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## Animals in Wartime

*A Legal Research Agenda**Anne Peters and Jérôme de Hemptinne*

## 1 CONTEXT AND PURPOSES OF THE RESEARCH

Wildlife populations remain the unknown victims of armed conflicts throughout the world.<sup>1</sup> Although they rarely disappear completely, these populations usually decline, often significantly, during warfare.<sup>2</sup> Over the last fifty years, a number of species have been vanishing at a particularly rapid rate in this context, with disastrous repercussions on the food chain and the ecological balance of fragile ecosystems and protected areas such as national parks.<sup>3</sup> This is not surprising since 80 per cent of armed conflicts occurring during this period have taken place in countries such as Afghanistan, Burundi, the Central African Republic, Colombia, the Democratic Republic of the Congo, Iraq, Kenya, Mozambique, Nepal, Rwanda, Uganda or Vietnam, all of which contain areas of high global species diversity,<sup>4</sup> where the maintenance of wildlife habitats is precarious. A few figures drawn by the International Committee of the Red Cross (ICRC) from the situation in Mozambique illustrate this tendency. During the fifteen-year civil war in this country, '[t]he Gorongosa National Park lost more than 90% of its animals. The African buffalo went down from 14,000 to 100 individuals, and the hippo population from 3,500 to 100. The elephant population declined from 2,000 to 200.'<sup>5</sup> Moreover, belligerents have taken advantage of the chaos raised by war in order to poach protected species and to engage in the trafficking of expensive animal products. While generating billions of dollars each year – which are in part reinvested into warfare and the acquisition of weapons – such poaching and trafficking activities allow armed groups to grow and reinforce their authority over local populations and

<sup>1</sup> See ICRC, 'Natural Environment: Neglected Victim of Armed Conflict' (5 June 2019), available at <https://bit.ly/3HDUCWk>, accessed 22 February 2022.

<sup>2</sup> See, for example, Joshua H. Daskin and Robert M. Pringle, 'Warfare and Wildlife Declines in Africa's Protected Areas', *Nature* 553 (2018), 328–32. These authors emphasise that 'war can also relax pressure on wildlife when people avoid combat zones or are tactically disarmed, or when extractive industries decline' (ibid., at 328).

<sup>3</sup> Thor Hanson et al., 'Warfare in Biodiversity Hotspots', *Conservation Biology* 23 (2009), 578–87, at 578.

<sup>4</sup> Ibid.

<sup>5</sup> ICRC, 'Natural Environment' (n. 1).

disputed territories.<sup>6</sup> Sometimes government forces are themselves responsible for poaching and trafficking, complicating the issue further.<sup>7</sup> All this fuels a cycle of violence and ultimately threatens peace and security in the concerned areas.<sup>8</sup>

Livestock and companion animals, which are highly dependent on human care, are also direct victims of hostilities. They are regularly confined and left to starve or let loose without the ability to feed themselves.<sup>9</sup> Often they are pre-emptively eliminated by their owners or wantonly killed by the enemy ‘in order to deprive populations presumed to be loyal to the opposing party of their livelihood’.<sup>10</sup> For instance, during the Iraqi occupation of Kuwait in the early 1990s, more than 80 per cent of Kuwaiti livestock (cattle, sheep, and goats) died.<sup>11</sup> Zoo animals are also particularly vulnerable; they are slaughtered, looted, bombed, or starved on a massive scale.<sup>12</sup>

On a different front, certain armed forces have trained, and continue to train, some animals – principally marine mammals such as bottlenose dolphins and California sea lions – to perform military tasks like ship and harbour protection or mine detection and clearance.<sup>13</sup> They also use animals as tools in military research and experiments to develop sophisticated weapons, to improve surgical techniques employed for the treatment of wounded soldiers, or to test resistance to physical assaults and adverse warfare conditions.<sup>14</sup> Millions of horses, mules, donkeys, camels, dogs, elephants, oxen, and birds serve in various other ways – either as means of medical transport, in search and rescue operations, or as communication and logistics tools – thereby becoming particularly vulnerable targets.<sup>15</sup> Companion animals and mascots are also valued for their contribution in lifting the morale of the troops, and in so doing become exposed to the dangers of war.

<sup>6</sup> See James McDonald, ‘How War Affects Wildlife’, *JSTOR Daily* (23 January 2018), available at <https://daily.jstor.org/how-war-affects-wildlife/>, accessed 22 February 2022.

<sup>7</sup> *Ibid.*

<sup>8</sup> Anne Peters, ‘Elephant Poaching and Ivory Trafficking as a Threat to the Peace’, *American Journal of International Law Unbound* 108 (2014), 162–5.

<sup>9</sup> Anne Peters, ‘Animals in International Law’, *Collected Courses of The Hague Academy of International Law: Recueil des Cours* Vol. 410 (Leiden: Brill 2020), 95–544, at 339.

<sup>10</sup> *Ibid.*

<sup>11</sup> John Loretz, ‘The Animal Victims of the Gulf War’, *Physicians for Social Responsibility Quarterly* 1 (1991), 221–5, at 224.

<sup>12</sup> Peters, ‘Animals’ (n. 9), 339, with references.

<sup>13</sup> Terrill Ceiridwen, ‘Romancing the Bomb: Marine Animals in Naval Strategic Defense’, *Organization & Environment* 14 (2001), 105–13. See also John M. Kistler, *Animals in the Military: From Hannibal’s Elephants to the Dolphins of the US Navy* (Santa Barbara: ABC-CLIO 2011), 311–26.

<sup>14</sup> Ian Murnaghan, ‘Animal Tests in Military Defence’, *About Animal Testing* (14 November 2017), available at [www.aboutanimaltesting.co.uk/animal-tests-military-defence.html](http://www.aboutanimaltesting.co.uk/animal-tests-military-defence.html), accessed 22 February 2022. See Bílková, Chapter 17, ‘Military Experimentation’, in this volume.

<sup>15</sup> See generally Jilly Cooper, *Animals in War* (London: Corgi 2000); Rainer Pöppinghege (ed.), *Tiere im Krieg: Von der Antike bis zur Gegenwart* (Leiden: Brill 2009); Eric Baratay, *Bêtes de tranchées: Des vécus oubliés* (Paris: CNRS éditions 2013); Ryan Hediger (ed.), *Animals and War: Studies of Europe and North America* (Leiden: Brill 2013). See de Hemptinne, Chapter 11, ‘Medical Transport, Search and Rescue’, in this volume.

In view of the foregoing, shielding animals and the ecosystems in which they live from the direct and indirect effects of warfare should be a matter of great concern. However, international humanitarian law (IHL), being deeply anthropocentric, largely ignores this preoccupation. Such silence raises significant questions that can no longer be left unanswered. For instance, does IHL's focus on humans mean that animals are not legally protected in armed conflicts? Or should they be treated as objects<sup>16</sup> and thus governed by the principles of distinction,<sup>17</sup> proportionality,<sup>18</sup> and precaution<sup>19</sup> that commanders and soldiers alike must respect when launching on-the-ground attacks against military objectives? To which animals should these principles apply? Do they apply differently to living creatures rather than inanimate objects? Could animals be treated like those specially protected objects that already receive additional protection by IHL norms, such as means of medical transport and those used in search and rescue operations,<sup>20</sup> or as objects that are indispensable for the survival of civilian populations?<sup>21</sup> Or could animals even be regarded as a part of civilian populations? And, if so, how do these legal regimes reinforce their protection? When used for military purposes, could animals be treated as combatants and legitimately targeted by adversaries? If yes, when and under what conditions and principles? How could the prohibition on unnecessary suffering or the Martens clause play out? In the case of unjustified attacks against protected species, what sanctions could be imposed? Are these sanctions enough? Should the poaching and trafficking of endangered species during armed conflicts be qualified as war crimes or as crimes against humanity? In the last scenario, would the ICC have jurisdiction over these crimes? And how could the cooperation of states prosecuting and trying the authors of such crimes be improved?

More fundamentally, the protection of animals must be examined in light of the fact that the dividing line between humans and animals has been significantly eroded on biological and ethical grounds over the last decades. The next logical question is thus how to determine whether both humans and animals could be protected in a similar manner against superfluous injury or unnecessary suffering.<sup>22</sup> Consequently, should domestic laws that prohibit and punish cruelty to animals influence their treatment under IHL? Would conferring some rights and/or legal personality to animals – as opposed to merely imposing duties upon belligerents – strengthen their protection in the context of IHL?<sup>23</sup> In that case, which animals

<sup>16</sup> See, for example, Art. 52(3) of AP I.

<sup>17</sup> See, for example, Art. 52 of AP I.

<sup>18</sup> See, for example, Art. 51(5)(b) and 57(2)(a)(iii) of AP I.

<sup>19</sup> Art. 57 of AP I.

<sup>20</sup> See, for example, Art. 8(h) of AP I; Art. 11 of AP II.

<sup>21</sup> Art. 54 of AP I; Art. 14 of AP II.

<sup>22</sup> Art. 35(2) of AP I. For an extensive analysis of the application of such a prohibition to animals, see Marco Roscini, 'Animals and the Law of Armed Conflict', *Israel Yearbook on Human Rights* 47 (2017), 35–67, at 51–6.

<sup>23</sup> Anne Peters, 'Rights of Human and Nonhuman Animals: Complementing the Universal Declaration of Human Rights', *American Journal of International Law Unbound* 111 (2018), 255–360, at 356.

deserve legal personality and/or rights and what types of rights should be granted to them?

Furthermore, animals seem to be collectively protected by the general legal framework on the preservation of the environment against ‘widespread, long-term and severe’ damages caused by war.<sup>24</sup> But how should this regime concretely apply to animals? Do these meagre rules offer sufficient protection, especially in non-international armed conflicts? How do the several existing international treaties that protect the environment, such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Convention on the Conservation of Migratory Species of Wild Animals,<sup>25</sup> and the Convention on Biological Diversity<sup>26</sup> apply during hostilities? Are they compatible with the core legal norms governing armed conflicts, namely the GCs and their APs? Do these conventions apply extraterritorially, for instance, when states conduct military operations abroad? Do they impose environmental legal obligations upon non-state armed groups? In so doing, under what conditions? Should certain areas of high biodiversity be spared from the conduct of hostilities as part of the cultural heritage of humanity and thus be protected by the World Heritage Convention?

Despite (or because of) the fundamental, operational, and theoretical challenges that the protection of animals raises, such questions have never been thoroughly studied.<sup>27</sup> Most of the work in this area consists of general publications related to the protection of the environment in armed conflict<sup>28</sup> – which sometimes indirectly address certain issues related to the protection of animals – and specific studies on the safeguarding of endangered species. The current state of research in this field is in sharp contrast to the increasing level of legal analysis and domestic litigation actively being conducted concerning the status and protection of animals in peacetime. As a result, a clear lacuna exists in the academic literature.

To fill this gap, our book aims at achieving the following four goals. First, it seeks to create an inventory of the international legal framework available for the

<sup>24</sup> Art. 35(3) and 55(1) of AP I.

<sup>25</sup> Convention on the Conservation of Migratory Species of 23 June 1979, 1651 UNTS 333.

<sup>26</sup> Convention on Biological Diversity of 5 June 1992, 1760 UNTS 79.

<sup>27</sup> Among the rare publications in this domain, see, for example, Karsten Nowrot, ‘Animals at War: The Status of “Animal Soldiers” under International Humanitarian Law’, *Historical Social Research* 40 (2015), 128–50; Roscini, ‘Animals’ (n. 22), 35–67; Jérôme de Hemptinne, ‘Challenges Regarding the Protection of Animals During Warfare’, in Anne Peters (ed.), *Studies in Global Animal Law* (Heidelberg: Springer 2020), 173–83.

<sup>28</sup> See, for example, Michael Schmitt, ‘Green War: An Assessment of the Environmental Law of Armed Conflict’, *Yale Law Journal* 22 (1997), 1–110; Yoram Dinstein, ‘Protection of the Environment in International Armed Conflict’, *Max Planck Yearbook of United Nations Law* 5 (2001), 523–49; UNEP, *Protecting the Environment during Armed Conflict: An Inventory and Analysis of International Law* (Geneva: UNEP 2009); ICRC, *Strengthening Legal Protection for Victims of Armed Conflict*, 31st International Conference of the Red Cross and Red Crescent (Geneva: ICRC 2011). See also the ICRC Environmental Guidelines.

protection of animals in armed conflict. Second, our research examines to what extent this legal regime is adequate in specific situations (in occupied territories, protected zones, sea warfare and disaster situations) or in specific practices (when animals are used as tools in medical experiments). Third, the book evaluates to what extent the enforcement of the current legal framework adequately protects animals in terms of the repression of illegal conduct, reparation and rehabilitation. A special emphasis is placed on the regime established for wildlife trafficking and on the enforcement powers of the UN Security Council in this regard. Fourth, the research outlines several measures aiming at increasing the protection of animals during warfare and the enforcement available in this situation.

## 2 MAIN CHALLENGES

Delicate cross-cutting challenges need to be briefly addressed at the outset. They revolve around the following issues: the silence of IHL on the protection of animals (Section 2.1), the difficulty in identifying animals that are protected in times of war (Section 2.2), the inaptitude of IHL to adequately protect animals (Section 2.3), and the ambivalent nature of the violence inflicted upon animals in wartime (Section 2.4).

### 2.1 *The Silence of International Humanitarian Law*

Despite the fact that animals are among those affected by armed conflicts, IHL does not clearly and explicitly protect them. As will be discussed in Parts II and III of the book, animals are only indirectly addressed as objects, specially protected objects, weapons of war, means of medical transport and rescue or as part of the environment. A historical reason for IHL's silence on the welfare of animals is that the conventions regulating armed conflicts were adopted at a time when legal entitlements for animals did not attract significant attention. Enacted in response to World War II and during the period of decolonisation, IHL has been essentially geared towards the safeguarding of human beings. The conventions continue to represent an overwhelmingly anthropocentric body of law that has 'a strong utilitarian flavour'.<sup>29</sup> Even the few provisions restricting attacks against the environment were designed with a view to preserving the interests of human beings instead of the environment per se.<sup>30</sup> The Christian roots of IHL might also explain this anthropocentric attitude and the difficulty that this body of law has in conceptualising the protection of the environment and animals independently of human interests.<sup>31</sup> Against this background, three related objections might be voiced against our proposal to improve the legal protection of animals by means of IHL. The first

<sup>29</sup> Schmitt, 'Green War' (n. 28), 6.

<sup>30</sup> Ibid., 69.

<sup>31</sup> See the references in n. 63.

fundamental question is why lawmakers and law-appliers should at all be concerned about the silence of IHL on animals? Why *should* IHL deal with this issue? Animals are killed on a massive scale in peacetime, for human use and consumption under full protection of the law. Would it not be absurd to protect animals in war while upholding the lawfulness of constantly and severely harming animals, for example in factory farming? Second, it is often argued that alleviating the extreme suffering of human beings during hostilities would be impaired should animal protection be put at the forefront. Devoting time, energy and money to protect animals would therefore prevent these resources being used for worthier, human-focused causes.<sup>32</sup> A third, connected criticism is often raised: promoting animal welfare or even rights during armed conflicts would devalue the rights of human beings in these circumstances.<sup>33</sup>

Let us briefly respond to these three objections.<sup>34</sup> First, we wish to point out that the severe shortcomings of the legal regimes governing food and agriculture should not be allowed to stymie a legal evolution in other fields. International humanitarian law can no longer ignore the evolution that the status and protection of animals has undergone in some jurisdictions around the world.<sup>35</sup> In the same way that the rise of human rights and increased awareness of environmental challenges after World War II have influenced and shaped the development of IHL, the increasing concern for animal welfare during the last decades should also progressively impose limits on belligerents' actions. This should apply even more so when it is considered that wars have disastrous effects on wildlife and, in particular, on protected species whose numbers significantly decrease because of hostilities.

Second, and contrary to what is often claimed, safeguarding animals does not necessarily interfere with, or run contrary to, the protection of human beings; the two often run in parallel without impacting negatively on each other. In any case, it will be shown that certain IHL principles – such as the principle of proportionality – are flexible enough to guarantee that human interests prevail over animal interests if one is forced to choose between the two. In other words, when human concerns conflict with those of animals, these principles allow human matters to take precedence.

Third, care for animals in no way inevitably downgrades the rights of humans.<sup>36</sup> On the contrary, promoting animal welfare may increase respect

<sup>32</sup> This argument is recalled in Anne Peters, 'Liberté, Egalité, Animalité: Human-Animal Comparisons in Law', *Transnational Environmental Law* 5 (2016), 25–53, at 35.

<sup>33</sup> Ibid.

<sup>34</sup> This response builds on de Hemptinne, 'Challenges' (n. 27), 175–6.

<sup>35</sup> See Global Animal Law Database, available at [www.globalanimallaw.org/database/national/index.html](http://www.globalanimallaw.org/database/national/index.html), accessed 22 February 2022.

<sup>36</sup> Peters, 'Liberté, Egalité, Animalité' (n. 32), 36.

for all life.<sup>37</sup> Indeed, in practice, leaders of animal protection movements have been typically active in combating other forms of social injustice (such as child abuse and violence against women).<sup>38</sup> An alignment (as opposed to a competition) of concerns is also possible in attempts to denounce injustices that occur in war zones.

### 2.2 *The Identification of Protected Animals*

Which animals should be cared for in times of war? In principle, all living creatures that are not human beings should receive some sort of protection under IHL. However, the level, type and nature of the protection these creatures receive vary widely from one animal to another, depending on a multitude of factors. These factors include the roles animals play during warfare (for example as weapons of war, means of medical transportation and rescue, or as objects of medical experimentation); the circumstances in which they are placed (for example when they are targeted or detained); the areas in which they live (for example in invaded or occupied territories, land or sea, protected or unprotected zones); or the animals' specific nature (for example whether they are endangered or considered vermin). Some safeguards – such as those protecting the environment as a whole – apply generally to the entire wildlife population. In light of this variety of contexts, our introductory chapter will not provide a general legal definition of animal that could apply in each and every situation in war. This issue is left to the individual authors, as such definitions depend on the specific legal question and protective regime examined.

### 2.3 *The Inaptitude of International Humanitarian Law to Protect Animals*

International humanitarian law neither explicitly addresses animals nor is it particularly well equipped to protect their interests. Indeed, the Geneva Conventions (GCs) and their additional protocols (APs) presuppose temporal and spatial boundaries between war and peace that are not easy to draw when the protection of animals is at stake. These legal instruments assume a world in which dividing lines are clear. In contrast, effective safeguards for animals would need to follow a different logic. Wildlife is usually not confined to the territories of the belligerents and its destruction generally affects the ecological balance on a wider scale. Thus, measures to ensure their protection should potentially extend beyond the territorial borders of the parties to the conflict. Furthermore, the negative impact of war on animals does not necessarily stop with the end of active hostilities. However, IHL conventions do not contain reasonable standards for ensuring long-term measures in the interest of animals.

Moreover, most of the provisions regulating the protection of individuals and the conduct of hostilities are aimed at achieving a compromise between two diverging or

<sup>37</sup> Gary Francione, *Introduction to Animal Rights: Your Child or the Dog?* (Philadelphia: Temple University Press 2000), 174.

<sup>38</sup> Peters, 'Liberté, Egalité, Animalité' (n. 32), 12.



even antagonist interests, considerations of military necessity on the one hand and humanitarian preoccupations on the other. This balancing exercise is particularly complex when animals are at stake. Indeed, the status of animals varies widely from one culture to another (also within belligerent factions) and inevitably changes over time. A proper assessment requires the kind of environmental knowledge that even well-equipped state forces often do not possess, given that the damage inflicted on animals tends to manifest itself in the long run and is often the indirect result of the destruction of certain habitats.<sup>39</sup>

Furthermore, IHL's protective regime cannot be easily transposed to animals. For instance, the rules governing the protection of objects in the GCs and APs<sup>40</sup> are mainly designed for inanimate objects. Even if this regime were extended to animals, assimilating them with pure objects is far from ideal in many respects; it does not properly take into account that animals are sentient beings that experience pain and distress, and it does not accommodate the many different functions that animals can serve during warfare and the rights and duties that such functions normally entail. In this context, applying the rules designed for the protection of individual persons remains a valid option. But this regime is also ill-structured for duly safeguarding the interests of non-human living creatures. The various categories of 'protected persons' – combatants *hors de combat* and prisoners of war on the one side and civilians on the other – cannot, as such, be opened up so as to comprise animals. For reasons that will be further explored throughout the book, animals do not easily fit into this rigid system.<sup>41</sup> As pointed out by Marco Roscini, 'if they were considered combatants, animals would have not only the rights, but also the obligations associated with this status'.<sup>42</sup> Clearly animals are not able to respect these obligations autonomously, which, among other things, require the capacity to identify persons who directly participate in hostilities – and are therefore targetable – or to make proportionality calculations.<sup>43</sup> Moreover, the definition of 'civilians' mentioned in Article 50(1) of AP I only refers to 'persons'.<sup>44</sup> This term is normally, though not compellingly, understood to comprise only humans and thereby excludes other living creatures.

Lastly, it should be noted that the special rules on the protection of the environment per Articles 35(3) and 55(1) of AP I – which encompasses wildlife<sup>45</sup> – have no parallel in the written rules governing non-international armed conflicts, be they common Article 3 of the four GCs or AP II. Moreover, this protection is subject to particularly strict requirements; the damage forbidden under IHL must be cumulatively 'widespread, long-term and severe'. Reflecting the reluctance of governments

<sup>39</sup> de Hemptinne, 'Challenges' (n. 27), 179. For an extensive analysis of the concept of proportionality in the context of the protection of the environment, see Schmitt, 'Green War' (n. 28), 55–61.

<sup>40</sup> See, for example, Art. 52(2), 51(5)(b), and 57 of AP I.

<sup>41</sup> See de Hemptinne, Kebebew and Niyo, Chapter 10, 'Combatants and Prisoners of War?', in this volume.

<sup>42</sup> Roscini, 'Animals' (n. 22), 44–5.

<sup>43</sup> Nowrot, 'Animals at War' (n. 27), 140.

<sup>44</sup> Roscini, 'Animals' (n. 22), 45.

<sup>45</sup> *Ibid.*, 61.



to accept tight constraints on their military conduct against rebel groups, the narrow scope of the rules creates a significant gap in protection. Nonetheless, special safeguards offered by IHL to the environment would be essential for a comprehensive protection of animals and the ecosystem in which they live.

#### 2.4 *The Ambivalent Nature of the Violence on Animals*

In peacetime, while acts of violence against human beings are in principle forbidden, the slaughter of animals – in conformity with certain methods and procedures – is widely accepted and practised throughout the world. It might therefore appear paradoxical that in situations of armed conflict, where acts of violence against certain individuals (mainly combatants and civilians who directly participate in the hostilities) are admitted and expected, acts of violence against animals should be strictly constrained.<sup>46</sup> This apparent ‘paradox of violence’ must be evaluated in light of the following factors which all point to similarities (rather than to a contrast) in the legal regimes of peace and of war for animals. Due to the increased human sensibility about animal welfare, acts of cruelty against animals (as opposed to ‘normal’ killing) are now increasingly prohibited and sanctioned in peacetime.<sup>47</sup> In other words, the peacetime regime knows lawful and unlawful violence against animals. The same could be said for wartimes: acts of violence against animals during warfare can be lawfully committed when animals become military targets or when the harm inflicted on them constitutes a proportionate collateral damage. A modified wartime regime on animals would form a parallel dual regime with a distinction between lawful and unlawful killing.

The situations of peace and of war are similar also with regard to the forms of violence against animals. Only superficially, the violence allowed in peacetime is of a different nature than violence authorised during armed conflicts. The former aims at satisfying specific economic needs – for instance, food production, or medical, pharmaceutical, and chemical testing. In contrast, the latter is in principle dictated by military considerations, whereby animals are targeted for military purposes. Nevertheless, this delineation between different types of violence is not that straightforward; the slaughtering of animals for human uses also occurs in wartime, while certain forms of violence, which are usually committed in the chaotic circumstances of war (such as poaching and the trafficking of species) can also take place during peacetime.<sup>48</sup> More fundamentally, as Saskia Stucki has demonstrated, the regulation of both forms of violence (by IHL on the one hand and by the laws promoting animal welfare on the other) share the common objective to ‘humanise’ a violent situation.<sup>49</sup> While the former aims at reducing the

<sup>46</sup> de Hemptinne, ‘Challenges’ (n. 27), 175–6.

<sup>47</sup> See above n. 35.

<sup>48</sup> de Hemptinne, ‘Challenges’ (n. 27), 175–6.

<sup>49</sup> Saskia Stucki, ‘(Certified) Human Violence? Animal Welfare Labels, The Ambivalence of Humanizing the Inhumane, and What International Humanitarian Law Has to Do with It’, in Anne Peters (ed.), *Studies in Global Animal Law* (n. 27), 121–31, at 127.

suffering of humans caused by armed conflicts, the latter is designed to minimise the suffering of animals resulting from economic exploitation; and both bodies of law start from the same premise: putting an end to these types of violence by completely prohibiting them would be unrealistic since they are both part of the human condition.<sup>50</sup> All mentioned resemblances should facilitate extending the scope of IHL also to (non-human) animals. And if we want to avoid that rules seeking to 'humanise' innately inhumane situations become purely cynical, we should do the utmost to design them in a way that facilitates their application and enforcement.

### 3 NORMATIVE BACKGROUND

The legal approaches towards animals fall into three paradigms: animal species conservation regimes (Section 3.1), animal welfare norms (Section 3.2), and animal rights (Section 3.3). Current 'hard' international treaties mainly apply the first paradigm, as they are almost exclusively concerned with the conservation of a small subset of animal species.<sup>51</sup> In contrast, animal welfare – defined as 'the physical and mental state of an animal in relation to the conditions in which it lives and dies'<sup>52</sup> – pertains to the individual animal. Thus far, animal welfare is directly addressed only in 'soft' international law, and only very rarely in an ancillary fashion in conservation regimes.<sup>53</sup> Animal rights are the legal entitlements of animals protecting their fundamental interests against encroachment, as opposed to merely benefitting animals in their quality as objects of protective rules. As a groundwork for the detailed doctrinal work done in the following chapters, the three paradigms will now be briefly introduced in turn.

#### 3.1 *Animal Species Conservation*

The conservation of species seeks 'the safeguarding of ecological processes and genetic diversity besides management of natural resources in order to ensure their maintenance by sustainable utilization'.<sup>54</sup> The point of departure for all wildlife conservation treaties

<sup>50</sup> Compare Theodor Meron, 'The Humanization of Humanitarian Law', *American Journal of International Law* 94 (2000), 239–78, at 240.

<sup>51</sup> 'Conservation' is the most frequent term in the international treaties, used interchangeably with 'preservation' and 'protection'. The main reference work is Michael Bowman, Peter Davies, and Catherine Redgwell, *Lyster's International Wildlife Law* (2nd ed., Cambridge: Cambridge University Press 2010). For more on international conservation law, see Rosalind Reeve, *Policing International Trade in Endangered Species: The CITES Treaty and Compliance* (London: Earthscan 2002); Ed Couzens, *Whales and Elephants in International Conservation Law and Politics: A Comparative Study* (London: Routledge 2014).

<sup>52</sup> Organisation Internationale des Epizooties (OIE) terrestrial code, Sec. 7 'Animal Welfare' (29th ed., 2021), chapter 7.1. 'Introduction to the Recommendations for Animal Welfare', Art. 7.1.1. 'General Considerations'. The meaning and measurement of animal welfare is controversial and depends, inter alia, on the disciplinary approach.

<sup>53</sup> Peters, 'Animals' (n. 9), 503–5.

<sup>54</sup> Pieter van Heijnsbergen, *International Legal Protection of Wild Fauna and Flora* (Amsterdam: IOS Press 1997), 52.