary authorities of both importing and exporting countries to prevent the transfer of pathogens without creating unjustified barriers to trade. Accordingly the Code regulates import and export procedures and specifies the diagnostic tests to be applied before export (sec. 5). Since 2005, the Code also addresses some animal welfare issues, particularly those arising (1) during the transport of animals by land, sea or air; (2) the slaughter of animals for human consumption; and (3) the killing of animals for purposes of disease control (sec. 7). The incorporation of animal welfare standards into the Code is the result of the OIE's having identified animal welfare as a priority in its 2001-2005 Strategic Plan.

In 2002, the OIE created a permanent Working Group on Animal Welfare, whose first task was to develop a set of guiding principles to serve as the

³ In May 2003, the OIE was officially renamed the World Organisation for Animal Health but retained its historical and well-known acronym.

philosophical foundations of all OIE work on animal welfare. These principles were adopted by the International Committee of OIE member countries during the 72nd General Session in May 2004 and are now included in the Code (sec. 7) as follows:

1. There is a critical relationship between animal health and animal welfare.
2. The internationally recognized "Five Freedoms" (see Chapter I, Section 1.3) provide valuable guidance in animal welfare.
3. The internationally recognized "three Rs" (reduction in number of animals, refinement of experimental methods and replacement of animals with non-animal techniques) provide valuable guidance for the use of animals in science.
4. The scientific assessment of animal welfare involves diverse elements which need to be considered together, and selecting and weighing these elements often involves value-based assumptions which should be made as explicit as possible.
5. The use of animals in agriculture and science and for companionship, recreation and entertainment makes a major contribution to the well-being of people.
6. The use of animals carries with it an ethical responsibility to ensure the welfare of such animals to the greatest extent practicable.
7. Improvements in farm animal welfare can often improve productivity and food safety and hence lead to economic benefits.
8. Equivalent outcomes based on performance criteria, rather than identical systems based on design criteria, should be the basis for comparison of animal welfare standards and recommendations.

The first OIE Global Conference on Animal Welfare held in Paris in February 2004 brought together governmental authorities, scientists, consumers, private sector and non-governmental organizations (NGOs) from countries around the world to support OIE in its animal welfare activities. At the second conference held in Cairo in October 2008, the OIE and its key partners reviewed progress made by OIE member countries and territories, the world veterinary community and livestock industries, and produced a set of considerations and recommendations. The most significant formal outcomes were that the OIE conference participants:

- recognized that animal welfare must be addressed in parallel with economic and social development, and as a result, "a progressive

implementation of OIE standards, adapted to the economic situation and capacities of [OIE] members is appropriate";

- recognized OIE as "the unique reference organization globally for the elaboration of international animal welfare standards";
- expressed concern that "some private standards for animal welfare are not consistent with the OIE standards";
- requested that OIE members "create or update, where necessary, legislation that prevents cruelty to animals as well as legislation that establishes a legal basis for complying with OIE standards for . . . animal welfare"; and
- requested that OIE members promote the adoption by the United Nations of a declaration addressing animal welfare (see Section 2.3).⁴

These policy statements indicate that the OIE and its member states are committed to the harmonization and implementation of the animal welfare standards contained in the Code, while taking into consideration economic and social development needs. The need to balance animal welfare concerns with economic capacities will be particularly important in the large majority of OIE member states that are not fully industrialized.

2.2 World Trade Organization

The World Trade Organization (WTO) international trading system is designed to eradicate barriers to international trade through the creation and enforcement of market access rules. As noted earlier, the SPS Agreement identifies the OIE as the source of binding international standards on animal health. However, it is an open question whether "sanitary and phytosanitary measures" would include animal welfare and whether, therefore, a country's imposition of a trade restriction based on animal welfare considerations would be found justified under the WTO.

The cornerstone of WTO rules is the principle of non-discrimination in international trade, which is characterized by three concepts:

- *like products or like goods*: goods are grouped according to their end properties, not according to process and production methods;

⁴ The full set of recommendations is available at www.oie.int.

- *national treatment*: imported and locally produced goods should be treated equally, at least after foreign goods have entered a domestic market;
- *most favoured nation (MFN)*: like products from all WTO members must be given the same treatment as the most advantageous treatment given to any state's products.⁵

Article XX of the General Agreement on Tariffs and Trade (GATT)⁶ lists trade-restricting measures that can be exempted from WTO rules (WTO, 2008), including measures "necessary to protect public morals" (para. (a)) and measures "necessary to protect human, animal or plant health" (para. (b)). Legal arguments have been framed to justify an exemption for animal welfare trade restrictions under both paragraphs, although it is generally agreed that animal welfare issues can more easily be justified as protecting human or animal health than public morals. Yet, because the WTO has not yet directly addressed the issue, the arguments themselves and the likelihood that they might succeed are all speculation.

At the second special session of the WTO Committee on Agriculture (CoA) in June 2000, the European Union (EU) submitted a proposal on animal welfare and trade in agriculture, arguing that the WTO should directly address animal welfare standards.⁷ The EU has more stringent animal welfare regulations, and therefore higher production costs in certain cases (see Chapter I, Section 1.2), than some of its trading partners. In its submission to the CoA, the EU expressed concern that its animal welfare standards could be undermined and that it could suffer negative trade effects, since agricultural products produced to meet high EU animal welfare standards would run the risk of being edged out of the market by cheaper imports produced under lower standards. The EU agreed in its proposal that animal welfare provisions must not be used for protectionist purposes but argued that

⁵ There are exceptions to the MFN system that allow for the preferential treatment of developing countries, regional free trade areas and customs unions.

⁶ The GATT is an international trade agreement adopted in 1948 which led to the creation of an international organization also known as the GATT, which was the first and only international trade organization before the establishment of the WTO in 1995. The WTO incorporated the agreements negotiated during the "GATT years", including the GATT agreement referred to here, which remains binding on GATT signatories.

⁷ WTO Document No. G/AG/NG/W/19, European Communities Proposal: Animal Welfare and Trade in Agriculture, 28 June 2000, available at docsonline.wto.org.

greater international efforts are needed to win recognition for EU animal welfare standards and to ensure that they are not undermined by WTO trade obligations.

The EU proposal set out several potential ways to address animal welfare standards within the WTO. The first suggestion was the creation of a new multilateral agreement on animal welfare.⁸ The second was to establish a labelling regime pertaining to animal welfare standards for imported foods, enabling consumers to make informed choices. Third, the EU proposed a compensation scheme to enable producers to meet the additional costs of producing food to meet EU animal welfare standards.

The proposal did not receive widespread support among other WTO members. A number of countries, including Bolivia, India, Pakistan, Thailand and Uruguay, indicated that although they were not indifferent to animal welfare, the priority for their resources was the alleviation of human poverty and suffering. Argentina and India stressed that countries should be left to set their own standards. Colombia and again India rejected the labelling proposal as simply a disguised barrier to trade. The debate over these issues continues along with the ongoing Doha Round negotiations.

Another way that the WTO could address animal welfare is through a complaint filed before its Dispute Settlement Body (DSB). In November 2009, Canada and Norway formally requested WTO consultations based on their complaints challenging import bans of seal products (based on animal welfare concerns) passed by Belgium, the Netherlands and the EU (ICTSD, 2009). This dispute will likely force the WTO to directly address whether animal welfare is a justified exception under Article XX(a) (public morals), although not precisely in the context of farm animal welfare.

Despite the EU proposal and the pending complaint before the DSB, the common consensus is that for the time being animal welfare-based restrictions are not permitted under the WTO trade regime (Thiermann and Babcock, 2005).

⁸ Whether the agreement in question was meant to be part of the WTO framework (like the Agreement on Technical Barriers to Trade) or to remain outside it is unclear. See European Communities Proposal: Animal Welfare and Trade in Agriculture.

2.3 Universal Declaration on Animal Welfare

In recent years, a number of NGOs under the leadership of the World Society for the Protection of Animals (WSPA) have advocated that the United Nations elaborate and adopt a Universal Declaration on Animal Welfare (UDAW). A global petition launched to support the UDAW initiative had acquired over 2.2 million signatures by September 2010 (www.udaw.org). According to established principles of international law, the UDAW would not be binding although it would represent a consensus among states regarding animal welfare and would therefore be considered customary international law. Customary international law derives from practices which a group of states recognize as legally binding (Caponera, 1992), and generally creates an expectation that those binding practices will be observed in the future (Janis, 2003). A practice will only become a general rule of international law if a large number of states consider it to be binding on them, and if the international community does not protest the practice's extension to international relations (Greig, 1976).

In 2003, the Government of the Philippines hosted an intergovernmental conference which produced a draft declaration agreeing on four principles that could form the basis for a UDAW. The draft declaration was agreed upon by 21 delegations (19 countries, one commonwealth in political union with the United States (Saipan) and one regional organization (the European Commission)). The four UDAW principles agreed upon in the Manila meeting are as follows:

- The welfare of animals shall be a common objective for all states.
- The standards of animal welfare attained by each state shall be promoted, recognized and observed by improved measures, nationally and internationally.
- All appropriate steps shall be taken by states to prevent cruelty to animals and to reduce their suffering.
- Appropriate standards on animal welfare shall be developed and elaborated on such topics as the use and management of farm animals, companion animals, animals in scientific research, draught animals, wild animals and animals used for recreation.⁹

⁹ Full text available at www.animalsmatter.org.

In 2007, the highest authority of the OIE (the International Committee) decided to support, in principle, the development of a UDAW that would call on countries to acknowledge the importance of animal welfare and that would, at the same time, recognize the OIE as the principal international animal welfare standard-setting body. The International Committee considered that a 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".¹⁰ The OIE is actively encouraging the participation of member governments as well as globally recognized animal welfare organizations in the development and adoption of a UDAW.

2.4 Regional agreements

2.4.1 Council of Europe

The Council of Europe (COE), an international organization whose membership consists of the governments of nearly all the countries on the European continent, has been one of the leading fora for the promotion of animal welfare since the 1960s. Seeking to recognize the importance of animal welfare and the contributions animals make to human health and the quality of life, over time the COE has adopted six conventions on animal welfare. These have facilitated regional harmonization of animal welfare standards in the COE's member states¹¹ and have served as the basis for a variety of public and private standards adopted in Europe and worldwide. The three COE conventions of principal interest for farm animal welfare are:

- *The European convention for the protection of animals kept for farming purposes (ETS No. 87) of 1976, revised in 1992 (ETS No. 145)*. ETS No. 87 is a framework convention introducing principles for the housing and management of farm animals, in particular for animals in intensive farming systems. It is complemented by 12 recommendations for specific species (including goats, sheep, pigs, cattle, turkey and other domestic fowl). The convention creates a standing committee that approves recommendations and facilitates settlement of any disputes between parties on the convention's implementation.

¹⁰ Resolution No. XIV.

¹¹ As of July 2010, the COE had 47 member states and one candidate for membership (Belarus), while Kazakhstan had signed a cooperation agreement with the COE.

- *The European convention for the protection of animals during international transport (ETS No. 65) of 1968, revised in 2003 (ETS No. 193)*. The revised version of ETS No. 65 applies to all vertebrate animals and is based on the principle that local slaughter is preferable to animal transport. The convention is supplemented by detailed recommendations for the international transport of cattle, sheep, goats, pigs, poultry and horses. It covers a variety of topics related to transport, including the preparation of the journey from loading to unloading; vehicle design; animal fitness for travel; animal handling; veterinary controls; and certification. It also sets out special conditions for transport by road, air, sea and rail.
- *The European convention for the protection of animals for slaughter (ETS No. 102) of 1979*. ETS No. 102 covers the treatment of animals in slaughterhouses and slaughter operations.

These COE conventions are based on the principle that "for his own well-being, man may, and sometimes must, make use of animals, but . . . he has a moral obligation to ensure, within reasonable limits, that the animal's health and welfare is in each case not unnecessarily put at risk".¹² Most COE member states have signed these conventions, thereby expressing their support, and many have become parties, agreeing to be legally bound.

2.4.2 European Union

Since the mid-1970s, the European Union (EU) has passed increasingly specific legislation on animal welfare. European regional legislation began with EU directives, which impose a duty on member states to take steps to fulfil the directives' requirements. Later, the EU developed more detailed regulations, which, by virtue of the principles of immediate applicability and direct effect, are a part of member states' national legislation from the time of their publication.

The first animal welfare legislation by the then-European Economic Community (EEC) dates to 1974 when Council Directive 74/577/EEC on the stunning of animals before slaughter included in its preamble the

¹² Council of Europe, Human rights and legal affairs, Biological safety use of animals by humans, available at www.coe.int.

following language: "Whereas the Community should also take action to avoid in general all forms of cruelty to animals; whereas it appears desirable, as a first step, that this action should consist in laying down conditions such as to avoid all unnecessary suffering on the part of animals when being slaughtered".

At first, EEC legislation on animal welfare mainly involved adopting or incorporating the COE conventions into the laws of the EEC, and after 1992, into the regulations of the European Community (EC) common agricultural policy and internal market. ETS No. 87 (on animals kept for farming purposes) was adopted by Council Decision 78/923/EEC and then Council Directive 98/58/EC.¹³ ETS No. 102 (on animals kept for slaughter) was approved by Council Decision 88/306/EEC, later updated by Council Directive 93/119/EC.¹⁴ ETS No. 65 (on transport) was ratified by individual EC member states and used as basis for the later Council Regulation (EC) No. 1/2005.¹⁵

Despite the implementation of the COE conventions in the EEC/EC, there was no specific legal basis in the EEC/EC treaties for the regulation of animal welfare in internal production within member countries. This is because the original treaty framework for the EEC/EC made it difficult to justify any action other than regulating trade of agricultural products among EEC/EC member states.

Since the Maastricht Treaty in 1992, however, the legal basis for animal welfare in EC treaties has been progressively strengthened. The first clear reference to animal welfare was the non-binding Declaration on the Welfare of Animals annexed to the Maastricht Treaty on the European Union, approved in 1992, which called upon EC institutions to "pay full regard to the welfare of animals" when drafting and implementing legislation.

¹³ Council Directive 98/58/EC applied without prejudice to other pre-existing instruments, namely, Directive 88/166/EEC, Directive 91/629/EEC and Directive 91/630/EEC. See Council Directive 98/58/EC, art. 1.3.

¹⁴ In June 2009, the European Council adopted a new regulation on animal welfare during slaughter which will come into effect in 2013 and replace Directive 93/119/EC.

¹⁵ Council Regulation No. 1/2005.

Next, the Amsterdam Treaty of 1997 included a Protocol on Protection and Welfare of Animals,¹⁶ which recognizes animals as "sentient beings", a status distinct from property or agricultural products. It introduces for the first time legal obligations to consider animal welfare in the formulation and implementation of EC agriculture, transport, internal market and research policies. The protocol specifies that "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". The last clause is a subject of debate among animal welfare advocates, who feel that it leaves too large a loophole for EC member states. Others, however, acknowledge that no animal welfare provision might have been included at all without such a compromise allowing member states flexibility with respect to issues of culture or religion and animal welfare.¹⁷

The Lisbon Treaty of 2004, which came into effect on 1 December 2009 and establishes a Constitution for Europe, reiterated the language of the protocol. Therefore, the treaty provides for the first time a clear constitutional basis for animal welfare in the EU. With slight variations, Article III-121 crystallizes and makes legally binding the language of the Amsterdam Treaty protocol, as follows:

In formulating and implementing the [European] Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the requirements of animal welfare, while respecting the legislative or administrative provisions and customs of Member States relating in particular to religious rites, cultural traditions and regional heritage.

Two significant documents address future objectives and strategies on animal welfare in the EU. The first is a Communication from the Commission to the European Parliament and the Council on a Community Action Plan on

¹⁶ Protocol on Protection and Welfare of Animals (1997). The Amsterdam Treaty entered into force in 1999.

¹⁷ One such issue concerns animal welfare during Jewish (kosher) and Muslim (*halal*) religious slaughter, discussed further in Chapter IV, Section 4.3.

the Protection and Welfare of Animals 2006-2010 (COM (2006) 13), which identifies five key actions to be undertaken in EU member states:

1. upgrading existing minimum standards for animal protection and welfare;
2. giving a high priority to promoting policy-oriented future research on animal protection and welfare and the application of the 3Rs principle (see Chapter II, Section 2.1);
3. introducing standardized animal welfare indicators;
4. ensuring that animal keepers/handlers and the general public are more involved in animal welfare issues and informed about current standards of animal protection and welfare and fully appreciate their role in promoting these values; and
5. continuing to support and launching further international initiatives to raise awareness and create a greater consensus on animal welfare.

With respect to the third action area, the plan emphasized that the EU would strive to introduce standardized animal welfare indicators both across the EU and internationally with its trade partners. For the fifth action area, the plan specified that the EU would attempt to engage with developing countries by providing trade opportunities to those that establish "welfare friendly production systems" (COM (2006) 13).

The second document is the Animal Health Strategy for the European Union 2007-2013 (COM 539 (2007)), which explicitly lists as one of its objectives the promotion of "farming practices and animal welfare which prevent animal health related threats and minimise environmental impacts in support of the EU Sustainable Development Strategy (ESDS)". One specific goal in the ESDS is the inclusion of animal welfare status in the EU-wide labelling system called "TRACES" (TRAde Control and Expert System).¹⁸

The EU does not currently impose general import restrictions on food products based on animal welfare standards, but has proposed legislation on protection of animals during international (non-EU) transport. In addition, the EU has included animal welfare standards in the terms of at least one bilateral free trade agreement (FTA) with Chile.¹⁹ Animal welfare standards

¹⁸ For more information about TRACES, see ec.europa.eu.

¹⁹ See Chile-European Community Association Agreement, Annex IV, 2002.

have also been included in ongoing FTA negotiations with the Association of Southeast Asian Nations (ASEAN) and the Mercado Común del Sur (MERCOSUR).

2.4.3 Non-binding instruments

In recent years, the OIE has begun working through its regional offices to build awareness of animal welfare issues and, where possible, to facilitate the development of regional strategies on animal welfare. Although such regional strategies are not binding, they do set out guiding principles shared by countries that are likely to trade in animals and animal products or by-products in a particular geographic region.

The most successful example is the Regional Animal Welfare Strategy (RAWS) agreed to by the 31 member states of the Asia, Far East and Oceania (AFEO) OIE regional representation in 2008. The RAWS opens with a statement of its vision for the AFEO as a "region where the welfare of animals is respected, promoted and incrementally advanced, simultaneously with the pursuit of progress and socioeconomic development". The strategy's scope includes the welfare of all sentient animals in the care of humans or used by humans, and an objective is to follow OIE standards and guidelines for the handling, transport and slaughter of farm animals.

The OIE regional representation for the Americas also seems to be moving towards creating a regional animal welfare strategy for the region. At a workshop in Panama in August 2008, representatives of member states prepared a proposal for the creation of a regional animal welfare strategy. The outcome of this proposal has yet to be seen.

III

NATIONAL REGULATION OF ANIMAL WELFARE

Contents

3.1	Introduction	27
3.2	Constitutional provisions	27
3.3	Prevention of cruelty to animals	29
3.4	Non-binding instruments	31
3.5	Economic and other alternative policies	32

3.1 Introduction

Countries can choose to regulate animal welfare in a variety of ways. The strongest is to adopt constitutional provisions that recognize animal welfare principles or to provide another constitutional basis for the protection of animal welfare. Countries that adopt a constitutional provision on animal welfare may also enact national legislation on animal welfare, while other countries may enact only legislation.

There is much diversity in national legislation on animal welfare. Animal welfare provisions may appear in a free-standing animal welfare law or may form part of a broader law on animal health and welfare or veterinary matters in general. The most common form of legislation around the world criminalizes cruelty against animals. Many nations limit animal welfare statutes to certain animals used in scientific research or entertainment, whereas for farm animals they regulate only slaughter methods.

Increasingly, more nations and sub-national jurisdictions are passing laws or adopting provisions that explicitly set out animal welfare principles and extend coverage to farm animals, not just animals used for research, entertainment or companionship. This type of animal welfare legislation has been passed in most countries in Europe, as well as in Costa Rica (1994), New Zealand (1999), the Philippines (1998), Taiwan Province of China (1998), the United Republic of Tanzania (2008) and several others. Some countries employ non-binding instruments such as national animal welfare strategies or model welfare codes in lieu of binding legislation.

3.2 Constitutional provisions

Several countries have adopted constitutional provisions that provide a basis for the protection of animals, though none explicitly establishes animal welfare principles. The first country to constitutionally address animal welfare may be India. Article 48 of the 1950 Constitution requires the state to "endeavour to organise . . . animal husbandry on modern and scientific lines" and to prohibit the slaughter of cattle and dairy animals for religious reasons. In 1974, Article 51A(g) was added, declaring it the duty of every citizen of India "to have compassion for living creatures".

In 1994, a Swiss referendum modified the federal constitution to change the status of animals from "things" to sentient creatures. By 1999, the

Swiss Constitution had established the mandate for federal legislation in all areas of farm animal welfare.

Box 1 – 101st Federal Constitution of the Swiss Confederation*

Art. 80 Protection of animals

1. The Confederation shall legislate on the protection of animals.
2. It shall in particular regulate:
 - a. the keeping and care of animals;
 - b. experiments on animals and procedures carried out on living animals;
 - c. the use of animals;
 - d. the import of animals and animal products;
 - e. the trade in animals and the transport of animals;
 - f. the slaughter of animals.

The enforcement of the regulations shall be the responsibility of the Cantons, except where the law reserves this to the Confederation.

* non-authoritative translation available on Swiss Government website

In 2002, Germany added a provision to its constitution which is interpreted as enshrining the protection of animals as a major state objective, binding on all state actors (Haupt, 2008). It reads: "Mindful also of its responsibility toward future generations, the state shall protect the natural foundations of life and animals by legislation . . ." ²⁰ The revision of this article to include "and animals" was the result of a lengthy campaign by animal welfare advocates, and made Germany the first EU member state to include animal protection in its constitution. Within the German constitutional law system,

²⁰ Germany, Basic Law for the Federal Republic (Grundgesetz, GG), art. 20(a).

the inclusion of animals in this provision means that the Constitutional Court must balance the protection of animals against other constitutionally enshrined state objectives.

Several other countries that provide for the protection of animals in their constitutions do so in sections devoted generally to environmental protection or sustainable development. For example, Chapter VI, Article 225(1)(VII) of Brazil's Constitution (1988) provides that the government must protect flora and fauna from all practices that subject animals to cruelty prohibited by law. Part 4 of the Serbian Constitution (2006) also mentions the "protection and improvement of flora and fauna" as an area for government protection, although the term "fauna" here is generally interpreted as applying only to wildlife, not animals used in food production.

3.3 Prevention of cruelty to animals

Legislation prohibiting cruelty against animals originated in the English Parliament in 1822, and variations of this type of legislation proliferated over the next century, particularly in countries formerly under English colonial rule. A number of countries continue to have laws on prevention of cruelty to animals that date from early to mid-20th century, before the significant development and internationalization of the animal welfare movement. Animal cruelty legislation prohibits the most extreme, deliberate or wilful forms of mistreatment of animals, imposing criminal sanctions for certain acts that constitute "cruelty to animals". This is in contrast to animal welfare legislation, which assumes that some conditions are unavoidable collateral effects of productive economic activity and seeks to minimize animals' unnecessary suffering. Animal welfare legislation aims at improving conditions that cause suffering to animals through negligence or oversight, by regulating farms, slaughterhouses, transport and personnel.

Some anti-cruelty legislation excludes cruelty to animals involved in "economic" or "useful" activity such as food production, or entirely exempts farm animals as a class from the definition of animals covered. Other anti-cruelty legislation provides some basis for animal welfare protection of farm animals. One example is the *Zambian Prevention of Cruelty to Animals Act* (1921, last revised in 1994), which includes a provision that slaughtering an animal in sight of another constitutes cruelty. The legislation also delegates to a specific ministry the power to issue regulations regarding the treatment of

animals transported by train, but otherwise does not provide much protection for farm animals.

One example of an anti-cruelty statute that provides more general coverage to farm animals is the Malaysia Animals Act (1953, last revised in 2006). The legislation defines as an animal "any living creature other than a human" and prohibits a series of acts constituting cruelty to animals. Several of these prohibited acts would implicate any handling of farm animals that causes "unnecessary pain or suffering" or transportation without provision of adequate water and food. With respect to slaughter, the legislation bans "the destruction, or the preparation for destruction, of any animal as food for mankind" if "such destruction or such preparation was accompanied by the infliction of unnecessary suffering." Any of these prohibited acts that constitute cruelty carry a criminal penalty.

India's Prevention of Cruelty to Animals Act (1960) was unique for its era in that it established an oversight body, the Animal Welfare Board of India, "[f]or the promotion of animal welfare generally and for the purpose of protecting animals from being subjected to unnecessary pain or suffering" (Chapter II).²¹ The creation of such a Board to implement the anti-cruelty law led to the promulgation of a series of specific rules on animal transportation and slaughter that are closer to the realm of animal welfare than anti-cruelty legislation.

Often, legislation that contains "animal welfare" in its title actually uses a definition of animal welfare that is similar or identical to definitions of cruelty against animals, centred on the prevention of unnecessary suffering. Such legislation may still go beyond the realm of anti-cruelty legislation through substantive provisions that cover areas commonly addressed in animal welfare laws, such as appropriate animal housing and management, transport and slaughter methods.

²¹ The exact composition and powers of this Board will be discussed further in Chapter IV, Section 4.2.2.

3.4 Non-binding instruments

There are two types of non-binding instruments commonly employed by countries wishing to further animal welfare.²² One is a document defining a national animal welfare strategy, such as is used in Australia with the aim of coordinating or harmonizing the animal welfare legislation of the various states. Australia adopted this strategy because within its constitutionally defined federal structure, animal welfare is a subject regulated at the state level. The Australian Animal Welfare Strategy (AAWS) establishes a coordinating vision, defines its purpose and scope and details particular goals. This framework also led to the establishment of AAWS advisory and working groups dedicated to different animal sectors, as well as a national implementation plan that contains procedures for coordination and reporting on the strategy.

Another type of non-binding instrument is a model code of best practice, which usually sets out standards with which producers can voluntarily comply, sometimes for the purpose of receiving product certification prior to export. New Zealand is a country that uses model "codes of welfare", which include both binding minimum standards and non-binding best practice recommendations. The method for drafting and adopting such codes, with civic participation, is outlined in Part 5 of New Zealand's Animal Welfare Act (1999). Australia is also in the process of drafting and adopting model codes of practice for animal welfare, which are entirely non-binding but serve as guides for best practice. The United Kingdom (UK) Animal Welfare Act (2006) authorizes the creation of non-binding Codes of Recommendations, which farmers are legally required to know.

Sometimes non-binding instruments relate directly to binding law. For instance, the UK's Agriculture (Miscellaneous Provisions) Act of 1968 (ch. 34)

²² This discussion does not discuss in detail private certification schemes or best practice codes developed by industry associations, which are another common way of promoting animal welfare in food production. An example is the Brazilian Program of Good Agricultural Practices, a certification program developed by the Brazilian Agricultural Research Corporation (EMBRAPA), which contains recommendations on cattle welfare. A growing number of beef farmers have adopted these standards in recent years, while at the same time cattle welfare standards have been improving through the standards review process.

created an offence of causing or permitting unnecessary distress (sec. 1(1)) and also commissioned the writing of codes (sec. 3(1)). Although the codes were not mandatory, failure to comply with them could be and was used as evidence in prosecutions (sec. 3(4)). By contrast, Australia, Canada and New Zealand also developed non-binding codes, but at first did not specifically link them to law. Subsequently, both New Zealand and the Canadian Province of Manitoba followed the UK's lead by referencing non-compliance with the codes as admissible evidence of commission of an offence.²³

Another link between non-binding codes and law occurs when a law prohibiting causing distress to animals excludes actions carried out in conformity with generally accepted practices of animal management. In such a case, if a practice is allowed in a code, it is likely to fall under the exemption. Examples of such laws exist, with some variation, in several Canadian provinces including Alberta, British Columbia and Saskatchewan.

3.5 Economic and other alternative policies

To encourage compliance with animal welfare standards, governments at times establish policies that go beyond direct regulation. These may include economic incentives, government-supported food labelling systems and education or public awareness campaigns. The European Community, for example, has implemented economic incentives tied to its rural development program (European Commission, 2008) and has been evaluating the feasibility of community-wide labelling options (European Commission, 2009).²⁴ Public education and awareness-building around animal welfare are common in many countries, and may be specifically called for in the animal welfare legislation. Public awareness and education provisions are discussed at greater length in Chapter IV, Section 4.2.4.

²³ See New Zealand Animal Welfare Act (sec. 13(1A)) and Manitoba (Canada) Animal Care Regulation 126/98, clauses 2, 4(2).

²⁴ Options for animal welfare labeling and the establishment of a European Network of Reference Centres for the protection and welfare of animals. Eurocommerce Response to European Commission Report and Staff Working Document, available at www.eurocommerce.be.

In addition, some governments may fund or support private activities or programs designed to improve animal welfare. For example, the Brazilian Ministry of Agriculture, Fisheries and Supplies has contracted with the World Society for the Prevention of Cruelty to Animals to provide training in animal welfare standards to veterinarians and to improve slaughter methods in the country.²⁵ The Brazilian Ministry also officially acknowledges a voluntary animal welfare protocol for broiler chickens and turkeys developed and issued by a private organization, the Brazilian Poultry Union.²⁶

Although these non-regulatory measures can provide additional support to achieve animal welfare objectives, they are complementary to the main tool governments have to regulate animal welfare: legal instruments. The next part examines in more detail the main elements of animal welfare laws and regulations.

²⁵ For the text of the contract (in Portuguese), see www.wspabrazil.org.

²⁶ The full protocol (in Portuguese) is available at www.avisite.com.br.