

any page—with some of his main interventions sometimes nicely tucked away in a footnote—the reader should not be daunted by the book's size nor shy away from reading it cover to cover. She will then discover that the book is a veritable trove of intellectual pleasure, full of ideas and written in a remarkably accessible style. She will also discover, and maybe deplore, that aside from the brief introduction and conclusion, and altogether very rare discursive interventions in between, Koskenniemi gives relatively little guidance in terms of making explicit connections between the authors, the ideas, the Chapters, and the Parts. He leaves the reader to think for herself. In doing so, he has issued an open invitation for further research and reflection on some grand topics that spring to mind, such as the genealogies of ideas, the comparison of national or regional approaches, the transnational debates between scholars from different countries, the role of shared ideas and values in international networks of diplomats and economic elites, and most ambitiously, a global approach to constitutional history. With this book, Koskenniemi has pioneered an integrated constitutional history of international order. He has set a high bar for those who want to follow on this path, but he has also offered strong foundations to build on.

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Animals in International Law is a pocketbook version of Anne Peters's January 2019 Hague Academy of International Law lectures. Peters is a director at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, professor at both Heidelberg University and Freie University Berlin, and an L. Bates Lea Global Law Professor at the University of Michigan. Her research addresses

diverse topics across public international law, including the role of the human individual, global constitutionalism, and in recent years she has devoted attention to the plight of animals in international law. Her groundbreaking scholarship on animal rights and advocacy for the development of global animal law has helped to define this field.

Scholarship on the welfare of individual animals in international law has grown in recent years with a specific focus on animals and international environmental law, trade law, and the law of armed conflict. The publication of *Animals in International Law* is nonetheless a milestone; it represents the first attempt to provide a comprehensive and critical analysis of the position of animals in a subject field which is still predominantly concerned with states and statehood. As such, this book is a novel and a welcome addition to burgeoning literature on the plight and protection of animals in international law, and the Academy's decision to offer lectures on it is indicative of its growing importance in the field.

Peters articulates the premise of her book in Chapter I and explains why animal welfare should be of concern to international lawyers. She argues that, even as animals continue to be in chains, that public international law barely deals with the issue and in some instances even facilitates their harm. Animal exploitation has ethical, ecological and social implications on a global scale; it therefore requires global legal solutions. Her "global law" approach implies an alignment among domestic laws, treaties, and transnational private-public co-regulation (p. 57). Peters considers domestic law to be the breeding ground for international norms in a bottom-up approach. For example, several jurisdictions in the world have anti-cruelty legislation on non-wildlife. Moreover, domestic jurisdictions have also been the breeding grounds for progressive judgments on animal welfare and rights, which have resonated with judicial peers through transjudicial communication. At the same time, she insists that, in the context of a multidimensional regulatory framework, international law has an indispensable role to play (p. 58). Her approach is sensible as it recognizes the realities of

multidimensional global governance and the influence of domestic law in a globalized world.

Peters elaborates her argument in eight chapters. Chapter I provides a factual survey of the plight of wild and domesticated animals, and repudiates the existing legal divide between humans (as subjects) and animals (as objects). The first chapter eloquently establishes the contextual and introductory foundation for subsequent chapters. Peters's identification of *three pillars* of animal governance, namely: (1) species conservation; (2) animal welfare norms; and (3) animal rights, is useful for its conceptual delineation of the main regulatory approaches to animals. I need to point out the overlaps among these approaches, which indicate fluidity rather than a series of rigid distinctions. For example, it has become evident that welfare and conservation are two dimensions of integrated wildlife protection as the welfare of individual animals influences the viability and health of species. Hence, international (wildlife) law cannot ignore animal welfare issues.¹ It is likewise important not to confuse the formal distinction between the rights and welfare approaches with the substantive protection afforded by the respective approaches.

Chapter II comprehensively canvasses the existence of international rules (including soft law) on animals. Peters rightly points out that the current anthropocentric regulatory scheme essentially identifies who may exploit animals, rather than prohibiting exploitation (p. 63). In her discussion of a community-oriented view of wild animals, Peters notes that characterizing wild animals as a common concern, as in the preamble of the Convention on Biological Diversity,² leaves existing concepts of sovereignty undisturbed (pp. 76 et seq.). Thus, she seems to support the argument that (migratory) wildlife should be classified as the common heritage of humankind to strengthen their protection and possibly improve their welfare. I have a different

view. The application of the "common heritage" concept to areas within the territorial jurisdiction of states remains controversial, especially given concerns that powerful states could use the "internationalization" of resources as an excuse for the international management (or exploitation) of resources within the jurisdiction of other states.³ Also, I do not consider the common concern designation to be mere rhetoric that leaves sovereignty undisturbed. "Common concern" provides the international community with a legitimate interest in the protection of wildlife and a common responsibility of assistance in this regard. Specifically, the globalization of resources means that states have a common (global) responsibility for the protection of wildlife, which necessitates differential burden-sharing for the common goal. The question is whether "common concern" may be a suitable vehicle for the promotion of animal, in particular wildlife, welfare. I recently argued, based on the evolutionary interpretation of sustainable use and sustainable development in the Convention on Biological Diversity, that the common concern regarding biodiversity, which refers to measures concerning conservation and sustainable use, cannot ignore welfare concerns because sustainable use invokes welfare considerations.⁴ This means that one could argue that the welfare aspects of sustainable use are also globalized and are not of exclusive national concern.

Peters's conclusion, on page 84, that international law requires states to manage wild animals sustainably, must be viewed in the context of the recognition of scholarship that argues for the inclusion of welfare under the rubric of sustainable development.⁵ I consider the discourse on sustainable development and animal welfare to be a profound development, *de lege ferenda*,

¹ WERNER SCHOLTZ, *ANIMAL WELFARE AND INTERNATIONAL ENVIRONMENTAL LAW: FROM CONSERVATION TO COMPASSION* (2019).

² Convention on Biological Diversity, pmbl., Dec. 29, 1993, 1760 UNTS 79.

³ KEMAL BASLAR, *THE CONCEPT OF THE COMMON HERITAGE OF MANKIND IN INTERNATIONAL LAW* (1998).

⁴ Werner Scholtz, *Animals as Common Heritage and Common Concern*, in *THE OXFORD HANDBOOK OF GLOBAL ANIMAL LAW* (Anne Peters, Kristen Stilt & Saskia Stucki eds., forthcoming).

⁵ Elien Verniers, *Bringing Animal Welfare Under the Umbrella of Sustainable Development: A Legal Analysis*, 30 *REV. EUR., COMP. & INT'L ENVTL. L.* 349 (2021).

that holds considerable potential for the promotion of wildlife welfare. Her assessment of the Office International des Epizooties's (OIE) activities, and specifically the OIE Animal Welfare Strategy (p. 93), which refers to the complex balancing of environmental, socioeconomic, and animal welfare interests, affirms my view concerning sustainable development and animal welfare.

The analysis of the impact and role of international financial institutions highlights the important role that these actors may play in the promotion of animal welfare in areas of investment, and I am certain that the scholarship will continue to develop in ways that seek to ensure that these institutions pay more attention to the matter (p. 97). The discussion on the role of private actors in the global governance of animal welfare reminds me of similar debates concerning environmental self-regulation and the importance of establishing legal standards that create regulatory parameters for the implementation of voluntary initiatives. As such, I am in favor of a form of transnational conditional regulation, which should not rely on the goodwill of private actors only. Relevant private standards must be created in a legitimate manner that involves the participation of the Global North and South, since the danger exists that private actors in the North have more capacity and resources to further their agendas, which could be perceived as a form of imperialism.

Chapter III analyzes the whaling regime, which represents an interesting example of a shift from a species-oriented conservation regime to the protection of species and the promotion of their welfare. I consider a discussion on whaling indispensable for any book on animal welfare and international law because of the brutality of whale hunting and the associated welfare implications, as well as the totemic nature of whale protection. The past scramble to hunt these sentient, charismatic, and intelligent megafauna to near extinction and the subsequent moratorium on whale hunting has significant symbolic value for the environmental movement. I deem the debates concerning the evolutionary shift of the objectives of the International Convention for

the Regulation of Whaling (ICRW)⁶ to represent salient aspects of the conservation vs. animal welfare debate, which juxtaposes ethics (in terms of welfare) with science (in terms of conservation). Peters's analysis of the International Whaling Commission's recommendations and regulations as well as the *Whaling* case results in the conclusion that the evolution of the whaling regime toward the inclusion of welfare considerations is not *ultra vires* (p. 186). I share the view of scholars that the Convention is indeed a constituent instrument that can be interpreted in a flexible evolutionary manner. The objectives of the Convention, however, curtail the progressive flexibility of the interpretation of the treaty as evolutionary interpretation must not represent a departure from the intentions of the parties, as required by Article 31 of the Vienna Convention on the Law of Treaties.⁷ A thorough scrutiny of the objectives included in the preamble of the Whaling Convention does not exclude the shift to welfare or even the non-lethal usage of whales and supports the opinion of Peters.⁸ In addition to her analysis of the Whaling Convention, she considers whale rights to be an attractive avenue to protect whales (*id.*). I support the recognition of the proposed right to life of whales, which may be bolstered by recent developments concerning the "rights of nature" discourse and progressive judgments of domestic courts concerning the rights of wildlife and the dignity of animals. It is my view that the evolutionary nature of the Convention could be conducive to facilitating an incremental process of progressive consensus on the ethical aspects of whaling, which could be translated into a right to life for whales. Lastly, Peters concludes her chapter with the warning that other anthropogenic effects in the Anthropocene, such as pollution and climate change, constitute the biggest threats to the whale population (p. 194). This stark warning affirms, in

⁶ International Convention for the Regulation of Whaling, Dec. 2, 1946, 161 UNTS 2124.

⁷ Vienna Convention on the Law of Treaties, May 23, 1969, 1155 UNTS 331.

⁸ Michael Bowman, "Normalizing" the *International Convention for the Regulation of Whaling*, 29 MICH. J. INT'L L. 293, 378 et seq. (2008).

my opinion, the need for the holistic protection of the global environment and its constituent parts and the coordination between different multilateral environmental agreements (MEAs).

Chapter IV contains an analysis of the European Union regulatory framework on animal welfare governance and agro-production which highlights the discrepancy in legislation that treats animals both as sentient beings and as tradeable goods (p. 213). The dualism inherent in the regulation of animals necessitates an increase in welfare standards, which will be resisted by powerful agricultural industries and other vested economic interests. The operation of the EU in a globalized world of trade implies that the imposition of unilateral stringent welfare standards is not viable (p. 245), and underscores the need for a global approach. Also, the devastating environmental effects and negative welfare impacts affirm the interwoven nature of ecological, economical, and welfare interests in a global context that point to the need for a more integrated regulatory approach. The integration of different interests is a key feature of sustainable development in terms of the principle of integration and it is evident that a sustainable approach is needed that can balance the different interests in an equilibrium. Peters's argument for the utilization of animal welfare impact assessments in circumstances involving the intensive rearing of animals may be a valuable tool and the proposed integration of welfare impact assessments in environmental impact assessments points to an alignment of environmental and welfare concerns (p. 250).

Chapter V contains a critical analysis of the impact of international trade law on animal welfare, which deserves increased attention, especially since the watershed World Trade Organization (WTO) Appellate Body report in the *Seal Products* dispute. The examination of international trade liberalization agreements does not paint a positive picture concerning animal welfare, but Peters argues that international trade law can be harnessed to promote animal welfare if higher international standards can be agreed upon. Chapter V is an important and welcome addition to the literature on international

trade law and animals, and the pocketbook would not have been complete without a reflection on this specialized subject of international law. I suspect that the topic will increase in importance and the Chapter provides an insightful discussion and the Chapter provides an insightful discussion for non-trade lawyers to grasp the relationship between trade law and animal welfare.

Another subject of increasing importance is the "animalization" of the laws of armed conflict, which is still largely ignorant of the plight of animals. Animals' precarious position is worsened by armed conflict as they are victims of the destructive practices of warfare, for example, the illegal poaching of wildlife, or they are actively conscripted to participate in and/or support wars. Chapter VI includes a comprehensive analysis of the issue of animals and the law of armed conflict. International Humanitarian Law (IHL) poses a thought-provoking example of the necessity for international law to respond to the recognition of the sentience of animals and the fallacy that they are mere commodities in service of human needs. War is a destructive and exploitive action between humans and IHL is concerned with the suffering of humans during conflicts, but it is evident that the plight of animals during warfare requires a rethink of IHL. Peters canvasses the opportunities for developing a more animal-friendly conception of IHL and concludes that such a conception of IHL would be aligned with the *telos* of IHL (p. 411). She identifies a need to ensure consensus among "vague principles which might attract easy approval" as a precursor to lawmaking efforts (p. 412). Her suggested approach seems sensible as it follows the soft law approach often used in international environmental law, especially concerning the development of sustainable development and its underlying principles. Peters's identification of dignity as a candidate for easy approval is not unproblematic. I share the view that law must recognize a more inclusive form of dignity that also extends to animals. A more inclusive form of dignity has the potential to kindle an animalization of international trade, international environmental, and international humanitarian law. I am, however, skeptical whether animal dignity is indeed a principle which could "attract easy

approval” as states might be hesitant at this moment to agree to a principle as vague as animal dignity.

A comprehensive overview of animals and international law would be incomplete without a reflection on animal rights, which has been at the forefront of debates on animal protection. However, animal rights have not always received the same attention in international law and it is important in this context to distinguish between the overlapping concepts of the philosophical discourse on moral rights for animals, on the one hand, and legal rights, on the other (p. 440). Chapter VII includes a thoughtful and elaborate analysis of a topic that has been informed by moral and ethical debates, and which has become increasingly important in legal discourse.⁹ Personhood has been a central aspect of the animal rights debate and I agree with Peters that while international law is theoretically open to the personhood of non-humans (p. 436), this notion raises questions about the future susceptibility of a (still) relatively state-centered international legal order to confer personality upon non-governmental organizations, future generations, or animals. Peters argues that personhood as a precondition for recognizing rights is too vague and that alternatively, animals do not have to meet the conditions for personhood to be rights holders (p. 440). Critical scholarship validates her arguments in this regard.¹⁰

Peters’s brief review of the recognition of animal rights in domestic jurisdictions shows that several questions remain unanswered (pp. 444–54). The domestic recognition of rights provides momentum that could strengthen the march toward the international recognition of animal rights. A clearer indication of the relevance of the discussion on the domestic recognition of animal rights could have been useful and Peters could have considered the interaction between domestic and international law in a global setting and how progressive domestic case law could

ultimately influence international law through, *inter alia*, transjudicial communication.¹¹

An interesting question is which legal models should underlie the recognition of animal rights (p. 455). I agree with Peters that the human rights model holds the most promise, although a need exists to design animal rights “with their zoo-specific rationale and telos” (pp. 468–69). It is untenable to uphold the species-ist appeal to the genotype *Homo sapiens* as a basis for the exclusion of animals from the sphere of human rights and the vulnerability of animals as well as an appeal to their dignity makes the human rights model appropriate. Hence, I do not think that it is necessary to reinvent the wheel and human rights concerning life, liberty, and freedom can be used as a point of departure to further animals’ interests. The intrinsic interests and dignity of animals can guide the formulation of animal rights to ensure that it is tailored to their zoo-specific rationale. As such, it is my opinion that the global dimension of animal protection mandates a reconfiguration of existing international human rights to fit the needs of animals. The recognition of the distinct zoo-specific rationale for animal rights invokes the important distinction between wild and domesticated animals for regulatory purposes that Peters does not address in the Chapter. It is important to recall that exponents of animal rights theory, such as Tom Regan, have traditionally concerned themselves with the plight of domesticated animals and tended to adopt a *laissez-faire* approach to wild animals.¹² The proximity between humans and domesticated animals, such as companion animals, implies that humans have a direct influence through their actions on the well-being of these animals and are responsible for their well-being by providing shelter and nutrition and refraining from cruel treatment. Thus, the distinct relationship and distance between wild animals and humans have been offered as a counterargument for awarding rights to wildlife. Another objection

⁹ Saskia Stucki, *Towards a Theory of Legal Animal Rights: Simple and Fundamental Rights*, 40 OXFORD J. LEGAL STUD. 533 (2020).

¹⁰ Visa Kurki, *Legal Personhood and Animal Rights*, 11 J. ANIMAL ETHICS 47 (2021).

¹¹ Werner Scholtz, *Injecting Compassion into International Wildlife Law: From Conservation to Protection?*, 6 TRANSNAT’L ENVTL. L. 463, 472 (2017).

¹² TOM REGAN, *THE CASE FOR ANIMAL RIGHTS* (2d ed. 2004).

to awarding rights to wildlife can be found in the dichotomy between environmental ethics and animal rights ethics. Proponents of environmental ethics follow a holistic approach in their focus on the preservation of biological diversity and the need to recognize the moral consideration of species and ecosystems. According to the animal rights ethic, the focus of moral concern should be on individual animals. I am of the view that the era of the Anthropocene requires a reconsideration of the point of departure and a more nuanced discussion of the matter. The rights of nature model offers promising insights concerning the protection of individual animals under the ecocentric and holistic approach to the recognition of the rights of nature as indicated in the recent *Estrellita* judgment.¹³

Ultimately, I agree with Peters that “some animals need some rights,” even if awarding rights to animals may not have an immediate and direct effect on the improvement of their situation. It would nonetheless carry considerable symbolic and transformational value in prompting a paradigm shift in our interaction with animals from an approach of exploitation to a need to justify intrusion (pp. 525–31). The welfare approach can provide comprehensive protection concerning an array of issues and it is possible to derive “rights-like” protection from animal welfare legislation. Thus, I am in support of strengthening global welfare standards in conjunction with awarding selective rights at the international level to animals to increase animal protection incrementally.

The concluding chapter (Chapter VIII) reviews the shortcomings of public international law concerning animal welfare, which include: a welfare gap; a focus on species protection rather than individual animals; and how international law (such as WTO law) obstructs animal welfare goals. Peters uses the shortcomings to recommend responses to charter new directions in law. Her discussion on building global consensus on animal welfare recommends an alignment of global animal welfare and human development and ultimately the sustainable development

goals. In this regard, I consider the potential of sustainable development and sustainable use, to incorporate animal welfare concerns as promising avenues in international law. However, I do not think that it is sufficient to focus merely on highlighting the alignment of welfare interests with anthropocentric concerns, but it is rather imperative to strengthen non-anthropocentric ethics and values in international law through the injection of compassion into existing law. As such, I consider it important to canvas existing opportunities offered by law and to recognize the intrinsic value of animals as a moral and legal imperative, which may charter new directions in law and erode its inherent anthropocentrism. Ultimately, the final chapter makes a compelling case for the emergence of an international norm concerned with animal welfare and the aspiration to pursue “realistic utopia for animals globally” (p. 598). Her recognition of the need for an animal utopia, therefore, comes with a dose of sober realism as she recognizes the limits of policy discourse in achieving the stated goal.

In providing the first comprehensive overview of the position of animals in international law, Peters presents an original, significant, and rigorous analysis of an important, but largely ignored, topic in international law. *Animals in International Law* makes a lucid and compelling case for the establishment of an international norm for the global protection of animals. Animal welfare is not an issue at the fringes of international law anymore and can no longer be ignored by international lawyers. Anne Peters’s masterful analysis is not merely compelling reading material for lawyers with an interest in animal welfare. Rather it is a timely, topical, and long overdue contribution to the imminent development of international law, which must be species-blind to ensure the promotion of utopian global justice and adherence to ecological realism in a biosphere in which non-human and human animal species dwell and die alongside one another. As such, this text deserves a place on the shelf of every international lawyer.

¹³ Sentencia No. 253-20-JH/22 (Derechos de la Naturaleza y animales como sujetos de derechos) (Corte Constitucional del Ecuador) (Ecuador).

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