

# UNIVERSAL DECLARATION OF ANIMAL RIGHTS AND BRAZILIAN LAW SYSTEM

Heron José de Santana Gordilho \*

Fernando de Azevedo Alves Brito \*\*

**Abstract:** This article analyzes the Universal Declaration of Animal Rights (UDAR) as a source of Public International Law (PIL). The research uses historical, evolutionary, and the technique of bibliographical and documentary research. Initially, it identifies the origin and historical development of the UDAR, and then analyzes the influence of the UDAR on constitutional, infra-constitutional norms and Brazilian jurisprudence. Finally, it shows that UDAR, as a declaration of principles, is integrated into the list of new sources of PIL, which are indicative but can influence constitutional and judicial decisions.

**Keywords:** New sources of Public International Law; Soft law standards; Statements of principles.

**Summary:** 1. Introduction; 2. Declarations of principles such as soft law norms; 3. The Universal Declaration of Animals Rights and UNESCO; 4. The binding of the Universal Declaration of Animal Rights in Brazilian Law; 5. The Universal Declaration of Animal Rights as a rule of soft law; 6. Conclusion; 7. Notes.

## 1. INTRODUCTION

---

\* Post-Doctor at Pace University Law School (USA). Doctor at Universidade Federal de Pernambuco (UFPE). Law Professor at Universidade Federal da Bahia (UFBA) and Universidade Católica do Salvador (UCSAL). Member of the World Academy of Art & Science (WAAS).

\*\* PhD Law student at Universidade Federal da Bahia (UFBA). Law Professor at Instituto Federal da Bahia (IFBA).



The Universal Declaration of Animal Rights (UDAR) has been referenced in scientific works, journalistic texts and other publications, and it is not uncommon to find mentions on websites of non-governmental organizations specializing in the animal cause, and even on government websites.

Many doubts exist about the origin of the UDAR, as well as its characterization as a Declaration, similar to the Universal Declaration of Human Rights of the United Nations (UN), and these doubts extend to its "institutionalization" by UNESCO, the role of signatory countries, as well as their value as a source of international law and its legal authority.

The UDAR is a unique document with an extensive list of rights to serve animals, such as equality, respect, protection/care, freedom, dignity, protection from ill-treatment and cruelty<sup>1</sup>, inclusion at stake, including a possibility of rights holders.

In a time of debates on the consequences of post-humanism in law, and progressive consolidation of animal law, the UDAR is nonetheless an interesting and distinctive instrument that needs to be analyzed, which in itself justifies the realization of this work, which will seek to answer the following question-problem: Is UDAR a source of International Environmental Law?

The specific objectives of this article will be: (a) identify through documents the origin and historical development of UDAR; (b) the influence of the UDAR on the National Constituent Assembly of 1987-1988, especially in the wording of article 225, VII of the FC; (c) analyzing the references to UDAR in infra-constitutional norms, (d) identify the influence of UDAR in infra-constitutional norms and Brazilian jurisprudence, and (e)

---

<sup>1</sup>CFMV. *Declaração Universal dos Direitos dos Animais*. Available at: <http://portal.cfmv.gov.br/portal/uploads/direitos.pdf> Accessed in: 25 jan. 2018.

identify the legal nature of UDAR in the face of international law.

The research method used is the historical evolution to analyze the background and the conditions that preceded UDAR, while the research technique will be bibliographical and documentary, with access to official, daily information of the National Constituent Assembly, as well as legal and judicial decisions.

## 2. STATEMENT PRINCIPLES AS *SOFT LAW* STANDARDS

Since the beginning of the 19th century international conferences have adopted principles and rules of *soft law* in the form of non-binding resolutions addressed to the States, either as recommendations or statements of principle - as proclaimed in the Stockholm conference, Rio de Janeiro, the UNEP (Vancouver, 1976, Mar del Plata, 1977; Nairobi, 1978)- but also joint communiqués, minutes, codes of conduct or gentlemen's agreements, norms that have had a strong impact on international environmental rights.<sup>2</sup>

In fact, the rules of *soft law* result of a compromise when a final regulation cannot reach consensus - <sup>3</sup> usually takes the form of policy recommendations, action programs or declaration of principles.

As declaratory documents from non-binding international forums, they do not bind States, so that their simple non-compliance or violation does not allow states or citizens to be submitted to national or international courts.<sup>4</sup>

While the norms coming from the traditional normative sources, especially the custom and the international conventions, are considered hard law, since they are accompanied by

---

<sup>2</sup> GORDILHO, Heron José de Santana. *Postmodern environmental law*. Curitiba: Juruá, 2011.

<sup>3</sup> MELLO, Celso de Albuquerque. *Course on public international law*, p.45.

<sup>4</sup> MENEZES, Wagner. *Soft law as the source of international law*, p. 70.

sanctions that make them effective, soft law norms do not foresee penalties for their noncompliance.<sup>5</sup>

It is that these norms have only the dual function of setting goals for future political actions in international relations and recommending to the States that they adapt the dispositions of their organization to their principles and rules.<sup>6</sup>

They can thus take the form of directives, which are acts of intergovernmental organizations sent to Member States, so that they reserve the right to assess the situation and decide whether or not to implement its resolutions; declarations of principles adopted and proclaimed on behalf of the international society by the organizations or at international conferences or programs of action, addressed to the organizations that elaborate them, establish activities that should be undertaken in a certain period of time, such as Agenda 21, which establishes a list of priorities such as sustainable development, fighting poverty, protecting human health, water and waste management and pollution.<sup>7</sup>

In any case, it remains a controversial issue whether the declarations adopted by UN General Assembly resolutions, such as the Universal Declaration of Human Rights of 1948, the Declaration on Permanent Sovereignty over Natural Resources of 1962, or the Declaration on the Elimination of All Forms of Racial Discrimination of 1963, are sources of Public International Law (PIL).

Although these statements are not autonomous sources, they delimit the scope of possibility of the new law, identifying its evolutionary guidelines, exerting a great influence in the formation of customs or in the celebration of conventions, in addition to linking the organisms that elaborated them in their

---

<sup>5</sup> CRETILLA NETO, José. *Course on International Environmental Law*. São Paulo: Saraiva, 2012. p.260.

<sup>6</sup> SOARES, Guido Fernandes Silva. *International Environmental Law*, p. 92.

<sup>7</sup> KISS, Alexandre; SHELTON, Dinah. *Droit International de L'environnement*. p.112.

relations with member states, often performing the function of a qualified material or direct source.<sup>8</sup>

These statements can be adopted and proclaimed by organizations or at international conferences, and most often seek to recognize the emergence of new values.<sup>9</sup>

In fact, international organizations such as the United Nations (UN), the International Whaling Commission (IWC), CITES and the European Commission (EC) have made an important contribution to the environmental community by providing the international community with structures of authority necessary for the protection of the environment.

It turns out that such declarations of principles do not contemplate precise actions to be fulfilled, and merely establish general values and objectives, often exerting a strong influence on the creation of new legal rules and on the judicial decisions of national and international courts.

Let us look at the example of the Universal Declaration of Human Rights (UDHR), adopted in the form of a resolution by the UN General Assembly, which has been respected and observed by States as a true source of international law, although many countries do not always respect its Principles.

Some publicists consider this declaration a set of customary norms and/or general principles of international law with binding force, even though most of their norms have already been positively embodied in constitutions of the democratic world.<sup>10</sup>

Many decisions handed down by national courts refer to the Universal Declaration of Human Rights as general principles

---

<sup>8</sup> MONCADA, Antonio Cabral de. *Course on Public International Law*, p.352-353.

<sup>9</sup> GORDILHO, Heron José de Santana. *Postmodern environmental law*. Curitiba: Juruá, 2011.

<sup>10</sup> On the Stockholm and Rio Declarations, SOARES, Guido Fernando, *International Environmental Law*, p. 200: "For our part, we prefer to consider both Declarations as a remarkable consolidation of general principles of law, not so much because they were adopted by the States during a special *ad doc* conference, although under the aegis of the UN... more by its content and purpose."

of law, since according to arts. 1 (3) and 55 of the Charter of the Nations, States have committed themselves to ensuring universal and effective respect for human rights. In this way, the UDHR would at least have the negative effect of delegitimizing the rules of the States that systematically violate its precepts.<sup>11</sup>

Nonetheless, principles proclaimed in international declarations such as the Stockholm Declaration and the Rio Declaration still do not influence state legislation in the same way as the UDHR, although declarations of principles with more limited objectives such as the European Water Charter on Pollution the OECD Recommendation of 1974 and the principles of conduct declared by UNEP in 1978 influenced the legislation of several States.

The Declarations adopted unanimously by the UN General Assembly, for example, have legal recommendations but are binding only to the organization itself, not to the member states.

In addition to the UDHR, examples of declarations adopted through resolutions by the UN General Assembly, are the Declaration on Permanent Sovereignty over Natural Resources of 1962 and the Declaration on the Elimination of All Forms of Racial Discrimination of 1963.

Although they cannot be considered as autonomous sources, these declarations delimit the scope of possibility of the new law, identifying the guidelines of juridical evolution and exerting a great influence in the formation of the customs and in the celebration of new conventions, in addition to linking the organisms that elaborated them in their relations with member states, often performing the function of a qualified material or direct source.<sup>12</sup>

In any case, the enumeration of sources provided for in Article 38 of the ICJ Statute is not exhaustive, so that it is possible to identify new sources of international law, such as

---

<sup>11</sup> PIOVESAN, Flavia. *Human rights and international constitutional law*. P. 152.

<sup>12</sup> MONCADA, Antonio Cabral de. *Course on Public International Law*, p.352-353.

*unilateral acts* that are manifested through declarations of will issued by States, alone or in international conferences; the *acts of inter-governmental organizations* such as the World Health Organization (WHO), the International Labor Organization (ILO) and UNESCO; and *unilateral international acts of non-personalized instances*, which often function as true autonomous sources.<sup>13</sup>

The unilateral acts proclaimed by bodies lacking legal personality, in the form of conclusions or declarations proclaimed at international conferences, are intended to harmonize common interests and to standardize policy instruments to address international problems.<sup>14</sup>

It is known that these instances, by not having legal personality, would not be able to practice legal acts in their own name, and so their acts should be imputed to the participating States, hence why many consider these acts as multilateral legal transactions in the simplified convention mode or unilateral legal deals in the collective act modality.

It is through these statements of will that States demonstrate the intention to make political commitments which are not binding, though likely to be used by national courts, since for Virally<sup>15</sup> a State can only refuse to comply if there is a justification of fact and law.

For many authors, although these new sources of international law remove their validity from customs or international treaties (Quadri), they function as instruments of integration

---

<sup>13</sup> For JF Rezek. *International law public*, p. 132: "This omission could be debited from the circumstance that the roll was originally drafted in 1920, when the era of international organizations was just beginning, and copied - with no greater spirit of refinement or updating - in 1945."

<sup>14</sup> MAZZUOLI, Valério de Oliveira. *Course of Public International Law*. 8.ed. São Paulo: Journal of the Courts, 2014. p.203.

<sup>15</sup> MELLO, Celso de Albuquerque. *Public international law course*, p.302: It may be recalled that some internal court decisions (US, Japan, Italy) have invoked UN resolutions. For Bedjaoui, the resolution is "close to a transitional right, a kind of pre-law that puts an end to the old law and precedes the new right."

(Chaumont) rather than as the source itself. Others consider them simply acts of execution (Delbez).<sup>16</sup>

### 3. THE UNIVERSAL DECLARATION OF ANIMAL RIGHTS AND UNESCO

Whether or not the UDAR was proclaimed by UNESCO has been shrouded in a number of contradictions and obscurities, with conflicting information among authors.

In Brazil, one of the first references to UDAR was Edna Cardoso Dias, who in her seminal work, *The legal guardianship of animals*,<sup>17</sup> states that the Declaration was created by UNESCO at a meeting held in Brussels, Belgium, on January 27<sup>th</sup> 1978,<sup>18</sup> and that Brazil would have been a signatory to this document.<sup>19</sup>

The content found by a simple search on the Internet makes one realize that this document is not even mentioned on the UNESCO *site*,<sup>20</sup> which in itself could already indicate a misunderstanding.

In June 5<sup>th</sup> 2016, we performed a query to the Ministry of Foreign Affairs, through its information portal (<https://esic.cgu.gov.br>), inquiring about: (a) the nature of UDAR; (b) the schedule of the participation of the Brazilian

---

<sup>16</sup> MELLO, Celso de Albuquerque. *Course on Public International Law*, p.290: "It does not matter whether we are sources of the second or third degree. The really important question in this matter is whether or not they are legal norms by which states should guide their conduct, and in that sense the answer is yes. In this way, unilateral acts are sources of ID."

<sup>17</sup> DIAS, Edna Cardozo. *The legal protection of animals*. Belo Horizonte: Commandments, 2000.

<sup>18</sup> CFMV, 2017.

<sup>19</sup> NETVET. *Universal Declaration of the Rights of Animals*. Available at: <http://netvet.com.br/post/Declaracao-Universal-dos-Dimensitos-dos-Animais,176> Accessed on: 25 Jan. 2018.

<sup>20</sup> MURAL ANIMAL. *Animal rights and declaration that does not exist*. 2014. Available at: <http://muralanimal.blogspot.com.br/2014/09/direitos-dos-animais-e-declaracao-que.html> Accessed on: 25 Jan. 2018.

State (with specific dates, place and content) in the activities pertinent to the formalization of this Declaration; and (c) the existence of historical records/archives (minutes of meetings, official documents, etc.) of Brazil's participation in the process of preparing this Declaration.

In response to the inquiry, the Ministry of Foreign Affairs provided the following information:

[...] We inform you that there is no record in the archives of the International Acts Division (DAI/MRE) of the Declaration under consideration, which is not characterized as a formal international act. Thus, it is not possible to speak of Party States, accession, ratification, promulgation or validity. Considering the content of the questions asked, and bearing in mind that the declaration, as found on the internet, was "adopted" at a UNESCO meeting in Brussels on 27 January 1978 or "proclaimed" at the UNESCO building in Paris in October 15, 1978, is not, therefore, a formal international act (hence there is no internalization). It would be necessary to search the archives of Itamaraty to see if there are any records or archives of Brazil's participation in the process of preparing the Declaration on the screen, since it was signed in 1978. [...].<sup>21</sup>

As we have seen, the Ministry of Foreign Affairs has reported that there is no record of UDAR in the DAI/MRE files, which evokes that DOUBT is not an act unilateral organization of an intergovernmental organization.

Moreover, as verified by Cardozo herself that the uncertainty of the document is so significant - even at government level, since the Ministry itself had to turn to the internet to search the requested information.<sup>22</sup>

On June 16<sup>th</sup>, 2016, a similar consultation to the United

---

<sup>21</sup> MINISTRY OF FOREIGN AFFAIRS. *Response to the request for information*. Response obtained by the information portal (<https://esic.cgu.gov.br>), 23 jun. 2016, p. 1.

<sup>22</sup> It is not intended here to question the competence of the Ministry of Foreign Affairs in the management of the information requested, even because the lack of registration of the UDAR in its archives is indicative of its informality, which therefore runs away from its attributions. The Ministry itself, moreover, states that the document is not characterized as a formal international act.

Nations Information Center in Brazil (UNIC Rio) was sent by email, receiving the following information:

UNESCO informs that it is not of its own making the Declaration; UNESCO affirms this, of course, claiming it to be correct, but we can also confirm this information.

[...] The UN is unaware of a document allegedly called the 'Universal Declaration of Animal Rights', which is not authored by this Organization. There is no mention of such a document ('Universal Declaration on Animal Rights') either in the General Assembly of the United Nations or in any other organ of the UN System.

[...] The aforementioned Declaration, however, does not belong to the UN, and therefore I apologize for not being able to answer about its origin.<sup>23</sup>

The UNESCO Archives and Records Management Unit, in response to the official consultation held by biologist Frank Alarcón on September 23, 2014, informs:

In fact, UNESCO did not approve the Universal Declaration of Animal Rights. This declaration was adopted in London by the International League of Animal Rights (now: Foundation Droit Animal, Ethique et Sciences) in September 1978, and proclaimed in Paris on October 15<sup>th</sup>, 1978 by the above league at a meeting which was held in a UNESCO building. [...]

We have three records in connection with the official relations between the World Federation (WFPA) and UNESCO. Records always come from UNESCO's NGO relations unit. [...]. However, UNESCO does not maintain official relations with this organization. There is no record of correspondence between the League (author of the Declaration) and UNESCO [...].<sup>24</sup>

---

<sup>23</sup> UN. *Re: Clarification on the formalization of the Universal Declaration of Animal Rights*. Answer obtained by e-mail (fernando.brito@ifba.edu.br) 16 jun. 2016, p. 1.

<sup>24</sup> Cf. MURAL ANIMAL, 2014. Original wording: "*In fact, UNESCO has not endorsed the Universal Declaration of Animal Rights. This declaration was adopted in London by the International League for Animal Rights (today: Foundation Droit Animal, ethics et sciences), in September 1978, and proclaimed in Paris on 15 October 1978 by the above league at a meeting that was held in the UNESCO building. [...] We have three records in connection with the official relations between the World Federation (WFPA) and UNESCO. The records always come from the UNESCO unit for relations with NGOs. You will find attached an example of the letters exchanged.*

According to this information, provided by said Unit Archives and Records Management, UDAR would not be a UNESCO authored document, but authored by the old International League of Animal Rights (ILAR), so we cannot talk about signatory countries.

UNESCO states that in 1973, LIDA collaborated with the drafting of the Convention on International Trade in Animals in danger of extinction (CITES)<sup>25</sup> and that on at least two opportunities it considered the possibility of formalizing the UDAR<sup>26</sup>, which, unfortunately, did not occur.

When reading the information provided, one can conclude that, in fact, UDAR is not an act of an intergovernmental organization, but rather a simple STATEMENT of principles proclaimed in a CONFERENCE on animal rights organized in the year 1978 by the NGO International League of Animal Rights (ILAR), now called Animal Law Foundation, Ethics and Science.

If it cannot be said that the UDAR, under the terms of Public International Law, establishes general principles of international law, it was to be expected that it would be ignored by the state bodies; after all, it is an unofficial document, produced in an international conference organized by an NGO, without any binding force vis-à-vis States and national and international courts.<sup>27</sup>

Regardless of, it not only serves as justification for the formulation of various public actions, but also the creation of bodies and standard legal entities to the guardianship of animals.

---

*However, UNESCO does not maintain official relations with this organization. There is no record of correspondence between the League (author of the Declaration) and UNESCO, but you will also find attached the reference to their meeting in the calendar of conferences and meetings for 1978".*

<sup>25</sup> GORDILHO, 2011.

<sup>26</sup> MURAL ANIMAL, 2014.

<sup>27</sup> Moreover, even if the UDAR were a Declaration itself, created by UNESCO, it would be no more than a political declaration, devoid of imperatives.

#### 4. THE INFLUENCE OF THE UNIVERSAL DECLARATION OF ANIMAL RIGHTS IN BRAZILIAN LAW

Indeed, UDAR was one of the main elements of inspiration for the constitutional norm that prohibits any activity that subjects animals to cruelty (article 225, §1, VII).<sup>28</sup>

During the work of the 1987 Constituent Assembly, Federal Deputy Fábio Feldman appointed a representative of each State to defend the articles of the chapter on the environment that were being debated by the Constituent Assembly.

On that occasion, it was up to teacher Edna Dias Cardoso, then president of the League for the Prevention of Cruelty against Animals (LPCA), to defend Article 225, §1º, VII, in a hollow event at the Auditorium Nereu Ramos, in Brasilia, on June 5<sup>th</sup>, 1987, before the Constitutional Rapporteur, Senator Bernardo Cabral.<sup>29</sup>

It is relevant to point out that there is an express reference to UDAR in the Diaries of the National Constituent Assembly of 1987-1988, in the record of a speech by Congressman Fabio Feldmann, who criticizes the practice of rodeo-like events in the State of Santa Catarina, *verbis*:

[...] . On the other hand, in the case of the Constituent Assembly, the "*Farra do Boi*" has proved the need to create a constitutional device that protects animals from practices that subject them to unwanted and unnecessary sacrifices. In this regard, it is necessary to recall the Universal Declaration of Animal Rights, which is the subject of an international treaty to which Brazil is a signatory, which states in its article 2 that "each

---

<sup>28</sup> BRAZIL. *Constitution of the Federative Republic of Brazil, of October 5, 1988*. Available at: [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm) Accessed on: 15 Aug. 2017.

<sup>29</sup> By message from WhatsApp, professor Edna Cardoso Dias reported that: "The information circulated and I do not know if he used my writings because they all said the same thing. That UNESCO had endorsed UDAR and that Brazil was a signatory. I even corresponded with NGOs from other countries that informed me (...) All my material came from correspondence with NGOs from Europe and the USA, who gave me books, magazines..." Message received on May 8, 2018.

animal has the right to be respected" and "the right to exterminate or exploit other animals in violation of that right cannot be attributed." With regard to "*Farra do Boi*", I hereby inform that I have applied to the Office of the Attorney General of the Republic for judicial measures to ensure the non-fulfillment of such crimes, based on the law of diffuse interests and Decree 24.645 of July 10<sup>th</sup>, 1934 - although old, still in force - whose article prescribes that "all the animals of the Country are protected by the State".<sup>30</sup>

It should be noted that UDAR is mentioned by the constituent deputy as an international treaty to which Brazil is a signatory, so that the "declaration" was not only known to the Members of the National Constituent Assembly of 1987-1988, but that the Constituents considered it as a binding rule of Public International Law.

Beyond reference expressed in the UDAR within the Diaries of the National Constituent Assembly of 1987-1988, as a typical norm of International Public Law, we find reference to it in Resolution No. 7.499, dated January 23<sup>rd</sup>, 2013, of the Civil Police of Minas Gerais, which created the Specialized Crime Investigation Office (DEI CCF).

In fact, in its initial considerations, the Resolution seeks to justify the creation of the new Delegacy in the norms established by UDAR:

Considering that the Universal Declaration of Animal Rights, proclaimed by the United Nations Organization for Education, Science and Culture (UNESCO) on January 27<sup>th</sup> of 1978, of which Brazil is a signatory, provides that all animals are equal before life and have the right to existence, respect, healing and protection of man;

Whereas, under the same Declaration, no animal should be subjected to ill treatment or cruel acts and, if its death is necessary, it must be instantaneous without pain and anguish [...].<sup>31</sup>

The same happened with Decree No. 12.567, which

---

<sup>30</sup> BRASIL, 1987, p. 351-352.

<sup>31</sup> CIVIL POLICE OF THE STATE OF MINAS GERAIS. *Resolution Law No. 16,431 of September 22, 2016*, p. 1. Available at: <https://www.jusbrasil.com.br/diarios/54319571/doemg-executivo-24-01-2013-pg-41> Accessed on: 25 Jan.2018.

created the Executive Secretariat of the City of Niterói / RJ, the Special Coordination of Animal Rights:

THE PREFECT OF THE MUNICIPALITY OF NITERÓI, in the use of the attributions that are conferred by law;

CONSIDERING the Universal Declaration of Animal Rights, proclaimed by UNESCO at a meeting held in Brussels, Belgium, on 27<sup>th</sup> of January 1978; [...].<sup>32</sup>

There are similar situations, also, in Brazilian jurisprudence, namely: (a) the Civil Appeal No. 12.301 MS (0012031-94.2008.4.03.6000), judged on September 12<sup>th</sup> of 2012 by the Fourth Panel of the Federal Regional Court of the 3rd Region;<sup>33</sup> and (b) Infringements in Civil Appeal No. 21.481 RS (2004.71.00.021481-2), judged on March 13<sup>th</sup> of 2008 by the Second Section of the Federal Regional Court of the 4th Region.<sup>34</sup>

In the first case, when assessing the legality of Inter-ministerial Ordinance No. 1.426 MAPA, the court decision quoted the UDAR on two occasions:

6. Ordinance no. 1.426 is also illegal because it faces the protection of the environment, especially Law no. 9.605/98, which defines, among environmental crimes, those that are committed against fauna, as well as the Universal Declaration of the Rights of Animals, proclaimed at a UNESCO Assembly in Brussels on January 27<sup>th</sup>, 1978, which regulates at an international level, and was approved by our legal system.

---

<sup>32</sup>NITERÓI. *Decree No. 12567, of February 21, 2017*, p. 1. Available at: <[http://pgm.niteroi.rj.gov.br/legislacao\\_pmn/2017/DECRE-TOS/Decn%2012567%20Cria,%20na%20Secretaria%20Executiva,%20a%20Coordenadoria%20Especial%20Direito%20dos%20](http://pgm.niteroi.rj.gov.br/legislacao_pmn/2017/DECRE-TOS/Decn%2012567%20Cria,%20na%20Secretaria%20Executiva,%20a%20Coordenadoria%20Especial%20Direito%20dos%20). Accessed on: 25 Jan. 2018.

<sup>33</sup>BRAZIL. Regional Federal Court of the 3rd Region. Civil Appeal nº 12,301 MS (0012031-94.2008.4.03.6000) - Mato Grosso do Sul. Rapporteur: Judge Convoked David Diniz. *Jurisprudence Search*, Judgment, September 13. 2012. Available at: <http://www.stf.jus.br/portal/jurisprudencia/pesquisarJurisprudencia.asp> Accessed on: 25 Jan. 2018.

<sup>34</sup>BRAZIL. Federal Regional Court of the 4th Region (2nd Section). Infringements in Civil Appeal nº 21.481 RS (2004.71.00.021481-2) - Rio Grande do Sul. Rapporteur: Carlos Eduardo Thompson Flores Lenz. *Jurisprudence Search*, Judgment, March 13. 2008. Available: <https://trf-4.justice.org/jurisprudencia/1274536/embargos-infringentes-na-apelacao-civel-eiac-21481> Accessed on: 25 Jan. 2018.

7. The protection of animals in relation to practices that may lead to their extinction or that subjects them to cruelty is a consequence of the right of the human person to the ecologically balanced environment provided for in item VII of § 1 of article 225 of the constitutional text.

8. The Federal Constitution, the Brussels Declaration and the laws of wildlife protection are directed towards the protection of both life and ill treatment. The prohibition of drugs used for humans or those not registered to alleviate or avoid the disease in question, provided they are prescribed by law, represent a serious violation and disrespect to the mentioned statutes.<sup>35</sup>

In the second case, when assessing the prohibition of amateur hunting in the State of Rio Grande do Sul, the judicial decision also quoted UDAR:

With reason the sentence to prohibit, in the center of art. 225 of the Constitution, as well as in the constitutional exegesis of Law no. 5.197/67, amateur hunting, once it has no relevant social purpose that legitimates it and also, before the suspicion of environmental pollution resulting from its practice (irregular emission of lead in the biosphere), reported throughout the present case and well explained by MPF. In addition, its prohibition of cruelty to animals - art. 225, Paragraph 1, VII of the Constitution - and its prevalence when weighted against the fundamental right to leisure, is supported, in this specific case, by art. 11 of the Universal Declaration of Animal Rights, proclaimed in 1978 by the Assembly of UNESCO, which states that the act that leads to the death of an animal without necessity is a biocide, that is, a crime against life.<sup>36</sup>

Thus, despite the UDAR be a simple rule of *soft law*, it was a reference to the Constitution of 1988 and continues to serve as the foundation for the creation of various law projects and a series of decisions in the Brazilian courts.

## 5. THE UNIVERSAL DECLARATION OF ANIMAL RIGHTS AS A RULE OF *SOFT LAW*

---

<sup>35</sup>BRASIL, 2012, p. 1-3.

<sup>36</sup>BRASIL, 2008, p. 1.

Art. 38, item paragraphs 1 and 2 of the Statute of the International Court of Justice (CIJ) provides that international conventions or treaties, international customs and general principles of law of civilized nations are the direct sources of Public International Law (PIL) while jurisprudence, doctrine and equity are sources or instrumentalities for the integration of international legal norms.<sup>37</sup>

Nevertheless, this role is not exhaustive, because as it was mentioned before, international conferences have adopted *soft laws* as sources of PIL, either as recommendations or declarations of principles, as well as joint communiqués, minutes, codes of conduct or gentlemen's agreements, causing a strong impact on international environmental law.

Such standard *soft law*, the fruit of a compromise between those who want definitive regulation and those who do not want it,<sup>38</sup> they have the dual function of setting goals for future political actions in international relations and of recommending States that they conform to these principles and rules in the provisions of their law.<sup>39</sup>

Directive recommendations are acts that intergovernmental organizations themselves send to Member States so that they reserve the right to assess the situation and decide whether or not to implement their resolutions, such as the recommendations of international organizations such as UNESCO, World Health Organization (WHO), International Labor Organization (ILO).

The directive recommendations, which constitute the majority of acts by which intergovernmental organizations refer

---

<sup>37</sup> UN. *Statute of the International Court of Justice*. June 26, 1945, p. 12. Available at: <http://www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-permanentes/cdhm/comite-brasileiro-de-rutas-humanos-e-politica-externa/EstCorIntJust.html> Accessed on: 25 Jan. 2018.

<sup>38</sup> MELLO, Celso de Albuquerque. *Course on public international law*, p.45.

<sup>39</sup> SOARES, Guido Fernandes Silva. *International Environmental Law*, p. 92.

States to spontaneously accept certain obligations, are often written in general and abstract terms, so that they must be detailed in each specific case by the internal agencies of these organizations.

The action programs are directed at the organizations that develop them, establishing activities that should be undertaken over a given period of time, such as the Action Plan for the Human Environment adopted by the Stockholm Conference of 1972, composed of 109 recommendations, some for governments and others for international organizations.

Another example is Agenda 21, composed of forty chapters grouped into four sections, which set out a list of priorities such as sustainable development, combating poverty, protection of human health, water and waste management and pollution, implementation of which will be monitored by the Commission for Sustainable Development under the UN Economic and Social Council (Ecosoc), with possible funding from the Global Environment Facility (GEF).

Statements of principles, unlike directives, do not contemplate precise actions to be followed, and merely outline and often exert considerable influence on the development of new legal rules and decisions both internationally and domestically.

They can be adopted and proclaimed on behalf of international society by organizations or at international conferences, recognizing the emergence of new values and seeking their consecration, initially by society, and then by law.<sup>40</sup>

Let us look at the example of the Universal Declaration of Human Rights adopted by the UN General Assembly in the form of a resolution, which has been respected and observed by States as a true source of international law, even though countries such as China and others do not always respect their principles.

---

<sup>40</sup> KISS, Alexandre; SHELTON, Dinah. *Droit International de L'environnement*. p.112.

On the other hand, many rulings handed down by the national courts refer to the general principles of law as a source of law, given that in Arts. 1 (3) and 55 of the Charter of the Nations, States are committed to ensuring universal and effective respect for human rights, so that the Universal Declaration of Human Rights has at least the negative effect of delegitimizing all states that systematically violate their precepts.<sup>41</sup>

In fact, it seems to us that, in principle, declarations cannot be considered as independent sources – as it was pointed out earlier -, they can delimit the scope of possibility for new laws, greatly influencing in the creation of new rules and conventions, in addition to connecting their developers to the member states, oftentimes functioning as qualified material or direct source.<sup>42</sup>

The principles and rules of *soft law* are declaratory documents from international forums that are not mandatory and do not bind States to the express compliance of their provisions, so that their non-compliance or violation does not lead to submission to international jurisdictional bodies.<sup>43</sup>

*Soft law* norms do not depend on positivation in international constitutions, laws or treaties, because they deal with demands of respect for human dignity, exercised against the powers, official or not.<sup>44</sup>

It is important to note that even the declarations adopted by the UN General Assembly would create general principles of international law, since according to the Charter of Nations they are binding only to the organization itself.

For a number of jurisdictions, these statements end up integrating customary law and/or general principles of international law, assuming binding force, and introducing, at least, the negative effect of delegitimizing decisions of states that violate

---

<sup>41</sup> PIOVESAN, Flavia. *Human rights and international constitutional law*. P. 152.

<sup>42</sup> MONCADA, Antonio Cabral de. *Course on Public International Law*, p.352-353.

<sup>43</sup> MENEZES, Wagner. *Soft law as the source of international law*, p. 70.

<sup>44</sup> COMPARATO, Fábio Konder. *The historical assertion of human rights*. 2. ed. São Paulo: Saraiva, 2001. p. 227.

their principles consistently.<sup>45</sup>

These documents are endowed with indicative character, and end up influencing in the creation of future international conventions, and even the issuance of constitutional or ordinary rules.<sup>46</sup>

Anyway, the UDAR has become an important tool to "clarify points", "set new parameters," "discover new ways not searched yet," "provide just solutions" to animals, contributing, moreover, to the "identifying and clarifying of existing rules" and serving as "interpretive method and fouling of regulation of gaps",<sup>47</sup> characteristics of what the specialized literature commonly calls "doctrine".

## 6. CONCLUSION

In short, since UDAR is not an international treaty, it does not have signatory countries, which is also imperative, since it is not a rule of international law, capable of linking, in bilateral or multilateral national and/or International Organizations.

Thus, the UDAR is a set of standard *soft law*, provided with indicative character, able to influence the creation of international conventions, constitutional or common standards and decisions courts, although only to delegitimize the guidelines contrary to them.

In Brazil, the UDAR was one of the main elements of inspiration for the constitutional norm that prohibits any activity that subjects animals to cruelty (article 225, §1, VII) and for some animal law precedents.

---

<sup>45</sup> GORDILHO, Heron. *Animal Abolitionism: Habeas Corpus for great apes*. Salvador: EDUFBA, 2017, p.

<sup>46</sup> GORDILHO, Heron José de Santana. *Postmodern environmental law*. Curitiba: Juruá, 2011.

<sup>47</sup> Ibid.



## 7. REFERENCES

- ACCIOLY, H., SILVA, G., & CASELLA, P. B. (2012). *Manual of public international law*. (20th Ed.) São Paulo: Saraiva.
- AMARAL JUNIOR, A. (2008). *Notions of international law*. (3rd Ed.) Brasília: FUNAG/Ministry of Foreign Affairs.
- BELCHIOR, G. P. (2017). *Epistemological foundations of environmental law*. Rio de Janeiro: Lumen Juris.
- BRAZIL. Federal Regional Court of the 4th Region (2nd Section). *Infringements in Civil Appeal nº 21.481/RS (2004.71.00.021481-2) - Rio Grande do Sul*. Rapporteur: Carlos Eduardo Thompson Flores Lenz. *Jurisprudence Search*, Judgment, March 13, 2008. Available in: <https://trf-4.justice.org/jurisprudencia/1274536/embar-gos-infringentes-na-apelacao-civel-eiac-21481> Accessed in: Jan. 25th, 2018.
- BRAZIL. Regional Federal Court of the 3rd Region. *Civil Appeal nº 12.301/MS (0012031-94.2008.4.03.6000) - Mato Grosso do Sul*. Rapporteur: Judge David Diniz. *Jurisprudence Search*, Judgment, September 13, 2012. Available at: <http://www.stf.jus.br/portal/jurisprudencia/pesquisarJurisprudencia.asp> Accessed in: Jan. 25th, 2018.
- BRAZIL. *Constitution of the Federative Republic of Brazil, of October 5th, 1988*. Available at: [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm) Accessed: Jan 25th, 2018.
- BRAZIL. *Diaries of the National Constituent Assembly*. Year in. 38, Thursday, April 2nd, 1987, Brasília-DF, p. 351-352. Available at:

- [http://www.senado.gov.br/publicacoes/anais/constitu-  
inte/N003.pdf](http://www.senado.gov.br/publicacoes/anais/constitu-<br/>inte/N003.pdf) Accessed in: Jan 25th 2018.
- BRITO, F. A. (2010). *Popular environmental action: a critical approach*. (2nd Ed.) São Paulo: Nelpa.
- BRITO, F. A., & BRITO, A. A. et al. (2015). The fundamental subjective right to popular action: Abstractions essential to the understanding of its nature. *Jus Navigant Magazine*, 20 (4533). Teresina. Available at: <https://jus.com.br/artigos/42505> Accessed: Jan 25th, 2018.
- CÁMARA, A. F. (2013). *Lessons in civil procedural law*. (24th Ed). Rio de Janeiro: Lumen Juris.
- CASSAR, V. B. (2018). *Labor law: According to the labor reform and MP 808/2017*. (15th Ed.) Method.
- CFMV. *Universal Declaration of the Rights of Animals*. Available at: [http://portal.cfmv.gov.br/portal/up-  
loads/direitos.pdf](http://portal.cfmv.gov.br/portal/uploads/direitos.pdf) Accessed on: Jan 25<sup>th</sup>, 2018.
- DIAS, E. C. (2017). The defense of animals and the legislative achievements of the animal protection movement in Brazil. *Brazilian Journal of Animal Law*, 2 (2). Salvador: UFBA. Available at: [https://portalseer.ufba.br/in-  
dex.php/RBDA/article/view/10297/7357](https://portalseer.ufba.br/index.php/RBDA/article/view/10297/7357) Accessed on: May 7th, 2018.
- GODINHO, M. (2015). *Course on labor law*. (14th Ed.) São Paulo: LTr.
- GORDILHO, H. J. (2011). *Postmodern environmental law*. Curitiba: Juruá.
- HUSEK, C. R. (2000). *Course on public international law*. (3rd Ed.) São Paulo: LTr.
- MINISTRY OF FOREIGN AFFAIRS. *Response to the request for information*. Response obtained by the information portal (<https://esic.cgu.gov.br>), Jan 25<sup>th</sup>, 2018.
- MOSSIN, H. A. (2005). *Comments on the code of criminal procedure: In the light of doctrine and jurisprudence*.

Barueri: Manole.

MURAL ANIMAL. (2014). *Animal rights and declaration that does not exist*. Available at: <http://muralanimal.blogspot.com.br/2014/09/direitos-dos-animais-e-declaracao-que.html> Accessed on: Jan 25<sup>th</sup>, 2018.

NETVET. *Universal Declaration of Animal Rights*. Available at: <http://netvet.com.br/post/Declaracao-Universal-dos-Dimensitos-dos-Animais,176> Accessed on: Jan 25<sup>th</sup>, 2018.

NITERÓI. *Decree No. 12.567, of February 21, 2017*, (p. 1). Available at: [http://pgm.niteroi.rj.gov.br/legislacao\\_pmn/2017/DECRE-TOS/Decn%2012567%20Cria%20na%20Secretaria%20Executiva,%20a%20Coordenadoria%20Especial%20Direito%20dos%20](http://pgm.niteroi.rj.gov.br/legislacao_pmn/2017/DECRE-TOS/Decn%2012567%20Cria%20na%20Secretaria%20Executiva,%20a%20Coordenadoria%20Especial%20Direito%20dos%20) Accessed in: Jan 25<sup>th</sup>, 2018.

NUNES, R. (2016). *Introduction to the study of law*. (13th Ed.) São Paulo: Saraiva.

UN. *Statute of the International Court of Justice. June 26, 1945*, (p. 12). Available at: <http://www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-permanentes/cdhm/comite-brasileiro-de-rutas-humanos-e-politica-externa/EstCortIntJust.html> Accessed on: Jan 25<sup>th</sup>, 2018.

UN. *Re: Clarification on the formalization of the Universal Declaration of Animal Rights*. Response obtained by e-mail (fernando.brito@ifba.edu.br), Jun 16<sup>th</sup>, 2016.

CIVIL POLICE OF THE STATE OF MINAS GERAIS. *Resolution Law No. 16,431 of September 22, 2016*, (p. 1). Available at: <https://www.jusbrasil.com.br/diarios/54319571/doemg-executivo-24-01-2013-pg-41> Accessed on: Jan 25<sup>th</sup>, 2018.

However, D. (2012). *Public international law*. (4th Ed.) São Paulo: Saraiva.

SILVA, T. T. (2013). *Animal law and legal education: training*

---

*and autonomy of post-humanist knowledge.* Doctorate Thesis in Public Law, Graduate Program in Law, Federal University of Bahia. Available at: <https://repositorio.ufba.br/ri/handle/ri/15284> Accessed on: Jan 25th, 2018.