

No voice, no rights, no protection?

The legal status of animals under international law

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On 19th November, the animal protection organisation *PETA* filed a complaint with the German federal constitutional Court (BVerfG) against a law that legalizes the unanaesthetized castration of pigs for two more years (see [here](#)). Notably, *PETA* is suing in the name of the animals themselves. The complaint is based above all on the constitutionally recognized national objective of animal protection (Art. 20a [German basic law](#)). In addition, the constitutional complaint also alleges a violation of the pigs' fundamental rights, more precisely the right to physical integrity (Art. 2(2)) and a violation of their dignity (Art. 1(1)). The BVerfG therefore has to deal with the question of whether and to what extent animals can be holders of (fundamental) rights at all. However, it is not the only national court to address this question.

In 2015, *PETA* had already made a copyright [claim under US law in favour of an Indonesian monkey](#) and this summer, the Punjab and Haryana High Court in India rendered a [far-reaching judgment](#) on animal rights, addressing a cow transport in violation of the [Punjab Prohibition of Cow Slaughter Act](#). According to the judgment (at para. 29), all animals have "a distinct legal persona with corresponding rights, duties, and liabilities of a living person" and humans have parent-like protection obligations towards them. In 2014, the Indian Supreme Court had already [ruled](#) in a judgement concerning the legality of Bullock-cart races that animals had the right to dignity and fair treatment. In the light of these national developments, the question arises which role animal protection plays under international law and whether the concept of animal rights has already found its way into the legal framework.

The international community seems to be reluctant to recognize animal rights. The [Universal Declaration of the Rights of Animals](#) adopted in 1977 by the International League of Animal Rights contains many fundamental rights, such as the right to life. In 2011, another attempt to draft a [declaration of animal rights](#) was made by the animal rights and planet conservation organization "Our Planet. Theirs Too". Both declarations are not legally binding and their political and moral impact remain low, since both declarations were not proclaimed or adopted by any UN- related organization (the Universal Declaration of the Rights of Animals was at least proclaimed at but not by the UNESCO).

The approach of the Indian Courts and the constitutional complaint of *PETA* in Germany to extend existing (human) rights to animals cannot be mirrored under international law. Existing human rights treaties cannot be fundamentally extended in their scope of application and contrary to their wording, because none of the signatory states consented to include animals as holders of rights when the conventions were concluded. Also, under customary international law, there is no rule that would grant animals their own rights. Although apart from the Indian ruling,

some other states have extended their domestic legislation to incorporate animal rights (see judgments [Argentina](#), [Colombia](#)), there is neither enough state practice nor *opinio juris* that would support the customary nature of such rights.

While there are hardly any broadly phrased agreements on the protection of animals, from which specific animal rights could be derived, several fields of international law contain protective regulations. However, they mostly instrumentalize animal protection to serve human interests. This is aptly illustrated by international humanitarian law (IHL). Animal protection is only implicitly enshrined in the [first Additional Protocol to the Geneva Conventions](#) (AP1; Art. 35(3), 54, 55(1)), e.g. as part of the “protection of the natural environment”. While animals are thus at least partially covered through certain IHL provisions, this is not based on considerations of animal welfare but rather on the rights and interests of the belligerent parties and other humans involved in armed conflict (see the ICRC commentary on Art. [35\(3\)](#), [54](#), [55](#)). Accordingly, Art. 55(1) AP I, concerning long-term environmental damages that undoubtedly include the protection of fauna, aims at the prevention of far-reaching environmental damages and destruction of ecosystems in the light of human interests and the protection of the population. Animals, if not used as animal soldiers, are mainly treated as property and objects under IHL. Although there is an understanding, that animals do not only have an economic, but can also have an emotional and cultural significance for their owners (see [ICTY](#), para. 336), the anthropocentric perspective of IHL objectifies animals as inanimate things.

Probably the most important international framework for animal protection is the Convention on International Trade in Endangered Species of Wild Fauna and Flora ([CITES](#)) of 1973, which aims to ensure sustainable international trade of animals and plants listed in its annexes and has been ratified by over 180 states. As regards endangered migratory species, the Convention on the Conservation of Migratory Species of Wild Animals ([CMS](#)) provides extensive protection. While both conventions establish a protection framework for (some) animals and recognize them as sentient beings, they only address the protection of a species as a whole and not the individual wellbeing of animals by way of ascribing rights to them. At the regional level, the EU and the Council of Europe arguably set the highest standards for binding animal welfare rules for its Member States, such as through the [European Convention for the Protection of Animals for Slaughter](#) of 1979, the [Convention for the Protection of Vertebrate Animals Used for Experimental and Other Scientific Purposes](#) of 1986 and Art. 13 of the [Treaty on the Functioning of the European Union](#). The Council of Europe and the EU thus clearly recognize animals as sentient beings and oblige Member States to take certain protective measures.

Beyond these measures, animal welfare is slowly gaining in importance at the international level, with constantly more *soft law* being developed. An important player in this regard, the World Organization for Animal Health ([OIE](#)) with its 182 member states has adopted several sets of standards on animal welfare. Also a [universal declaration on animal welfare](#) under the aegis of the Global Animal Law Project (GAL) is in the drafting process and might be proposed to the UN for adoption. Alongside such novel approaches, growing awareness of animal protection may eventually also impact positive law through the avenue of existing frameworks.

In this context, another look at IHL is in order. The Martens Clause (see Art. 1 (2) AP1) subjects legal considerations regarding “cases not covered by the law in force” to “the principles of humanity and the dictates of the public conscience”. This leaves room to argue that as the role of animal welfare in the public conscience grows, the protection of animals in armed conflicts will equally grow.

Despite some demands for international agreements that explicitly confer rights on animals ([e.g. Anne Peters as a leading voice](#)) and initial national advances, it does not seem realistic that animals will be treated as legal persons under international law in the near future. However, the growing state awareness concerning animal welfare (see [here](#) for an overview on domestic legislation) allows for hope that animal welfare will play an increasingly important role at the international level in the coming years. Eventually, this could be the basis for the recognition of animal rights under international law. Nevertheless, notwithstanding the importance of animal rights, a first logical (and necessary) step would be to rethink our own behavior towards animals – anything else would be hypocritical.

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