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## THE GENESIS OF INTERNATIONAL LEGAL STANDARDS OF ANIMAL WELFARE

In the second half of the XX century the fundamental shift has happened in the animal protection field. Animals were recognized as «sentient beings». Moreover, this recognition was stated in the fundamental agreement on the establishment of the EU. That is the key for determining future development of international legal standards of animal welfare. This article analyzes the genesis of animal welfare standards. The author notes that animals have always been a subject of concern of the mankind. Being treated as property, people concentrated mostly on preserving wild animals, especially endangered species. The author considers the evolution of animal treatment starting from the ancient times and ending with the modern approach. The author browses through the most important international instruments in the field.

**Key words:** animal welfare, convention, animal protection, international law.

**Problem statement.** Prior to the formation of modern international legal normative concept of «animal welfare» in the second half of the twentieth century, the humanity had a long and a difficult way to go in shaping the «legal treatment» of animals. These difficulties are respectfully reflected in the dynamics of regulatory recognition of the status of animals and legal regime of their treatment, which is rapidly developing nowadays. The article dwells on the formation and evolution of international legal animal welfare standards.

The **relevance of the study** is enhanced by the growing interest in animal welfare issues and securing welfare standards in international law. The recent International Court of Justice decision of 31 March 2014 on whaling in the Antarctic also evidences the need for the research<sup>1</sup>.

The **research subject** of this study is the rules of international law on animal welfare; animal welfare standards are the **research question** of the present study.

International legal scholars have focused a lot of attention on the issues related to animals in past years. O.V.Butkevych, T.R.Korotkyi, M.O.Medvedyeva, D.Bouman, S.Brells, M.Gibson, J.P.Davis, B.Isakat, C.Ridgewell have considered a number of international law rules governing the international legal standards of animal treatment. However, the issues of the development of normative content of standards and their evolution have been relatively outside the scope of researchers' attention. The **objective of this article** is to fill this gap.

**Basic presentation of the material.** There are several reasons for the growing interest of both international civil society and states - principal and universal subjects of international law - in the issues of treatment of animals, their place in life. Some publicists explain this trend in contemporary law approaches by the shift from the anthropocentric to biocentric perspective (e.g. O.V.Butkevych<sup>2</sup>, M.O. Medvedyeva<sup>3</sup>). Others emphasize the growing humanist sentiment of the mankind (e.g. T.R.Korotkyi<sup>4</sup>). At the same time, the treatment of animals and methods of securing their legal status in international and national law have always been a subject of philosophical, ethical, legal theory and international law debate: starting from paganism, when animals were sacred and inviolable for primitive people who personified as gods and, ending with consolidated anthropocentric philosophical concepts of the Renaissance and the Enlightenment,

<sup>1</sup> *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening) (Judgment) [2014] ICJ Rep 226* <<http://www.icj-cij.org/docket/index.php?p1=3&p2=1&case=148&p3=4>> (2016, January, 21).

<sup>2</sup> Буткевич, О.В. (2015). Сучасні правові тенденції та міжнародні зобов'язання України в сфері зоозахисту : Наукова доповідь. Наукова конференція УАМІП «Законодавство та міжнародно-правові зобов'язання України у сфері зоозахисту: проблеми відповідності», 24.

<sup>3</sup> Медведєва, М.О. (2015). Місце еко- та біоетичних стандартів у механізмі міжнародно-правового захисту прав людини: Наукова доповідь, Київ: ІМВ КНУТІШ, 31.

<sup>4</sup> Короткий, Т.Р. (2013). Организационно-правовые вопросы защиты животных в Украине: роль юристов в институционализации движения по защите животных. *Український часопис міжнародного права. Спецвипуск «Міжнародно-правові стандарти поводження з тваринами та їх захисту і практика України-2013»*, 33-39.

and lastly developing in modern ecological and biocentric approaches of sustainable development.

The researchers note three areas of animal protection: animal cruelty prevention, animal welfare, and animal rights movement<sup>1</sup>. These are areas of recent academic enquiries that dominate the international law agenda of animal treatment by humans:

- prevention of animal cruelty (nineteenth - early twentieth century) - national law of some developed states provide for specific prohibition of some examples of maltreatment of animals;

- animal rights (starting from 1900s of the twentieth century – till the present time) - a number of philosophers, animal advocates (Lawrence – the author of the «Declaration of the Rights of Animals» of the late nineteenth century, Tom Regan, Peter Singer, Andrew Linzey etc.) have proposed a new legal model associated with granting special status to animals and «animal liberation from slavery» and the protection of fundamental animal rights - the right to life, liberty, protection from unnecessary suffering. This approach is mostly declarative and has only been reflected in a number of international projects presented by NGOs and in the decisions of several international NGOs. Overall, this approach has not evolved to positive international law;

- animal welfare (from the second quarter of the twentieth century - till the present time) – stipulating in the norms of national and international law of individual components and a legal principle of «animal welfare» as a whole. The principle aims to legally prohibit animal cruelty and set the requirement to ensure a certain level of welfare that would meet physiological and biological needs of animals at the level of national and international law.

The development of other moral and ethical concepts of animal treatment<sup>2</sup> does not undermine the fact that the major debate in the theory and practice of international law continues between supporters of the concepts of «animal welfare» and «animal rights». International regulatory framework of «animal rights» advocates consider animal **exploitation** the key problem and try to abolish the current animals' property status and ensure their «fundamental rights», which should be under the absolute protection and cannot be sacrificed for greater «human» need.

In contrast, supporters of «animal welfare» strive for actual improving of animal treatment by people in the existing legal framework, where an animal (excluding wild animals) is a property and, accordingly, humans possess animals. This legal approach has been incorporated in a number of legal systems of the developed states and mostly in the conventions of the Council of Europe, and the founding documents of the EU. It does not prohibit the exploitation of animals, but pays full regard to the welfare requirements of animals and their needs, prohibits cruelty and inflicting of unnecessary pain and suffering.

**1. The origins of international legal regulation of issues related to animals.** The first examples of anti-cruelty national regulation are known from ancient times. For example, the Emperor of the largest in the history of ancient India Maurya Dynasty - Ashoka (III BCE) left to posterity inscriptions on stone pillars, known as Edicts of Ashoka<sup>3</sup>. They established a ban on the killing of many species of animals and hunting for pleasure and branding<sup>4</sup>. However, the first laws prohibiting certain types of cruelty in respect of certain types of farm animals became the turning point in the internal regulation of the treatment of animals in the nineteenth century. In particular, in 1822 both houses of the British Parliament passed the Act to Prevent the Cruel and Improper Treatment of Cattle<sup>5</sup>, which was also given royal assent. It is also known as «Martin's Act» (in honor of its author - Colonel Richard Martin). The Act became the first legislative piece aimed to not only ban wanton animal cruelty but also to protect animal welfare. It stated: «if any person or persons shall wantonly and cruelly beat, abuse, or ill-treat any Horse, Mare, Gelding, Mule, Ass, Ox, Cow, Heifer, Steer, Sheep, or other Cattle, ... it shall be lawful ... to bring the party or parties so complained of before ... Justice of the Peace or other Magistrate ...; and if the party or parties accused shall be convicted of any such Offence ... they so convicted shall forfeit and pay any Sum not exceeding Five Pounds, not less than Ten Shillings ...; and if the person or persons so convicted shall refuse or not be able forthwith to pay

<sup>1</sup> Борейко, В.Е., Левина, Г.Н. (2011). *Настольная книга зоозащитника*. Киев: Киевский эколого-культурный центр, Ассоциация зоозащитных организаций Украины, Экоправо, 30.

<sup>2</sup> Isacat, B. (2014). *How to Do Animal Rights ...legally, with confidence*. Lulu, 48-53.

<sup>3</sup> Potter, K.H. (1996). Abhidharma Buddhism to 150 A.D. *Encyclopedia of Indian Philosophies. VII. India*: Motilal Banarsidass Publ, 28-29.

<sup>4</sup> Dhammika, Ven.S. (1994). *The Edicts of King Asoka. Access to Insight (Legacy Edition)*.

<<http://www.accesstoinsight.org/lib/authors/dhammika/wheel386.html#minor>> (2016, January, 21).

<sup>5</sup> The Text of Martin's Act. In Shevelov, K. (2009). *For the Love of Animals: The Rise of the Animal Protection Movement*. Holt Paperbacks, 285-289.

the Sum forfeited, every such Offender shall ... be committed to the House of Correction or some other Prison within the Jurisdiction within which the Offence shall have been committed, there to be kept without Bail or Mainprize for any Time not exceeding Three Months»<sup>1</sup>.

The main consequence of the adoption of this law was the change of the dominant public opinion on this issue, and accordingly - the attitude of state authorities. The state itself began to express concern for animals.

Two years after the adoption of the «Martin's act» the Society for the Prevention of Cruelty to Animals (SPCA) was organized in England, one of its founders was Richard Martin himself; in 1840 it became «Royal», i.e. royal patronage followed (the respective letter «R» was added to the name upon permission of the Queen). Since 1849 RSPCA has been looking out for all animals, including domestic cats and dogs; since 1876 - laboratory animals, and since 1900 - zoos and circuses. The RSPCA has become the world's first public animal welfare organization. It inspired the creation of similar organizations in other states<sup>2</sup>.

Following the example of Great Britain animal welfare legislation was adopted in other European countries; in 1833-1840 respective laws were adopted by Germanic countries; in the 1850s there were similar laws in Scandinavia. Under the influence of the parent state animal protection laws appeared in the Dominions - Canada, Australia and the Union of South Africa<sup>3</sup>.

International law focused on treatment of animals by humans for the first time in the late nineteenth century. However, if national laws primarily prohibited animal cruelty, international instruments contained rules governing commercial exploitation of water resources and some species of fish and marine mammals. As the researchers note, the first animal, which became the subject of international agreement, was fish. A treaty between France and Great Britain in 1867 was the first, followed by similar agreements on fishing in the river Rhine and the North Sea<sup>4</sup>.

In late nineteenth - early twentieth century in matters related to animals international law mainly focused on the protection of endangered species, mostly marine mammals. Thus, the 1891 Agreement between the Government of the United States and the Government of Her Britannic Majesty for a Modus Vivendi in Relation to Fur Seal Fisheries in the Bering Sea was signed. In 1892 the Convention between the Government of the United States of America and the Government of Her Britannic Majesty for the Renewal of the Existing Modus Vivendi in the Bering Sea was signed<sup>5</sup>.

In 1900, states that at the time controlled the African continent, signed the first regional framework agreement - the Convention for the Preservation of Wild Animals, Birds and Fish in Africa, which sought to regulate the exploitation of wildlife and encouraged the creation of nature reserves. The convention never formally entered into force, though some parties took steps to implement its provisions within their own jurisdictions<sup>6</sup>.

In 1902, European countries signed the Convention for the Protection of Birds Useful to Agriculture, which is considered the first international convention in the field of environmental protection<sup>7</sup>. Because of the destruction of birds which were valued as predators upon insects and other pest species farmer suffered from diminishing of the crop yields<sup>8</sup>. The attempts of the Parties to the Convention to preserve some bird species were important for the welfare of these species (Articles 2-3 prohibited, in particular, the destruction of nests; some barbaric methods of capture were prohibited<sup>9</sup>). Animal welfare is maintaining

<sup>1</sup> The Text of Martin's Act. In Shevelow, K. (2009). *For the Love of Animals: The Rise of the Animal Protection Movement*. Holt Paperbacks, 285-286.

<sup>2</sup> Our history. *RSPCA official site*. <<https://www.rspca.org.uk/utilities/aboutus/history>> (2016, January, 21).  
The History of the RSPCA. *Animal Legal and Historical Center*. <<https://www.animallaw.info/article/history-rspca>> (2016, January, 21).

<sup>3</sup> Павлова, Т. (1997). *Биоэтика в высшей школе: учеб. пособие для вузов*. Москва: Моск. гос. академия ветеринар. медицины и биотехнологии, 19.

<sup>4</sup> Haas, M. (2008). *International Human Rights: A Comprehensive Introduction*. Routledge, 331.

<sup>5</sup> Haas, M. (2008). *International Human Rights: A Comprehensive Introduction*. Routledge, 331.

<sup>6</sup> Bowman, M., Davies, P., Redgwell, C. (2010). *Lyster's International Wildlife Law*. Kindle version. New York: Cambridge University Press, 100.

<sup>7</sup> Лукашук, И.И. (2008). *Международное право. Особенная часть*. Москва: Волтерс Клувер, 181.

<sup>8</sup> Bowman, M., Davies, P., Redgwell, C. (2010). *Lyster's International Wildlife Law*. Kindle version. New York: Cambridge University Press, 100-101.

<sup>9</sup> Международная конвенция по охране птиц, полезных в сельском хозяйстве (19 марта 1902 г.). *Общественный экологический Интернет-проект EcoLife*. <<http://www.eclife.ru/laws/inter/1902/01.php>> (2016, January, 21).

safely habitat conditions, without fear, pain and suffering for animals under the control or in interaction with a person. Birds useful to agriculture respectively interact with humans. Therefore, this convention was not only the first one in international environmental law. It became the first example of international legal obligations of states to establish rules for treatment of animals, which people use for their needs.

These conventions did not bring about serious consequences for the protection of animals, however they became a basis for the historical formation of modern international legal standards for treatment of animals<sup>1</sup>.

After the League of Nations was founded, several universal conventions to preserve some species of marine mammals, including the Convention for the Regulation of Whaling of 14 September 1931<sup>2</sup>, the Convention for the Protection of Fauna and Flora in Their Natural Environment of 8 November 1933 (with the Protocol and Annexes)<sup>3</sup>, International Agreement on the Regulation of Whaling of June 8, 1937 (the Declaration) and Protocol from June 29, 1938<sup>4</sup> were opened for signature. These documents deemed to preserve certain species of wild animals without touching upon the issue of their welfare.

The first examples of international legal regulation of farm animals' treatment also appeared in the practice of the League of Nations.

**2. Shaping of international legal welfare standards in the universal conventions (the first quarter of the twentieth century - 60s of the twentieth century).** The attempts to create universal conventions and substantially expand the scope of international law are chronologically linked to the creation of the first universal organization - the League of Nations. The shift in national and international law from bioethics (philosophical views and beliefs) to legal regulation of the welfare of the animals, which are under human control, was prepared by prominent members of the animal protection movement. Thanks to popularization of animal protection views and their respective «legalization» in special works, media, the creation and spread of the necessary views by influential members of society, experts and lawyers, ethical norms were gradually transferred to the national laws and universal conventions. The studies of the British scholars had a significant impact on the formation of general legal (i.e. not only at the level of ethics but at the level of law) attitude to the necessary prohibition of animal cruelty in national and international legislation. For example, the work of a well-known animal advocate Henry S. Salt (1851-1939) «Animals' Rights»<sup>5</sup>, in which he outlined the «natural rights of animals». John Lawrence in «On the Rights of Beasts» wrote about the need for a legal (legislative) regulation of humane treatment of animals, advocating a distinct branch of law - *jus animalium*. He proposed that «the Rights of Beasts be formally acknowledged by the state, and that a law be framed upon that principle, to guard and protect them from acts of flagrant and wanton cruelty, whether committed by their owners or others»<sup>6</sup>.

The researchers believe that the «Animals' Charter» by Stephen Coleridge (1854-1936), Chairman of the British National Society against vivisection, to be the first draft of a universal convention on the protection of animals presented to the League of Nations<sup>7</sup>. The «Animals' Charter» has been subsequently

<sup>1</sup> Bowman, M., Davies, P., Redgwell, C. (2010). *Lyster's International Wildlife Law*. Kindle version. New York: Cambridge University Press, 101.

<sup>2</sup> *Convention for the Regulation of Whaling* (signed at Geneva, September 24th, 1931) 155 LNTS 349. <<https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20155/v155.pdf>>.

<sup>3</sup> *Convention relative to the Preservation of Fauna and Flora in their Natural State*, Annex and Protocol (signed at London, November 8th, 1933) 172 LNTS 241. <<https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20172/v172.pdf>> (2016, January, 21).

<sup>4</sup> *International Agreement for the Regulation of Whaling* (signed at London, June 8th, 1937), and *Declaration by the Principal Secretary of State for Foreign Affairs of His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, relating to the Prolongation of the said Agreement* (signed at London, June 29th, 1938) 190 LNTS 79 <<https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20190/v190.pdf>> (2016, January, 21);

*Protocol amending the International Agreement of June 8th, 1937, for the Regulation of Whaling* (signed at London, June 24th, 1938) 196 LNTS 131. <<https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20196/v196.pdf>> (2016, January, 21).

<sup>5</sup> Salt, H.S. (1894). *Animals' Rights: Considered in Relation to Social Progress*. New York: Macmillan & Co, 177.

<sup>6</sup> Lawrence, J. (1802). *On the Rights of Beasts. A Philosophical and Practical Treatise on the Horse, and on the Moral Duties of Man Towards the Brute Creation (vol. 1). 2<sup>nd</sup> Edition*. Symonds, 123.

<sup>7</sup> Haas, M. (2008). *International Human Rights: A Comprehensive Introduction*. Routledge, 331.

Compromise & the Universal Declaration on Animal Welfare. (July/August 2005). *The Animal Law and History Web Center Michigan State University College of Law*. <<https://www.animallaw.info/article/compromise-universal->

expanded into «An Animals' Bill of Rights» by Jeffrey Godson (1886-1983). Hoping for approval of the document by the League of Nations in 1924, Andre Geraud (1882-1974) introduced the «A Declaration of Animal Rights» that inspired Florence Barkers to publish «International Animals Charter» in 1926<sup>1</sup>.

Animal advocates failed to convince the League of Nations to support any of the presented documents, but a wide discussion in the media influenced the public opinion and the governments of member states of the League of Nations; they realized the need to stipulate advocated animal protection norms and principles in universal legal conventions. Moreover, the urgent need of combating epizootics that accompanied the globalization of trade in animals for agricultural purposes largely contributed to taking practical steps and following the requirements.

The League of Nations prepared and opened for signature a few conventions which became the basis for the further consolidation of international legal standards, not so much on the prohibition of abuse, but also on animal welfare. Their relevance was determined by the epizootic threat at the international level. In 1920, rinderpest occurred unexpectedly in Belgium, as a result of zebus, originating from India and destined for Brazil, transiting via the port of Antwerp. Epizootic demonstrated the necessity of enhancing new forms of multilateral cooperation of states in its prevention and control. As a result of lengthy diplomatic procedures, on 25 January 1924, 28 member states of the League of Nations concluded the *International Agreement for the Creation at Paris of an International Office for dealing with Contagious Diseases of Animals* in Paris № 1360<sup>2</sup> (in effect as of 9 November 1926), establishing intergovernmental organization Office International des Epizooties (since 2003 – the World Organization for Animal Health)<sup>3</sup>. Today the OIE (the Organization preserved its acronym) is the main standard-setting body of the international animal welfare standards. It cooperates with international non-governmental organizations in preparing the text of the Universal Declaration of Animal Welfare and its final version is proposed to be adopted by the UN General Assembly.

The *International Convention for the Campaign against Contagious Diseases of Animals № 4310* signed at February 20, 1935 (in effect as of March 23, 1938)<sup>4</sup>, established veterinary rules and regulations to prevent epizootic among livestock. The High Contracting Parties undertook to enact the necessary legislation (Art. 1); establish an official veterinary health organization to ensure the execution of the measures (Art. 2); determine qualifications required for veterinary specialists (Art. 3); undertake to publish regularly a veterinary health bulletin on the basis of the OIE recommendations (Art. 5); communicate and cooperate with one another (Arts. 7, 8); it was formulated a list of measures for the central veterinary authorities in the event of epizootic outbreaks (Art. 6) etc.

The regulatory requirement of the Convention to guarantee the satisfactory level of veterinary services was an important step towards the development and adoption of the document that recorded the humane treatment of animals and the criteria / markers of ensuring their welfare.

The *International Convention Concerning the Transit of Animals, Meat, and Other Products of Animal Origin № 4486* signed at February 20, 1935 (in effect as of December 6, 1938)<sup>5</sup> is first document with requirements for the proper treatment of animals during transit. Art. 5, para. 2 stipulates: «With a view to meeting the various difficulties arising in the course of transit, the exporting countries shall take steps to see that the animals are **properly loaded and suitably fed** and that they **receive all necessary attention**, in order **to avoid unnecessary suffering**» (emphasis added). Later the secured regulatory requirement for the subjects of international law to deprive animals of «unnecessary suffering» becomes legal basis in the movement for the adoption of international legal standards for animal welfare.

declaration-animal-welfare-0> (2016, January, 21); Coleridge, S., Buchanan, W. *A Cambridge Alumni Database*. <<http://venn.lib.cam.ac.uk/cgi-bin/search.pl?sur=&suro=c&fir=&firo=c&cit=&cito=c&c=all&tex=%22CLRG873SW%22&sy=&eye=&col=all&maxcount=50>> (2016, January, 21).

<sup>1</sup> Haas, M. (2014). *International Human Rights: A Comprehensive Introduction*. 2<sup>nd</sup> edition. Routledge, 507.

<sup>2</sup> *International Agreement for the Creation at Paris of an International Office for dealing with Contagious Diseases of Animals* (signed at Paris, January 25, 1924) 57 LNTS 135. <<https://treaties.un.org/doc/Publication/UNTS/LON/Volume%2057/v57.pdf>> (2016, January, 21).

<sup>3</sup> About us. *World Organization for Animal Health (OIE)*. <<http://www.oie.int/about-us/>> (2016, January, 21).

<sup>4</sup> *International Convention for the Campaign against Contagious Diseases of Animals, and Declaration attached* (signed at Geneva, February 20th, 1935) 186 LNTS 173. <<https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20186/v186.pdf>> (2016, January, 21).

<sup>5</sup> *International Convention Concerning the Transit of Animals, Meat, and Other Products of Animal Origin, with Annex* (signed at Geneva, February 20th, 1935) 193 LNTS 37. <<https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20193/v193.pdf>> (2016, January, 21).

Annex to Art. 5 contained an important expansion of the content of the regulatory requirements to ensure comfortable conditions for transported animals. Thus, para. 2 of the Annex to Art. 5 set the requirements for the preparation of the container to transport animals, namely, «in the loading of ruminants and pigs, the floors of the transporting vehicles shall be covered with proper litter».

Para. 3 of the Annex to Art. 5 stipulates the requirement to provide appropriate oversight of transported animals by a person in charge: «consignments of live animals which are not transported in properly closed portable containers (baskets, boxes, cages, etc.) must be accompanied by a person in charge on long journeys. The latter must not be in charge of a greater number of animals than he can look after».

The last paragraph of the Annex to Art. 5 stated the need for choosing the shortest route of transportation, which is an important factor in ensuring the welfare of transported animals: «Transports of live animals must be sent by the quickest route and, as far as possible, by specially accelerated goods trains»<sup>1</sup>.

Therefore, thanks to the international rule-making activities and the transformation of many bioethical ideas and requirements of animal advocates in international legal instruments, the League of Nations initiated the formation of international legal standards for animal welfare. So far, a universal instrument defining the concept of «animal welfare» and determining the obligations of international law subjects regarding its implementation in the rule-making activities of the League has not been prepared.

**3. The current international legal regulation of animal welfare (twentieth-twenty first centuries).** After the creation of the United Nations, states address the problems of preservation of flora and fauna more often in their international rule-making activities. A number of international instruments for the protection of various wildlife species have been adopted: the International Convention for the Regulation of Whaling (1946), the Convention on Fishing and Conservation of the Living Resources of the High Seas (1958), North-East Atlantic Fisheries Convention (1959), the Agreement Concerning Protection of the Salmon in the Baltic Sea (1962), the Convention on Wetlands of International Importance especially as Waterfowl Habitat (1972), the Convention for the Conservation of Antarctic Seals (1972), the Agreement on the Conservation of Polar Bears (1973), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973), the Convention on the Conservation of Migratory Species of Wild Animals (1979), the Convention on Biological Diversity (1992) and others. Basically, these conventions are based on the normative requirement of the conservation of living conditions of wildlife. Humane treatment of animals was considered necessary in «soft law» acts. On October 28, 1982 the World Charter for Nature was adopted by the UN General Assembly Resolution 37/7<sup>2</sup>. This document of «soft law» states in its Preamble: «**Every form of life is unique, warranting respect regardless of its worth to man**, and, to accord other organisms such recognition, man must be guided by a moral code of action», [emphasis added]. The Declaration was an important step to consolidate the international legal principle of equal respect for any form of life and respect for animal life in particular. However, so far no document that would contain normative definition and duties of providing «welfare» at the UN level has been approved. At various times, several similar projects have been brought up in the Organization<sup>3</sup>.

An attempt to lobby for a universal document to protect «animal rights» was the submission of the Universal Declaration of Animal Rights in 1990<sup>4</sup> to UNESCO, prepared by several animal protection organizations. It was neither considered nor approved, since, according to most representatives of states, «rules of the draft declaration contradicted the existing international law»<sup>5</sup>. However, animal advocates have not stopped. The campaign to collect petition for the adoption of the «Universal Declaration on

<sup>1</sup> *International Convention Concerning the Transit of Animals, Meat, and Other Products of Animal Origin, with Annex* (signed at Geneva, February 20th, 1935) 193 LNTS 37. <<https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20193/v193.pdf>> (2016, January, 21).

<sup>2</sup> UNGA Res 37/7. World Charter for Nature (28 October 1982) <<http://www.un.org/documents/ga/res/37/a37r007.htm>> (2016, January, 21).

<sup>3</sup> Haas, M. (2008). *International Human Rights: A Comprehensive Introduction*. Routledge, 333-334.; Neumann, J.-M. (2012). *La Déclaration Universelle des Droits de l'Animal ou l'égalité des espèces face à la vie*. In *Animal law: developments and perspectives in the 21st century = Tier und Recht: Entwicklungen und Perspektiven im 21. Jahrhundert*. Switzerland, Germany: BWV Berliner Wissenschafts-Verlag, 368, 371-372, 374-378.

<sup>4</sup> Universal Declaration of Animal Rights. *Action Against Poisoning*. <[http://jose.kersten.free.fr/aap/pages/uk/UDAR\\_uk.html](http://jose.kersten.free.fr/aap/pages/uk/UDAR_uk.html)> (2016, January, 21).

<sup>5</sup> Compromise & the Universal Declaration on Animal Welfare.

Animal Welfare» was launched in 2000<sup>1</sup>: it is a compromise on the way to adoption of a universal document. The replacement of «animal rights» with «welfare» in the text of the declaration does not satisfy radical animal rights advocates who pursue the change of the legal status of animals and treating them as bearers of independent rights, not as objects of human ownership. The mechanical replacement of terms in the text did not receive support from representatives of states that are strongly convinced in the necessity to observe certain regulatory standards of animal welfare<sup>2</sup>.

The legal concept of animal welfare articulated in the second half of the twentieth century originally related only to farm animals. Subsequently, both states and international civil society started to apply the normative concept developed by the British government called «Five Freedoms» in the texts of conventions as *minimum minimumorum* to outline the welfare of all the animals under human control: farm animals, pets, wildlife in captivity (kept in circuses and zoos), and (partly) laboratory animals.

**The origins of the «Five Freedoms».** In 1964, the British animal activist Ruth Harrison published the book «Animal Machines»<sup>3</sup> describing intensive poultry and livestock farming. The book gained publicity and at the end of June 1964 the British government created the Technical Committee «to enquire into the welfare of animals kept under intensive livestock husbandry systems and to recommend on the improving of standards of their welfare»<sup>4</sup>.

The Committee consisted of nine experts in zoology, ethology, animal husbandry, agriculture, led by Rogers Brambell. The Committee members visited 54 intensive livestock farms in England, Wales and Scotland and also Denmark, Holland and Northern Ireland<sup>5</sup>.

In December 1965, the Committee prepared Brambell's report which: a) defined the concept of «welfare»; b) outlined the basic markers / criteria for animal welfare; c) scientifically proved animals' ability to suffer due to their biological similarity to a human, particularly in the structure of the nervous system. The report suggested measures and methods to ensure a minimum level of welfare in intensive livestock production. An animal should at least have sufficient freedom of movement to be able without difficulty, to turn round, groom itself, get up, lie down and stretch its limbs; adequate food and drink to prevent it suffering from hunger and thirst; veterinary treatment; animals need to be able to communicate with their own kind; there should be adequate technical equipment of buildings with adequate lighting and ventilation, safe design to prevent panic attacks and other inadequate behavior. Physical deformity of animals was condemned in the report as «unnecessary suffering» (unnecessary (wanton) cruelty)<sup>6</sup>.

The main recommendations of the Committee covered: 1) amendments to legislation to remedy the conditions in intensive livestock and ensure their welfare; to establish a clearer definition of «suffering»: (a) discomfort (such as may be characterized by such negative signs as poor condition, torpor, diminished appetite); (b) stress (i.e. a condition of tension or anxiety predictable or readily explicable from environmental causes whether distinct from or including physical causes); (c) pain (recognizable by more positive signs such as struggling, screaming or squealing, convulsions, severe palpitation); 2) to improve the legislation and monitoring the current state of animal welfare the Committee recommended the establishment of a Farm Animal Welfare Standing Advisory 61 Committee to advise the Minister on all these matters. It should not be representative of the interests concerned, but the persons appointed should serve because of their knowledge and experience in various fields and their personal qualities. The Committee should not be more than ten in number, and should include within its membership a veterinarian, an expert on animal behavior or comparative psychology, a zoologist or physiologist, persons knowledgeable in animal husbandry and farm buildings and a legal expert<sup>7</sup>.

<sup>1</sup> UDAW Universal Declaration for Animal Welfare. *IFAW official site*. <<http://www.ifaw.org/united-states/our-work/political-advocacy/udaw-universal-declaration-animal-welfare>> (2016, January, 21).

<sup>2</sup> UDAW Universal Declaration for Animal Welfare. *IFAW official site*. <<http://www.ifaw.org/united-states/our-work/political-advocacy/udaw-universal-declaration-animal-welfare>> (2016, January, 21).

<sup>3</sup> Harrison, R. (2013). *Animal Machines: The New Factory Farming Industry*. CABI.

<sup>4</sup> Brambell, F.W.R. (1965). *Report of the Technical Committee to Enquire into the Welfare of Animals kept under Intensive Livestock Husbandry Systems*. London: Her Majesty's Stationery Office, 1.

<sup>5</sup> Brambell, F.W.R. (1965). *Report of the Technical Committee to Enquire into the Welfare of Animals kept under Intensive Livestock Husbandry Systems*. London: Her Majesty's Stationery Office, 1.

<sup>6</sup> Brambell, F.W.R. (1965). *Report of the Technical Committee to Enquire into the Welfare of Animals kept under Intensive Livestock Husbandry Systems*. London: Her Majesty's Stationery Office, 9-15.

<sup>7</sup> Brambell, F.W.R. (1965). *Report of the Technical Committee to Enquire into the Welfare of Animals kept under Intensive Livestock Husbandry Systems*. London: Her Majesty's Stationery Office, 60-62.

On the basis of the Brambell's report the British government set up the Farm Animal Welfare Advisory Committee in 1967 (FAWAC - Farm Animal Welfare Advisory Committee), which in 1979 was transformed into the Council (FAWC - Farm Animal Welfare Council). The FAWC finalized Brambell's report and elaborated the «Five Freedoms», which became the main guidelines of animal welfare. It is not known which of these bodies - FAWAC or FAWC - developed the concept of «Five freedoms». Records from FAWAC are not readily available so the exact origin is not clear, and the earliest written reference we can find is the enclosed press notice released by FAWC in December 1979, with five key aspects for the welfare of animals under human control: (1) *freedom from thirst, hunger and malnutrition*, (2) *the appropriate comfort and shelter*, (3) *prevention or rapid diagnosis and treatment of injuries or illnesses*, (4) *freedom of natural behavior*, (5) *freedom from fear*<sup>1</sup>.

According to Dr. John Webster, today «Five Freedoms» are developed and formulated as follows<sup>2</sup>:

- *Freedom from hunger or thirst*, by ready access to fresh water and a diet to maintain full health and vigor;

- *Freedom from discomfort*, by providing an appropriate environment including shelter and a comfortable resting area;

- *Freedom from pain, injury or disease*, by prevention or rapid diagnosis and treatment;

- *Freedom to express (most) normal behavior*, by providing sufficient space, proper facilities and company of the animal's own kind;

- *Freedom from fear and distress*, by ensuring conditions and treatment which avoid mental suffering<sup>3</sup>.

The Brambell's report led to or inspired: strong legislation to protect farm animals; Codes of Recommendations for the Welfare of Livestock; significant advances in the science of animal welfare; greater emphasis on welfare in the curricula of agricultural and veterinary students and in training programs for farmers and stockmen; development of farm assurance schemes; regular surveillance of farm animal welfare by Animal Health and other agencies; independent advice about farm animal welfare to the Government; general improvements in farming systems and animal husbandry; and raised awareness and expectations of some consumers about farm animal welfare<sup>4</sup>. Today, the «Five Freedoms» express the clear welfare markers system that meets the general level of justice in the global society, and therefore is the basis of regulatory animal welfare standards consolidation enshrined in most international legal instruments and standards of animal welfare.

The «Five Freedoms» are laid down in the Council of Europe conventions and are implemented in the national law of most developed countries. The key point in the legal status of animals has not changed. Today, animals are the property with the special status, which obliges owners to ensure the internationally determined legal standards of their welfare.

***The Council of Europe conventions and EU law as the basis of international legal regulation of animal welfare today.*** The «Five Freedoms» are reflected in the existing conventions of the Council of Europe, aimed at regulation of the animals' treatment:

- *European Convention for the Protection of Animals during International Transport* No. 065 (signed in Paris on 13 December 1968, entered into force on 20 February 1971)<sup>5</sup>, revised in 2003 (the *European Convention for the Protection of Animals during International Transport (Revised)* No. 193, signed in Chişinău on 06 November 2003, entered into force 14 March 2006)<sup>6</sup>;

- *European Convention for the Protection of Animals kept for Farming Purposes* No. 087 (signed in

<sup>1</sup> Five Freedoms. *Farm Animal Welfare Council*. <<http://www.fawc.org.uk/freedoms.htm>> (2016, January, 21).

<sup>2</sup> Борейко, В.Е. (2013). *Прорыв в экологическую этику*. Киев: Логос, 96.

<sup>3</sup> Farm Animal Welfare in Great Britain: Past, Present and Future (2009). *Farm Animal Welfare Council*. <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/319292/Farm\\_Animal\\_Welfare\\_in\\_Great\\_Britain\\_-\\_Past\\_Present\\_and\\_Future.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/319292/Farm_Animal_Welfare_in_Great_Britain_-_Past_Present_and_Future.pdf)> (2016, January, 21).

<sup>4</sup> Farm Animal Welfare in Great Britain: Past, Present and Future (2009). *Farm Animal Welfare Council*. <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/319292/Farm\\_Animal\\_Welfare\\_in\\_Great\\_Britain\\_-\\_Past\\_Present\\_and\\_Future.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/319292/Farm_Animal_Welfare_in_Great_Britain_-_Past_Present_and_Future.pdf)> (2016, January, 21).

<sup>5</sup> *European Convention for the Protection of Animals during International Transport CETS No.: 065*. Council of Europe, Treaty Office. <<http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/065>> (2016, January, 21).

<sup>6</sup> *European Convention for the Protection of Animals during International Transport (Revised) CETS No.: 193*. Council of Europe, Treaty Office. <<http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/193>> (2016, January, 21).

Strasbourg on 03 October 1976, entered into force on 10 September 1978)<sup>1</sup>;

- *European Convention for the Protection of Animals for Slaughter* No. 102 (signed in Strasbourg on 10 May 1979, entered into force on 11 June 1982)<sup>2</sup>;

- *European Convention for the Protection of Vertebrate Animals used for Experimental and Other Scientific Purposes* No. 123 (signed in Strasbourg on 18 March 1986, entered into force on 01 January 1991)<sup>3</sup>;

- *European Convention for the Protection of Pet Animals* No. 125 (signed in Strasbourg on 13 November 1987, entered into force on 05 January 1992)<sup>4</sup>.

The Treaty on European Union is considered a breakthrough in further development of international legal standards of animal welfare. As European international law together with EU law can be considered part of general international law<sup>5</sup>, it is important to trace the evolution of the general rules on the protection of animals defining them as sentient beings, whose welfare must be ensured in the basic documents of the EU.

The Treaty of Rome establishing the European Economic Community (1957) did not contain rules on animal welfare, but stipulated restrictions «on imports, exports or goods in transit justified on grounds of ... the **protection of health and life** of humans, **animals** or plants» [emphasis added] (Art. 36)<sup>6</sup>.

The text of the revised Maastricht Treaty on European Union of 1992 contained the «Declaration on the Protection of Animals», which called upon «European Parliament, the Council and the Commission, as well as the Member States, when drafting and implementing Community legislation on the common agricultural policy, transport, the internal market and research, to pay full regard to the **welfare requirements of animals**» [emphasis added]<sup>7</sup>.

The *Protocol on protection and welfare* of animals became part of the 1997 Treaty of Amsterdam and replicated the provisions of the Declaration on the Protection of Animals of the Maastricht Treaty<sup>8</sup>. In 2007, the Protocol became Article 13 of the Lisbon Treaty that amended the Treaty on the Functioning of the European Union: «In formulating and implementing the 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 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» [emphasis added]<sup>9</sup>. This article recognizes that animals are able to feel (animals are sentient beings) and urge Member States to concern welfare conditions of farm animals.

<sup>1</sup> *European Convention for the Protection of Animals kept for Farming Purposes* CETS No.: 087. Council of Europe, Treaty Office. <<http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/087>> (2016, January, 21).

<sup>2</sup> *European Convention for the Protection of Animals for Slaughter* CETS No.: 102. Council of Europe, Treaty Office. <<http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/102>> (2016, January, 21).

<sup>3</sup> *European Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes* CETS No.: 123. Council of Europe, Treaty Office. <<http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/123>> (2016, January, 21).

<sup>4</sup> *European Convention for the Protection of Pet Animals* CETS No.: 125. Council of Europe, Treaty Office. <<http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/125>> (2016, January, 21).

<sup>5</sup> Колосов, Ю.М. (2006). О понятии европейского международного права. *Российский ежегодник международного права*. Санкт-Петербург: Социально-коммерческая фирма «Россия-Нева», 195.

<sup>6</sup> *Traité instituant la Communauté économique européenne* (avec annexes et Protocoles) (fait à Rome, le 25 mars 1957) 294 UNTS 3. <<https://treaties.un.org/doc/Publication/UNTS/Volume%20294/v294.pdf>> (2016, January, 21).

<sup>7</sup> Declaration on the Protection of Animals. In *Treaty on European Union* (done in Maastricht on 7 February 1992) C 191 Official Journal of the European Communities, 103. <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1992:191:FULL&from=EN>> (2016, January, 21).

<sup>8</sup> The Protocol on protection and welfare. In *Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts* (done in Amsterdam on 2 October 1997) C 340 Official Journal of the European Communities, 110. <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11997D/TXT&from=EN>> (2016, January, 21).

<sup>9</sup> *Consolidated version of the Treaty on the Functioning of the European Union* (done at Lisbon on 13 December 2007) C 115 Official Journal of the European Union, 47. <[http://eur-lex.europa.eu/resource.html?uri=cellar:88f94461-564b-4b75-aef7-c957de8e339d.0006.01/DOC\\_3&format=PDF](http://eur-lex.europa.eu/resource.html?uri=cellar:88f94461-564b-4b75-aef7-c957de8e339d.0006.01/DOC_3&format=PDF)> (2016, January, 21).

In 2014 Ukraine signed<sup>1</sup> and ratified<sup>2</sup> the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (hereinafter – AAEEU or Association Agreement). Ukraine's participation in international treaties implies fulfillment of international obligations<sup>3</sup>. The Association Agreement mentions «animal welfare standards» (Section 4, Chapter 4, Art. 59, para. 2)<sup>4</sup>, which means standards for the protection of animals as developed and applied by the Parties and, as appropriate, in line with the OIE standards and falling within the scope of this Agreement (Art. 62 para. 13). Since 11 July 1994, Ukraine is a member of the OIE - an organization that authored Terrestrial Animal Health Code<sup>5</sup> and Aquatic Animal Health Code<sup>6</sup> to which the EU-Ukraine Association Agreement refers (particularly, Art. 62, para. 2).

**Conclusions.** The twentieth century saw a fundamentally new nature of legal systems for the history of law – the transition from general to specific, i.e. securing universal legal norms in international law and its impact on national legal systems. The researchers embraced this legal trend of globalized world in the second half of the twentieth century. As a universal tendency in regulation, it was formed in the League of Nations conventions. International law set standards for national legal systems to follow. This practice was confirmed after the creation of the United Nations against the background of the active codification of the UN and its organs, especially the International Law Commission and other international institutions involved in international law-making including regional ones. The Council of Europe together with some other regional organizations played a significant role in the process of elaborating legal regulation standards and measures. In less than half a century the Council of Europe prepared and opened for signature more than 200 international conventions in various fields. Most of instruments became substantial international legal (statutory) standard to transpose in domestic law not only for Member States but also for the third states.

In the second half of the twentieth century, there were a number of conventions that focused particularly on the protection, preservation and conservation of endangered wildlife. Since the late 60s of the twentieth century, the Council of Europe adopted five conventions, which articulated the basic principles and standards of animal welfare: farm, laboratory, pet animals and wild animals kept as pets.

The main international legal developments in the second half of the twentieth century were the recognition of animals as sentient beings in the fundamental treaty establishing the EU. This rule of international law is the key to the further development of international legal standards aimed at the protection and welfare of animals.

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