

## Veterinary Personnel

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### 1 INTRODUCTION

To properly analyse the protection of veterinary personnel under international humanitarian law (IHL), it is first important understand the different roles that animals have played, and continue to play, in armed conflict. Before and up to World War II, horses, oxen and mules were the primary means by which supplies and combatants were brought to areas of combat. Horses and mules were used to accompany infantry divisions, pull artillery batteries and travel together with artillery crews. Cavalry units, consisting of mounted fighting troops, were an essential part of any army, as their mobility, speed and shock value offered significant advantages over infantry divisions. Horse-drawn ambulances were also widely used for the collection and transportation of the sick and wounded. It was said in 1864 that the Union Army had 220,000 horses and mules for 426,000 men – one animal for every two men.<sup>1</sup> In the 1899–1902 Boer War, the high number of human casualties suffered by the British (e.g. 22,000 men) was dwarfed by the vast number of animal casualties (e.g. 326,073 horses, 51,399 mules and 195,000 oxen).<sup>2</sup> In those days when animals played such a vital role in the waging of war, there were tens of thousands of sick and wounded animals that needed care and medical attention.<sup>3</sup> The high death rates of the animals referred to above are testament to the fact that animals often did not receive this care. Indeed, most literature assessing the provision of veterinary services in armed conflict in the late nineteenth and early twentieth century demonstrates that veterinary care was deeply inadequate and that the wastage of animals was appalling and unnecessary. The very few military veterinary hospitals that existed

<sup>1</sup> Gene Armistead, *Horses and Mules in the Civil War: A Complete History with a Roster of More Than 700 War Horses* (Jefferson: McFarland 2013), 10.

<sup>2</sup> Sandra Swart, 'Horses in the South African War, c. 1899–1902', *Society and Animals* 18 (2010), 348–66, at 348 and 349; Frederick Smith, *A Veterinary History of the War in South Africa 1899–1902* (London: H. & W. Brown 1914).

<sup>3</sup> Steven J. Corvi, 'Men of Mercy: The Evolution of the Royal Army Veterinary Corps and the Soldier-Horse Bond During the Great War', *Journal of the Society for Army Historical Research* 76 (1998), 272–84

were poorly organised and had to be supplemented by those run by charitable institutions, such as the UK Blue Cross and the UK Royal Society for the Prevention of Cruelty to Animals (RSPCA).<sup>4</sup> Due to the immense suffering of animals during the Boer War, there were calls from some quarters for the provisions of IHL to be extended to animals employed in warfare and veterinary surgeons.<sup>5</sup> While these legal changes were not made, veterinary care in the British Army at least was radically overhauled to offer more effective treatment of sick and wounded animals in World War I.

Although a number of horses, mules and oxen carried on being employed in much smaller numbers during World War II, they were gradually replaced with motor vehicles as the first half of the twentieth century progressed.<sup>6</sup> As the ratio of animals per human in state militaries radically reduced, the role of veterinary surgeons drastically changed, moving away from the care of horses and mules toward the care of other animals. Today, army veterinary personnel are assigned to varied duties that include providing medical attention to the explosive ordinance detection dogs that are used to inter alia sniff out improvised explosive devices (IEDs) placed by armed groups, such as the Taliban and Islamic State.<sup>7</sup> A military dog's keen sense of smell enables it to work with its handler to detect explosives, track militants and find the wounded among the rubble.<sup>8</sup> Veterinary personnel also take care of other animals that are used in the army's operations. Some countries use dolphins and sea lions in anti-mining operations and other sea mammals, such as beluga whales and seals, to guard entrances to naval bases, identifying intruders in restricted areas and finding lost equipment.<sup>9</sup> State militaries employ a range of personnel responsible for

- <sup>4</sup> Blue Cross, *The Blue Cross at War, 1914–18 and 1939–45* (Oxford: Blue Cross 1990). See also Smith, *Veterinary History* (n. 2) for an account of the difficulties and chaos that reigned due to the deficient organisation of the veterinary service, leading to the death of animals. While some accounts of the battle of Solferino indicate that more veterinary surgeons than doctors were involved on the battlefield, this should not be taken as a sign that the care of animals was good. Martin Gumpert estimates that there were roughly four veterinarians for every 1,000 horses, as opposed to two doctors for every 6,000 wounded (Martin Gumpert, *Dunant: The Story of the Red Cross* (New York: Oxford University Press 1938), 46).
- <sup>5</sup> Henry Salt, *Horses in Warfare* (National Peace Council 1912), available at [www.henrysalt.co.uk/library/article/horses-in-warfare/](http://www.henrysalt.co.uk/library/article/horses-in-warfare/), accessed 22 February 2022.
- <sup>6</sup> Eric Darre and Emmanuel Dumas, 'Vétérinaires et droit international humanitaire: Réflexions sur une controverse' *Military Law and Law of War Review* (2004) 43, 111–36, at 117.
- <sup>7</sup> For an overview of the duties of veterinary personnel in the Swiss, Dutch and French armies, see Joris Wijnker and Judith Gooijer, 'The Military Veterinarian: Its Position and Function in the Royal Netherlands Army', *Nederlands Geneeskundig Tijdschrift* (January 2014).
- <sup>8</sup> Robert Chesshyre, 'Dogs of War: Sniffer Dogs Lead the Way in Afghanistan', *Telegraph* (20 January 2011), available at <https://bit.ly/3nmPrsp> accessed 22 February 2022. Alex Horton, 'The Dog Who Helped Kill Baghdadi Visited the White House. But Conan is Just the Latest War Hero', *The Seattle Times* (26 November 2019), available at <https://bit.ly/3tflA63>, accessed 28 February 2022.
- <sup>9</sup> Marco Roscini, 'Animals and the Law of Armed Conflict' *Israel Yearbook on Human Rights* 35 (2017), 35–67, at 35. See also Jane Lee, 'Military Whales and Dolphins: What Do They Do and Who Uses Them?', *National Geographic* (3 May 2019), available at <https://on.natgeo.com/3Ghwlpw>, accessed 22 February 2022.

the training and care of these animals, including veterinary personnel. Veterinary personnel in state armies around the world also take an active role in the protection of the health of military personnel, taking responsibility for hygiene, epidemiology and disease control, as well as the safety and quality of food and water.<sup>10</sup>

Although it is hard to find specific information on veterinary personnel and armed groups, it has been rightly commented that whenever animals are used in combat, humans are assigned to their care.<sup>11</sup> Certainly, evidence exists that armed groups sometimes use animals in military operations. These groups very often adopt the same tactics or behaviours as states, especially when they are sophisticated or when their existence is attributed to a military coup. As evidence of the latter points, it is notable that Franco's army had a very effective cavalry division, which originated in the Spanish army. His forces also made extensive use of mules, which were essential for supplying troops to Franco's forces in difficult terrain.<sup>12</sup> Their handlers (*acemileros*) were said to be the rural heroes of Nationalist zones. They delivered food, munitions, medicine, weapons and transported the sick, injured and dead. The Tuaregs in Mali used camels for transportation in the first Tuareg rebellion in the 1960s.<sup>13</sup> Today, many armed groups, like states, have swapped animals for motorised vehicles. But, as states, several armed groups continue to use animals for the transportation of persons and goods across difficult terrain.<sup>14</sup> They also employ animals in combat. Some reports mention that contemporary armed groups, such as the Revolutionary Armed Forces of Colombia (FARC), Hamas and the Taliban, have used animals, like dogs, mules and donkeys as 'suicide bombers' – a practice already developed by the Soviet Union in World War II.<sup>15</sup> Several armed groups in

<sup>10</sup> See Wijnker and Gooijer, 'The Military Veterinarian' (n. 7).

<sup>11</sup> Darre and Dumas, 'Vétérinaires et DIH' (n. 6), 113.

<sup>12</sup> Michael Seidman, *The Victorious Counterrevolution: The Nationalist Effort in the Spanish Civil War* (Wisconsin: University of Wisconsin Press 2011).

<sup>13</sup> Kalifa Keita, 'Conflict and Conflict Resolution in the Sahel: The Tuareg Insurgency in Mali' (Carlisle: Strategic Studies Institute, US Army War College 1998), 10 available at [www.files.ethz.ch/isn/47576/Conflict\\_Conflict\\_Resolution.pdf](http://www.files.ethz.ch/isn/47576/Conflict_Conflict_Resolution.pdf), accessed 22 February 2022.

<sup>14</sup> Naharet Newsdesk, 'From Camels to 4x4s: A History of the Tuareg Rebels', *Naharet* (24 March 2012), available at [www.naharnet.com/stories/en/34453](http://www.naharnet.com/stories/en/34453), accessed 22 February 2022. There are many accounts of the FARC using mules. See US Senates, Hearing Before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, One Hundred Second Congress, First Session, 'Arms Trafficking, Mercenaries and Drug Cartels' (27 and 28 February 1991), 22; Marjolein van der Water, 'The FARC Guerilleros' Final Journey', *de Volkskrant* (30 November 2016).

<sup>15</sup> For accounts of the Soviet Union using suicide dogs, see Boris Egorov, 'Why Did the Soviets Use "Suicide" Dogs to Blow Up Nazi Tanks?', *Russia Beyond* (22 August 2018), available at [www.rbth.com/history/329005-soviets-used-suicide-dogs](http://www.rbth.com/history/329005-soviets-used-suicide-dogs), accessed 22 February 2022. For accounts of the FARC using mules, dogs and horses to detonate bombs, see Report Submitted to the Committee on Foreign Affairs, US House of Representatives and Committee on Foreign Relations, US Senate by the Department of State in Accordance with Sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961, as Amended, Volume 2, 2479. For accounts of the Taliban using donkeys to carry and detonate explosive devices, see Michael Evans, 'Donkey "Suicide" Bombing is Latest Tactic against Patrols', *Times* (30 April 2009), available at <https://bit.ly/3rim5wi>, accessed 22 February 2022. Associated Press, 'Bomb Attached to Donkey Kills Policeman in Eastern Afghanistan', *FoxNews* (5 April 2013), available at <https://fxn.ws/3HZSOxg>, accessed 22 February 2022.

the Sahel region of Africa are known for carrying out mounted attacks on horseback or camelback.<sup>16</sup> Hamas is reported to have a canine unit, as part of its *Nohba* tunnel unit belonging to the organisation.<sup>17</sup> In instances where armed groups are using animals in their military operations, it can be assumed that they have individuals who are responsible for these animals' care and health. Some groups almost certainly also engage individuals for the tasks mentioned above relating to food hygiene and disease control.

## 2 SCOPE OF APPLICATION OF THE LAWS POTENTIALLY APPLICABLE TO VETERINARY PERSONNEL

When analysing manner in which IHL applies to veterinary personnel, it is helpful to make a distinction between international armed conflicts (Section 2.1) and non-international armed conflicts (Section 2.2).

### 2.1 *General Rules in International Armed Conflicts*

Although during the drafting of Articles 8 and 9 of the 1929 Geneva Convention (GC) on the protection of the sick and wounded in the field it was proposed that veterinary personnel should benefit from the same protections as medical and health personnel; these suggestions were rejected and have never since been implemented.<sup>18</sup> As a result, under the modern framework of IHL that applies to international armed conflicts, veterinary personnel *generally* do not have a special status akin to medical personnel and veterinary hospitals or clinics are not protected in the same way as medical establishments and units. However, it will be shown below that veterinary personnel may fall within the scope of Article 24 of GC I, which provides special respect and protection to medical personnel, medical administrators and chaplains due to their functions.

The International Committee of the Red Cross (ICRC) Commentary on GC I (2016) confirms that a veterinarian who, as a member of the armed forces, takes care of animals that are deployed to assist combat activities will be deemed a combatant.<sup>19</sup> This reflects the traditional position that veterinary personnel engaged with the care of animals used in combat are treated like ordinary members of the armed forces

<sup>16</sup> The best-known group carrying out such attacks is the Janjaweed in Darfur. Janjaweed translates as 'devils on horseback'. For the use of camels by Boko Haram, see Reuters, 'Suspected Boko Haram Militants Riding Camels Kill Five in Niger', *YahooNews* (4 September 2016), available at <https://yhoo.it/3nnq2bO>, accessed 22 February 2022.

<sup>17</sup> Mordechai Sones, 'Hamas Canine Unit Revealed, Israeli Expert Sceptical', *Arutz Sheva* 7 (9 February 2017), available at [www.israelnationalnews.com/News/News.aspx/224713](http://www.israelnationalnews.com/News/News.aspx/224713), accessed 22 February 2022.

<sup>18</sup> Procès-Verbaux, Des Séances de la première Commission Révision de la Convention de Genève, Séances I à XXI, Séance III, 123. See Section 3 for a review of these proceedings.

<sup>19</sup> ICRC Commentary GC I (2016), Art. 24.

engaged in hostilities. This means that they are not immune from being targeted and are eligible for prisoner of war status upon capture. Some countries recognise that there can be members of the armed forces who do not have a combat mission, for instance military lawyers, cooks and labourers.<sup>20</sup> According to the IHL definition, these individuals are still held to have combatant status if they are members of the armed forces.<sup>21</sup> Veterinary personnel who are not members of the armed forces, but simply accompany these forces as civilians, are eligible for prisoner of war status if they receive authorisation from the armed forces which they accompany, as attested by an identity card which is granted to them. Any civilian veterinary personnel accompanying the armed forces which do not fulfil these conditions will benefit from the protections of GC IV upon capture.<sup>22</sup>

If veterinary personnel are exclusively assigned to duties that match those of medical personnel, it may be possible for them to fall within the scope of Article 24 of GC I which provides special respect and protection to medical personnel, medical administrators and chaplains. This provision specifies that '[m]edical personnel exclusively involved in the search for, or the collection, transport or treatment of the wounded or sick, or in the prevention of disease, staff exclusively engaged in the administration of medical units and establishments, as well as chaplains attached to the armed forces, shall be respected and protected in all circumstances'. The term 'prevention of disease' was added to the text of Article 24 in 1949, to take account of the fact that hygiene and prophylactic measures for the prevention of disease often forms an important part of the work of medical staff.<sup>23</sup> The term 'exclusively' is understood to indicate that an individual's assignment to such duties must be 'permanent', meaning that individuals who have different duties or a temporary assignment to the tasks enumerated in Article 24 will not fall within this provision.<sup>24</sup> The idea that temporary medical personnel engaged with the prevention of disease are also protected while they are exclusively assigned to medical tasks was introduced later by Article 8 of AP I.<sup>25</sup>

The insertion of the phrase 'prevention of disease' into Article 24 of GC I and its later enumeration in Article 8 of AP I is relevant to understanding when and how some veterinary personnel may be protected as 'medical personnel'. Historically and today, veterinary personnel have been responsible for protecting members of the armed forces from disease. They are very often responsible for carrying out food inspections and water checks, prevention of zoonoses (i.e. diseases that pass from

<sup>20</sup> See also Art. 3 of the 1907 Hague Convention (IV).

<sup>21</sup> Knut Ipsen 'Combatants and Non-combatants', in Dieter Fleck (ed.), *The Handbook of International Humanitarian Law* (3rd ed., Oxford: Oxford University Press 2013), 80–115, at 85–7 and 96–7.

<sup>22</sup> An example of volunteer civilian veterinary personnel accompanying the armed forces is the Blue Cross.

<sup>23</sup> Pictet Commentary GC I (2016), 219; ICRC Commentary GC I (2016), para. 1958.

<sup>24</sup> Pictet Commentary GC I (2016), 219.

<sup>25</sup> Art. 8 of AP I.

animals to humans), and even public health initiatives.<sup>26</sup> The ICRC Commentary on GC I (2016) states that, when veterinary personnel are ‘exclusively’ assigned to activities related to the prevention of disease vis-à-vis human beings, they will fall within the scope of Article 24.<sup>27</sup> The ICRC Commentary on GC I (2016) notes that these days there are ‘more and more’ veterinarians engaged exclusively in this protected activity.<sup>28</sup> However, it also observes that these activities remain exceptional and the more traditional activities of veterinarians – like the care of animal health care – ‘fall in principle’ outside the scope of Article 24, even if veterinary personnel are formally held to be members of the armed forces’ medical service.<sup>29</sup> It notes that ‘[a] veterinarian who, as a member of the armed forces, takes care of animals that deployed to assist combat activities would, for example, be deemed a combatant’.<sup>30</sup> The ICRC Commentary on GC I (2016) does not say anything about veterinarians who are exclusively assigned to duties relating to taking care of animals that *are not deployed* to assist combat activities, such as a veterinary surgeon that is solely responsible for the treatment of dogs used to sniff out the wounded or dead in the rubble of buildings. There seems room to argue that these personnel could also fall under Article 24, on the basis that they are medical personnel exclusively involved in the search for, or the collection, transport or treatment of the wounded or sick.

Veterinary hospitals and units that are devoted to the care of animals used in combat are also not given special protection under IHL, akin to the protection that is given to medical units. However, recognising that there is often some mixing between the work and duties of medical and veterinary personnel, Article 22(4) of GC I specifies that, when the personnel and equipment of the veterinary service are found in the unit of medical unit without forming an integral part thereof, that unit will not be deprived of its protection under IHL.

## 2.2 *General Rules in Non-international Armed Conflicts*

It can be presumed that, just as in international armed conflicts, veterinary personnel in non-international armed conflicts will benefit from the protection given to medical personnel where they are exclusively assigned to the prevention of human diseases within their ranks. It is noteworthy that the content of Article 24 of GC I has been held to have customary international law status and apply in both international and non-international armed conflicts.<sup>31</sup>

<sup>26</sup> See Wijnker and Gooijer, ‘The Military Veterinarian’ (n. 7). See also Vicky Fogelman et al., ‘The Role of Veterinary Public Health and Preventive Medicine during Mobilization and Deployment’ in Patrick Kelley (ed.), *Military Preventive Medicine: Mobilization and Deployment, Vol. I* (1st ed., Office of the Surgeon General, US Army 2003), 669–81

<sup>27</sup> ICRC Commentary GC I (2016), para. 1959.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.* See also Darre and Dumas, ‘Vétérinaires et DIH’ (n. 6) for examples.

<sup>30</sup> ICRC Commentary GC I (2016), para. 1959.

<sup>31</sup> ICRC Customary Law Database, Rule 25.

The status of individuals who are not exclusively assigned to these duties raises additional difficulties as it requires a consideration of whether the duties of a vet relating to animal care are such to cause these individuals to lose their protection under IHL. According to the ICRC, individuals associated with an armed group may lose their protection in one of two ways.<sup>32</sup> In instances where they are integrated into an armed group and hold a continuous functional role within the organisation that involves the preparation, execution or command of acts or operations amounting to direct participation in hostilities, they will lose their protection so long as they hold that function within the group.<sup>33</sup> Persons who are not integrated within such a group can lose their protection temporarily as a result of carrying out certain activities that are associated with the armed group's combat activities.<sup>34</sup> In these instances, these individuals will only lose their civilian protection for the duration of those activities. Although the exact content of such legal tests is contested, they both require an evaluation of the extent to which activities contribute to a group's military action.

### 3 CONTENTS AND LIMITS OF THE LAWS POTENTIALLY APPLICABLE TO VETERINARY PERSONNEL

It follows from the above analysis that in both international and non-international armed conflicts, veterinary personnel will be protected under IHL when they are exclusively assigned to the prevention of disease within their ranks. Veterinary personnel falling within the scope of Article 24 of GC I and its customary equivalent in non-international armed conflict are entitled to be *respected* by parties to an armed conflict and must not be the subject of attack or ill-treatment.<sup>35</sup> They are also allowed to be *protected* by parties to an armed conflict, meaning that these parties must take steps to ensure that they can carry out their work without interference.<sup>36</sup> If veterinary personnel exclusively responsible for medical duties fall into enemy hands, they will not become prisoners of war and may not be detained as such. They shall only be retained insofar as the state of health and number of the prisoners of war require. If they are retained, they will receive the benefits and protections of the GC III and be given the facilities they need to provide for the medical care of the prisoners of war.<sup>37</sup>

The protection conferred to veterinary personnel falling under Article 24 of GC I is generally thought to be limited and will cease if they commit an act harmful to the enemy, but only if due warning has been given and remained

<sup>32</sup> ICRC, *Interpretive Guidance on the Notion of Direct Participation in Hostilities Under International Humanitarian Law* (Geneva: ICRC 2009).

<sup>33</sup> *Ibid.*, 34 and 72.

<sup>34</sup> *Ibid.*, 34–5 and 65–8.

<sup>35</sup> See ICRC Commentary GC I (2016), paras. 1987–90.

<sup>36</sup> *Ibid.*, paras. 1991–2.

<sup>37</sup> See Art. 28, 30 and 31 of GC I; Art. 4(c) and 33 of GC III.

unheeded.<sup>38</sup> In general, taking a part in hostilities, in violation of the principle of strict neutrality and outside the humanitarian function of medical personnel, is considered an act harmful to the enemy.<sup>39</sup> This would include taking part directly in the hostilities and it *may* also encompass activities that do not amount to direct involvement in hostilities.<sup>40</sup> Veterinary personnel falling within the scope of Article 24 are required to wear a water resistant armlet affixed to their left arm bearing the distinctive emblem of the Red Cross, issued and stamped by the military authority to which they belong.<sup>41</sup> They are also obliged to possess a special identity card bearing the distinctive emblem of the Red Cross.<sup>42</sup>

In order to determine when and whether veterinary personnel not engaged in medical duties will enjoy protection in non-international armed conflict, it is necessary to analyse whether their functions (i.e. the care and treatment of military animals) amount to direct participation in hostilities. In order to make this determination, the ICRC has indicated that attention must be given to a cumulative three-part test. Although this test is not universally accepted, it provides a useful initial framework through which this issue can be studied.<sup>43</sup> Attention needs to be given to whether (i) the act is likely to inflict harm of a certain threshold on the adversary, (ii) the causal link between the act and this harm, and (iii) the nexus between the act and the military operation that the act supposedly supports.<sup>44</sup> In instances where veterinary personnel care for animals that are exclusively used for humanitarian purposes, their action will clearly not inflict any harm on the adversary. In circumstances where veterinary personnel provide medical treatment or care to animals that are used in active combat, the provision of veterinary services may contribute to a party's ability to inflict harm on the enemy by rendering it capable of disarming IEDs to enable a particular military operation or identifying militants.<sup>45</sup> However, the contribution is likely to be too far removed to constitute 'direct participation in hostilities' such as to remove a person's civilian protection. The word 'direct' in Article 51(3) of AP I – on which the ICRC's test is based – was

<sup>38</sup> ICRC Commentary GC I (2016), paras. 1995–2010 and para. 1881.

<sup>39</sup> ICRC Customary Law Database, Rule 25.

<sup>40</sup> For a definition of direct participation in hostilities, see below. For a discussion of the phrase 'act harmful to the enemy outside their humanitarian duties', see ICRC Commentary GC I (2016), paras. 1998–2010. This makes clear that medical personnel are not prohibited from carrying a light weapon for the defence of themselves or for the defence of the sick or wounded.

<sup>41</sup> See Art. 40 of GC I. See also ICRC Commentary GC I (2016), para. 2590 (indicating that an exception may be made when medical personnel are deemed to be better protected when they do not use the emblem).

<sup>42</sup> *Ibid.*

<sup>43</sup> ICRC, *Direct Participation* (n. 32).

<sup>44</sup> *Ibid.*, 46–64.

<sup>45</sup> For the notion that demining can constitute direct participation in hostilities depending on the circumstances, see Lindsey Cameron and Vincent Chetail, *Private Military and Security Companies under Public International Law* (Cambridge: Cambridge University Press 2013), 442.



included to make clear that the provision refers only to ‘acts of war which by their nature or purpose are likely to cause actual harm to the personnel and equipment of the enemy armed forces’.<sup>46</sup> The ICRC explains that the requirement that harm be ‘direct’ excludes war sustaining activities (e.g. design, production or shipment of weapons, construction or repair of roads) or the general war effort (e.g. production of agricultural or non-military goods or political propaganda).<sup>47</sup> While taking care of animals used in active combat has a closer link to hostilities than some of these examples the ICRC provides, it does not fulfil the requirement that the harm in question is brought about in one causal step.<sup>48</sup> A civilian veterinary surgeon providing treatment to sick animals used in combat can be compared to a civilian mechanic maintaining vehicles or equipment back at base, which although essential, does not directly impact on military actions.<sup>49</sup> As a result, the provision of veterinary services to combat animals will likely be excluded from the definition of ‘direct participation in hostilities’. This means that, under the ICRC guidance, veterinary personnel providing exclusive medical care to animals used by an armed group in military operations will not lose their protection under IHL in non-international armed conflict, either by virtue of being a member of this group or by virtue of directly participating in hostilities. If individuals associated with an armed group play a mixed role, for example by not only providing care to animals but also accompanying animals on military operations as ‘handlers’, they are likely to lose their protection under IHL at least for the duration of the military activity. Physically guiding or providing direct instructions to animals to find explosives or militants in the context of a specific military operation is likely to amount to direct participation in hostilities.

When reflecting on the contents and limits of the rules protecting veterinary personnel in IHL, one is struck by the conceptual awkwardness in the notion that veterinary personnel generally have combatant status in international armed conflict. It is not self-evident why veterinary personnel do not enjoy the same protected status as medical personnel in all circumstances and not just when they are involved in the prevention of diseases that threaten humans. Indeed, the fact that the duties of veterinary personnel are closely associated with the duties of medical personnel is recognised in Article 22(4) of GC I, which anticipates that there may be significant mixing between veterinary and medical personnel and mixing of materials. It is not clear why the legal framework forces us to compare veterinary personnel to the mechanic, rather than the surgeon. It is testament to the anthropocentric nature of IHL that it protects individuals involved in the care and medical treatment of

<sup>46</sup> Art. 51(3) of AP I; AP I Commentary, para. 1944.

<sup>47</sup> ICRC, *Direct Participation* (n. 32), 51

<sup>48</sup> *Ibid.*, 53

<sup>49</sup> Michael, N. Schmitt, ‘Humanitarian Law and Direct Participation in Hostilities by Private Contractors and Civilian Employees’, *Chicago Journal of International Law* 5(2) (2005), 511–46, at 544–5.

humans even if those humans are combatants, but does not provide safeguards to individuals involved in the care and medical treatment of animals when used in combat.<sup>50</sup>

This difference of treatment between veterinary personnel and medical personnel is certainly rooted in history. Indeed, before World War I, veterinary personnel sometimes took part in combat alongside the cavalry regiments.<sup>51</sup> It is also known that there was a staggeringly great loss of animal lives in armed conflicts pre-dating the twentieth century and in its early years during the Boer War. The appallingly large number of animal deaths indicate a widespread (but not universal) attitude that animals were disposable, like other military equipment. Indeed, if animals are treated as inanimate 'objects', it makes more sense that the people that take care for them are accorded less protection than those who care for humans. When considering this puzzle, it is interesting to look more closely at the drafting papers documenting the discussion whether veterinary personnel should benefit from the same protections as medical and health personnel contained in Articles 8 and 9 of the 1929 Geneva Convention on the protection of the sick and wounded in the field. The Secretary General of the Conference, Paul De Gouttes, indicated that he thought it more appropriate that veterinary personnel be given their own protection under Article 9, so that they would be given the same protection as those helping the sick and wounded and administering health establishments.<sup>52</sup> The Romanian delegation put forward a similar proposal. These suggestions were not received favourably by other states.<sup>53</sup> The reasoning of these states was based on three points. First, it was asserted that the humanitarian role of the veterinary service on the battlefield had not been demonstrated.<sup>54</sup> Second, it was argued that, if special protection was granted to new categories of individuals, it would have to be entrusted to other people as well.<sup>55</sup> Third, it was maintained that it would be hard to give members of the veterinary service the white armband with the red cross.<sup>56</sup>

Later in the conference, the Romanian delegate took the opportunity to explain how he felt the humanitarianism of the veterinary service had indeed been demonstrated. He argued that everyone had heard of the important role played by famous French veterinary surgeons, such as Nocard, Chaveau and Vallée.<sup>57</sup> He then

<sup>50</sup> For the anthropocentric nature of IHL, see Michael Schmitt, 'Green War: An Assessment of the Environmental Law of Armed Conflict', *Yale Law Journal* 22 (1997), 1–110, at 6.

<sup>51</sup> Darre and Dumas, 'Vétérinaires et DIH' (n. 11), 115–16.

<sup>52</sup> Procès-Verbaux (n. 18), 123.

<sup>53</sup> Ibid. The states expressing verbal opposition to this proposal (which was rejected by a majority vote) were France, the UK, and the United States.

<sup>54</sup> Ibid., 124. (View expressed by France.)

<sup>55</sup> Ibid.

<sup>56</sup> Ibid. (View expressed by the United States.)

<sup>57</sup> Procès-Verbaux, Des Séances de la première Commission Révision de la Convention de Genève, Séances I à XXI, Séance IV, 125–6. Edmond Nocard (1850–1903) was a French veterinarian and microbiologist who served briefly in the military. Auguste Chaveau (1827–1917) was a French professor and veterinarian who worked in microbiology, virology, biochemistry, muscle thermodynamics and

emphasised the important role that the veterinary service played in the care of the sick, the development of vaccines, as well as the preparation and production of food from fatally injured horses. Pointing this out, he indicated that he did not see how veterinary personnel should be protected less well than health personnel.<sup>58</sup> While at first glance it might seem that the Romanian delegate was going out on a limb to propose something quite radical, in fact these examples belie any notion that he was asserting a less anthropocentric approach to IHL. It is striking that to demonstrate the ‘humanitarian’ nature of veterinarians, the Romanian delegate pointed out how these professionals have assisted humans – and he did not mention the assistance that they have rendered to animals. A similar philosophy is demonstrated by the provisions of GC I which assert that, when veterinarians who are exclusively working to better *human* health (e.g. in hygiene, water or food supplies), they can be protected as medical personnel, but when they are working to improve animal health, they are not protected.<sup>59</sup>

These observations lead to a reflection on the desirability of IHL paying more attention to the care of animals. It might be said that it is inappropriate or unrealistic to critique IHL’s anthropocentric character on the basis that one of its key purposes is to protect humanity. But equally, it might be argued that there is a short-sightedness to such a position. Perhaps now there is an imperative to argue that it is wise and appropriate to find space for (non-human) animals within the concept of humanity? The development of such a conceptual framework could draw inspiration from efforts to treat the seabed, ocean-floor and environment as the ‘common heritage of mankind’ – finding respect for animal life as an endeavour to be supported by all humanity.<sup>60</sup> Notably such a rethinking would not require a radical reconfiguration of the anthropocentric nature of IHL, as it is increasingly understood that the survival of humankind is dependent on the survival of other species. This is true, not only on a grand scale, in the sense of warnings of an impending ‘mass extinction’ if we do not take better care of our planet, but also on a local scale, where the care of animals is often fundamentally important for the survival of local communities. It is for this reason that military veterinarians and humanitarian charities often provide veterinary advice and assistance to local communities alongside more traditional assistance such as food and medical support. They recognise that a community’s ability to survive is often dependent on – or connected to – the survival and health of their livestock or animals for food or the transportation of supplies or firewood.<sup>61</sup>

cardiology. Despite attempts, the author has not been able to ascertain the identity of the veterinarian ‘Vallée’ who was also referred to.

<sup>58</sup> *Ibid.*, 126.

<sup>59</sup> Art. 24 of GC I.

<sup>60</sup> See Art. 136 of the UNCLOS.

<sup>61</sup> ‘Dealing With the Aftermath: The Role of the Vet Following Conflict or Disaster’, *The Veterinary Record* (14 May 2005), available at <https://doi.org/10.1136/vr.156.20.625>, accessed 22 February 2022. It

Yet by proceeding to address this puzzle by evaluating whether the term ‘humanity’ is broad enough to encompass the animal kingdom with references to ‘human-kind’, one is arguably missing the other meaning attached to the word which refers to the ‘quality of being humane, kind, benevolent’. This alternate meaning also holds potential to see the protection of animals as integrated within the principle of humanity. One is reminded of the poem written at the beginning of the twentieth century that is cited in a Blue Cross publication on animals in World War I:

I'm only a cavalry charger,  
 And I'm dying as fast as I can  
 (For my body is riddled with bullets –  
 They've potted both me and my man);  
 And, though I've no words to express it,  
 I'm trying this message to tell  
 To kind folks who work for the Red Cross  
 – Oh, please help the Blue One as well!<sup>62</sup>

Indeed, it is notable that much writing on animals in warfare emphasises the close bond between animals and combatants.<sup>63</sup> Writers criticising the poor care of horses during the Boer War lamented this behaviour as ‘wanting’ in ‘humanity’.<sup>64</sup> Henry Salt, writing in 1912, argued that: ‘[n]o branch of the humanitarian movement can be carried to a successful conclusion with [sic] does not have regard to the suffering of all sentient beings – human and sub-human alike’.<sup>65</sup> If ‘humanity’ were interpreted more broadly, it opens up a more solid basis to argue that, by protecting animals that are *hors de combat*, veterinary personnel are engaged in humane work that falls into the spirit of IHL and thus deserve protection. Conferring protection to such animals is arguably justified since animal activities are much less harmful than those of human beings, and animals usually entirely depend on human beings to conduct warfare.

This alternate interpretation of the term ‘humanity’ highlights a related point that there is conceptual space for the protection of military animals to be given greater attention within IHL under the principle of ‘honour’ which is often referred to as another important bedrock of the legal framework.<sup>66</sup> It is interesting to note in this

notes that, in a refugee camp in Darfur, the provision of food for donkeys only belatedly became a priority after 10,000 donkeys died due to the priority that had been put on helping people. Not enough attention had been given to the fact that people relied on the donkeys for transportation and gathering firewood.

<sup>62</sup> Blue Cross, *The Blue Cross at War* (n. 4), 14.

<sup>63</sup> For a reflection on these sources, see Swart, ‘Horses in the South African War’ (n. 2), 359–60. This is not always the case of course. Frederick Smith also laments the ill-treatment of horses by their riders (*Veterinary History* (n. 2), 236–7).

<sup>64</sup> Smith, ‘Veterinary History’ (n. 2), viii.

<sup>65</sup> Salt, *Horses in Warfare* (n. 5).

<sup>66</sup> For a discussion of the relevance of honour to modern-day compliance with IHL, see ICRC, *Roots of Restraint in War* (Geneva: ICRC 2020), 32–3 and 65.

respect that at the time when horses were used on the battlefield, their treatment was seen as a ‘hallmark of civility’.<sup>67</sup> Still today, we see instances in which the care and welfare of animals has been secured through unexpected collaborations between fighting parties. An example is the rescue of the vulture in Syria; an operation that required collaboration between the Islamic State, the Free Syrian Army, Al-Nusra and Israel.<sup>68</sup>

#### 4 LEGAL CONSEQUENCES OF VIOLATIONS OF THE LAWS POTENTIALLY APPLICABLE TO VETERINARY PERSONNEL

According to analysis above, the protection that is due to veterinary personnel will depend on (i) the nature of their functions and (ii) the classification of an armed conflict.

Notably, directing attacks against personnel using the distinctive emblem, in accordance with IHL, is a war crime in both international and non-international armed conflicts.<sup>69</sup> This means that attacking veterinary personnel is a war crime in these contexts, when these personnel are exclusively engaged in activities related to the prevention of human disease and possibly also the care of animals used in humanitarian operations. Due to their status as ‘protected persons’, any acts listed in Article 50 of GC I committed against such medical personnel in the context of an international armed conflict will constitute a grave breach.

In non-international armed conflicts, it will be necessary to look carefully at an individual’s function at the time of the attack in order to determine whether the attack constitutes a war crime under Article 8(2)(c) or Article 8(2)(e)(i) of the ICC Statute. If the individuals were engaged in providing medical treatment to sick animals (no matter what their use) or the prevention of disease of humans, they will be protected. This will not be the case if these individuals were actively involved in guiding or providing direct instructions to combat animals, in the context of specific military operations.

#### 5 CONCLUDING RECOMMENDATIONS

This chapter has highlighted the conceptual awkwardness in the idea that veterinary personnel in international armed conflicts have combatant status. It has argued that there are good reasons of law and logic to contend that veterinary personnel should have the same status as medical personnel even when they are taking care of animals that are used in combat. On the basis that there has been very little discussion of the protection of veterinary personnel under IHL in academic literature before,

<sup>67</sup> Swart, ‘Horses in the South African War’ (n. 2), 361.

<sup>68</sup> Olaf Koens, *Paarden vliegen businessclass: Verhalen over mens en dier in het Midden-Oosten* (Amsterdam: Nijgh & Van Ditmar 2019), 38.

<sup>69</sup> Art. 8(2)(b)(xxiv) and 8(2)(e)(ii) of ICC Statute.

a sensible next step might be for the issue to be discussed in more detail at a conference convened by military veterinary personnel, for military veterinary personnel. Here attention could be given to veterinary personnel's own views about whether such a protected status is necessary and whether the current legal framework is satisfactory.<sup>70</sup> Attention could be given inter alia to the three points raised to deny their protected status during the drafting of the 1929 Geneva Convention, namely: (i) the humanitarian role of the veterinary service on the battlefield; (ii) the argument that if special protections are granted to new categories of individuals they will have to be granted to other people as well; and (iii) the argument that it is undesirable to give members of the veterinary service the white armband with the red cross.

The chapter has also shed light on a more general propensity of the IHL framework to define 'humanity' narrowly to refer almost solely to human beings. It has argued that this anthropocentric approach is a potentially missed opportunity that does not sufficiently take into account the fact that the fate of the human race is intricately bound up with the fate of the other animal and plant species with which it shares the planet. Taking this fact seriously, the principle of 'humanity' is broad enough to be interpreted in a manner to pay attention to other animal species. There is also room for more consideration to be given to animal welfare by interpreting the principle of humanity to include notions of kind and humane treatment. Connectedly, concern for animal welfare can potentially be brought to bear on the framework of IHL through the principle of honour, which calls upon the values of individual combatants.

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<sup>70</sup> Noting the 1929 rejection of the proposal to put veterinary personnel on the same footing as the medical service, Jean Pictet stated that this 'question appears to have lost some of its importance owing to the fact that modern armies are mechanized' (Pictet Commentary on GC I, 205). This chapter has shown that it remains a matter of relevance.

