

AMERICAN BAR ASSOCIATION
INTERNATIONAL LAW SECTION
GOVERNMENT AND PUBLIC SECTOR LAWYERS DIVISION
TORT TRIAL AND INSURANCE PRACTICE SECTION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association, urges the U.S. federal government and
2 other national governments, as well as multinational and international organizations
3 around the world, to amend existing laws or enact new enforceable laws, policies and
4 procedures that protect and provide for the health and well-being of all Military Working
5 Dogs, whether deployed in service, retained and trained by armed forms or deployed to
6 armed forces through contracts with governments, to:

- 7
- 8 ○ provide for military transportation back to their home country at
9 decommission or retirement;
 - 10 ○ grant priority of first adoption at retirement to their veteran soldier handlers;
 - 11 ○ ensure the provision of skilled veterinary care while in military service; and
 - 12 ○ designate specific government oversight for compliance and enforcement
13 of provisions for veterinary care, transportation and adoption processes at
14 decommission or retirement.
- 15

REPORT

Introduction

Military Working Dogs (MWDs) are increasingly deployed today by the United States and nations around the world to serve in warfare and international security details. Their keen abilities have proven to be highly effective for military duties and life-saving missions; and the bonds they share with their human soldier partners valiantly serve their regiments during deployment. These life-long ties of loyalty continue into mutually-supporting civilian life when veterans are able to adopt their MWDs in retirement.

So while an issue of international animal welfare, MWD well-being is a concurrent issue of veterans' welfare with the accompanying respect for military personnel and their service, both for human and canine soldiers.

In serving and protecting the well-being of MWDs in law and in policy, legal prescriptions are also providing vital support to the welfare of military personnel and retired veteran soldier partners who have served with their MWDs. In the United States, there are recent legislative and policy developments underway to promote MWDs' and their veterans' welfare, and a few other nations are similarly increasing their awareness on these issues. For effective and sustainable welfare protections, codifications of welfare protocols are necessary. The support of the legal community is vital at this time to advance the promulgation of such codes and to assist in the oversight of protocols.

By the factual nature of MWDs being deployed worldwide, serving in international deployments and involving rules of warfare, international legal principles are necessarily and practically applied to their military service along with national codes. Thus, the International Law Section, as the ABA's leader in the development of policy in the international arena urges the acceptance of this resolution by the ABA.

104B

Background

Dogs have been serving in warfare with their human partners for thousands of years – from protecting early settlements from invasions to participating in modern day elite special forces actions against terrorism.¹ The bond shared by human and dog has evolved and strengthened over centuries of domesticated living together; and one of the strongest human-canine bonds may be that of the human soldier and the Military Working Dog (MWD) who serve side by side protecting one another, their fellow soldiers and civilians on a daily basis in some of the most dangerous conditions of warfare and security efforts around the world.²

MWDs, with their keen senses and tactical prowess, carry out explosives detection, search and rescue, sentry, and other military duties for which their canine attributes cannot be replicated by human or machine.³ MWDs have been saving countless human lives including directly saving their human soldier handlers through their profound devotion, even sacrificing their own lives.⁴

United States Senator Richard Blumenthal (D-CT), a member of the Senate Committee on Armed Services observed “these heroic dogs deserve respect, care, and loyal companionship after their service, preferably from the handlers they protected in combat.”⁵

¹ Marco Roscini, Professor of International Law, University of Westminster School of Law, "Animals and the Law of Armed Conflict," 47 Israel Yearbook on Human Rights 35 (2017), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3037931; Sarah D. Cruse, "Military Working Dogs: Classification Treatment in the U.S. Armed Forces," 21 Animal L. 249 (2014-2015), available at: <https://law.lclark.edu/live/files/23698-21-crusepdf>

² Kyle Stock, "The Dogs of War Are in High Demand," Bloomberg.com, Aug. 28, 2017, available at: <https://www.bloomberg.com/news/features/2017-08-28/military-dogs-are-becoming-an-increasingly-precious-weapon>

³ Haley Cohen Gilliland, "Why Explosives Detectors Still Can't Beat a Dog's Nose," MIT Technology Review, October 24, 2019, available at: <https://www.technologyreview.com/s/614571/explosives-detectors-dogs-nose-sensors/>; also, Linda Crippen, TRADOC, "Military Working Dogs: Guardians of the Night," Army.mil (U.S. Army website), May 23, 2011, available at: https://www.army.mil/article/56965/military_working_dogs_guardians_of_the_night

⁴ Associated Press, "Military Dog Wins British Prize for Valor Under Fire," Bloomberg.com, Nov. 17, 2017, available at: <https://www.bloomberg.com/news/articles/2017-11-17/military-dog-wins-british-prize-for-valor-under-fire>; Aris Folley, "Army Ranger dog named Maiko died in Afghanistan saving US soldiers," TheHill.com, Dec. 5, 2018, available at: <https://thehill.com/blogs/blog-briefing-room/news/419837-army-ranger-dog-named-Maiko-died-in-Afghanistan-saving-us>; Press Release, AmericanHumane.org, "Five U.S. Military Dogs Receive Nation's Top Honors for Valor at American Humane's 2017 Lois Pope K-9 Medal of Courage Awards," Oct. 12, 2017, available at: <https://www.americanhumane.org/press-release/five-u-s-military-dogs-receive-nations-top-honors-for-valor-at-american-humane-2017-lois-pope-k-9-medal-of-courage-awards/>

⁵ Concurrent Resolution, S.Con.Res.58, 115th Congress, 2D Session, Dec. 6, 2018, "Recognizing the honorable service of military working dogs and soldier handlers in the tactical explosive detection dog program of the Army and encouraging the Army and other government agencies, including law enforcement agencies, with former tactical explosive detection dogs to prioritize adoption of the dogs to former tactical explosive detection dog handlers," available at: <https://www.congress.gov/bill/115th-congress/senate-concurrent-resolution/58/text>

In his April 2018 video address to the American Bar Association (“ABA”) International Animal Law Committee panel “Applying the Rule of Law to Protect Military Dogs as Deserving Heroes of War,” Senator Blumenthal called upon the gathered ABA legal community to continue efforts to improve the welfare of MWDs stating that “the U.S. can and should serve as a global model” in this area.⁶

Aimed at precisely this objective, this Resolution details such a global model for the health and well-being⁷ of MWDs.

The Deployment of MWDs – U.S. and International Perspectives

U.S. armed forces, as well as other national militaries around the world, multinational and international forces such as NATO, and United Nations peacekeeping details are increasingly depending upon MWDs where on-the-ground military and para-military presences are required.⁸ Comprehensive training is required to prepare dogs to serve as MWDs, including certifying them for certain duties, and often significant resources are expended by military and international agencies on canine forces.⁹ Considered as ‘force multipliers’¹⁰ by armed forces worldwide, details about the deployment of MWDs can often be part of classified or confidential military strategies; and thus, the information that follows in this report is limited to that which is publicly accessible.

⁶ See, U.S. Senator Richard Blumenthal, Video Address American Bar Association International Animal Law Committee Panel entitled -“Applying the Rule of Law to Protect Military Dogs as Deserving Heroes of War”, (April 19, 2018, NYC Meeting), available at: <https://www.youtube.com/watch?v=BMmsxj2FqQ>

⁷ The standard of “well-being” is proposed here as focusing on the needs of the animal and the individual with whom the animal resides/provides the care. The federal PETS Act of 2006 has a similar concept provided in terms of emergency action plans; whereby, operative language directs “such plans take into account the needs of households with pets and service animals” Public Law 109-308, Section 2 (2). State law developments are codifying the “well-being” of animals in family law and custody proceedings, notably first in Alaska (HB 147, available at: <http://www.legis.state.ak.us/PDF/29/Bills/HB0147Z.PDF>) and then Illinois (Public Act 100-0422, effective Jan. 1, 2018, available at: <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=100-0422&GA=100>). See, Nicole Pallotta, “Illinois Becomes Second State to Require Courts to Consider Well-being of Companion Animals in Custody Disputes,” Animal Legal Defense Fund, Animal Law Update, March 20, 2018, available at: <https://aldf.org/article/illinois-becomes-second-state-require-courts-consider-wellbeing-companion-animals-custody-disputes/>

⁸ News24.com, “Afghan Taliban capture NATO military dog,” Feb. 7, 2014, available at: <https://www.news24.com/World/News/Afghan-Taliban-capture-NATO-military-dog-20140207>; United Nations Peacekeeping website, “K9 Training with UNIFIL and LAF,” peacekeeping.un.org, Sept. 28, 2017, available at: <https://unifil.unmissions.org/k9-training-unifil-and-laf>

⁹ “Soldiers support regional operations as canine ambassadors,” (U.S. Army website), Jan. 7, 2019, available at: https://www.army.mil/article/215783/soldiers_support_regional_operations_as_canine_ambassadors

¹⁰ “Fact Sheet: 341st Training Squadron,” (U.S. Air Force website), Feb. 21, 2016, available at: <https://www.37trw.af.mil/About/Fact-Sheets/Display/Article/670140/341st-training-squadron/>

104B

United States

Published government reports indicate there were about 1,800 MWDs deployed in military service by the U.S. as of a 2016 assessment;¹¹ although the number is likely higher if privately-contracted details as well as special mission dogs, such as those deployed by the Central Intelligence Agency, are also included in an expanded count of all military and para-military working dogs.¹² The U.S. Air Force is the executive agent charged with the responsibility for recruiting and assigning MWDs to all military branches, and the U.S. Army is responsible for their medical care under federal directives.¹³ Most MWDs for Department of Defense assignments worldwide are trained at and deployed from the Military Working Dog Center of the 341st Training Squadron at Lackland Air Force Base in Texas.¹⁴ There is significant investment in the U.S. MWD program each year as expert training is upwards of \$40,000 for each dog.¹⁵

Examples of other MWD Programs Around the World:

- In the **United Kingdom**, the Royal Army Veterinary Corps trains up to 170 dogs every year who go on to serve in the military and police forces for a variety of protection tasks ensuring bases and military sites are secure, and detecting arms and explosives.¹⁶
- In **China**, press reports indicate that over 10,000 military dogs are deployed by China's military through its MWD program which was formally initiated in 1991.¹⁷

¹¹ U.S. Government Accountability Office, Department of Defense: "Medical Conditions and Care for End-of-Service Military Working Dogs," (GAO-17-358), (Washington, DC March 10, 2017), available at: <https://www.gao.gov/products/GAO-17-358>

¹² Central Intelligence Agency, News & Information, "The Recruit(s): K9 and Human Partnerships," Nov. 20, 2017; available at: <https://www.cia.gov/news-information/featured-story-archive/2017-featured-story-archive/the-recruits-k9-and-human-partnerships.html>; Logan Nye, We are the Mighty, "These are the dogs of the US Marine Corps Special Operations Command," Aug. 29, 2016, available at: <https://www.businessinsider.com/us-marine-corps-special-operations-command-dogs-2016-8>; Kyle Rempfer, "Army Rangers look to kit up their specially trained canines with cameras, sensors," Jan. 11, 2018, available at: <https://www.armytimes.com/news/2018/01/11/army-rangers-look-to-kit-up-their-specially-trained-canines-with-cameras-sensors/>

¹³ See supra note 11 at 2, GAO Highlights, "Why GAO Did This Study", available at: <https://www.gao.gov/assets/690/683308.pdf>

¹⁴ See supra note 10.

¹⁵ Kyle Stock, "Military dogs are becoming increasingly precious resources," Stars and Stripes, Aug. 29, 2017, available at: <https://www.stripes.com/news/us/military-dogs-are-becoming-an-increasingly-precious-resource-1.484993>

¹⁶ Tim Cooper and Imogen Holland, "UK vs US: How Are Military Animals Used," July 31, 2018, available at: <https://www.tw.forces.net/news/uk-vs-us-how-are-military-animals-used>

¹⁷ Rebecca Frankel, "Rebecca's War Dog of the Week: They got military dogs in China. Lots.," Foreign Policy, Jan. 13, 2012, available at: <https://foreignpolicy.com/2012/01/13/rebeccas-war-dog-of-the-week-they-got-military-dogs-in-china-lots/>; China Daily, "More than 10,000 dogs serving in Chinese Army," December 23, 2011, available at: http://www.chinadaily.com.cn/china/2011-12/23/content_14319209.htm

- In **Russia**, with a long history of deploying military dogs since the Soviet era, news reports note presently over 3,000 dogs serve in Russia's border patrol and military.¹⁸
- In **France**, the 'chiens du guerre' (dogs of war) have a significant place in military services; and are currently deployed in the country's army, air force and marines with over 250 dogs trained annually.¹⁹
- In **Israel**, the elite MWD program named Oketz (meaning "sting") was formally created in its present form in 1974, and currently serves all units of their army.²⁰ Specialized training for these dogs and their handlers lasts over 17 months.²¹
- In **Australia**, the MWD program was instituted in 1943 to protect its air force fleet; today MWDs are deployed for security and emergency response missions.²²
- In **Germany**, German Shepherds (as well as Belgian Malinois and similar Shepherd breeds) have long been deployed during war time.²³ These breeds are the preferred MWD breeds of many nations due to their keen senses and agility, particularly for bomb detection.²⁴
- In **Mexico**, which operates the largest canine center in Latin America, over 1,800 sniffer dogs have been trained for its army in the past decade.²⁵

¹⁸ Patrick Reeve, ABC News, "Russian military shares puppy video," Jan. 2, 2018, available at: <https://abcnews.go.com/International/russian-military-shares-puppy-video/story?id=52094870>; Associated Press, "Russia's military demonstrates its latest weapon: cuddly puppies," Jan. 2, 2018, available at: <https://www.businessinsider.com/ap-russian-army-demonstrates-latest-weapon-cuddly-puppies-2018-1>

¹⁹ Rebecca Frankel, "War Dogs of the World," Foreign Policy, April 27, 2012, available at: <https://foreignpolicy.com/slideshow/war-dogs-of-the-world/>

²⁰ Anna Ahronheim, "IDF's Oketz Canine Unit Drilling for War," The Jerusalem Post, Dec. 1, 2018, available at: <https://www.jpost.com/Israel-News/IDFs-Oketz-canine-unit-drilling-for-war-573273>

²¹ See supra note 19, Rebecca Frankel, "War Dogs of the World"; Shira Anderson, Duke University School of Law, "Canine Combatants: The Role of Military Working Dogs in the US and Israel" (2018)

²² "Combat support capability – Military working dogs," (Royal Australian Air Force), available at: <https://www.airforce.gov.au/technology/combatsupportcapability/military-working-dogs>; See supra note 19, Rebecca Frankel, "War Dogs of the World"; Gemma Wilson, "The RAAF's fearsome weapon," News Corp Australia Network, March 26, 2015, available at: <https://www.news.com.au/national/the-raafs-fearsome-weapon/news-story/95a2ef292104398a45ea150fa6918ff1>

²³ Michael Ritland and Gary Brozek, "Trident K9 Warriors: My Tale from the Training Ground to the Battlefield with Elite Navy SEAL Canines," St. Martin's Press, book excerpt appearing in Huffington Post, April 25, 2013, available at: https://www.huffpost.com/entry/history-of-war-dogs_n_3155904

²⁴ Denise K. Sypesteyn, "Canines in Combat: Military Working Dogs," San Antonio Magazine, Nov. 2013, available at: <https://www.sanantoniomag.com/SAM/November-2013/Canines-in-Combat-Military-Working-Dogs/>

²⁵ Juan Ramon Pena, "Mexican Army Trains Nearly 1,800 Sniffer Dogs," Latin America Herald Tribune, available at: <http://www.laht.com/article.asp?ArticleId=353752&CategoryId=14091>

104B

- In **India**, MWDs started to be deployed after recent terrorist attacks in that country, and are increasing in numbers along with high recognition of their valiant service.²⁶

Given the rigors of the service required by these dogs, their health and well-being require ongoing expert care since their lives are often shortened by the battle wounds, both physical and mental, including injuries and diseases, sustained during their deployments.²⁷ But while the deployments of MWDs have increased substantially worldwide, particularly today with the war on terrorism, the legal protections for MWDs and their welfare often have not moved at a tandem pace with their expanded military service.

Legal Status of MWDs

- Domestic laws and policies under national military codes and defense appropriations provide for the recruitment, training, handling, and care of MWDs.²⁸
- While there is not yet a specific international treaty covering animal welfare during warfare or otherwise, there are international legal and global norms codes proposed as applicable to the welfare of MWDs by the nature of their military service, accepted rules of warfare and combatant engagement in international conflicts, and deployment of canine forces by numerous nations, multinational and international organizations across borders in the modern era.²⁹

By way of historical context in the United States, the military's use of MWDs shaped their status under law in the modern era. During World War II, there was a large citizens' effort to volunteer their pets for the war and then attempts were made to return the dogs to their families at war's end;³⁰ so the dogs seemingly retained their pet status. By the time of the Vietnam War, a more concentrated program to train and deploy MWDs was carried out by the military directly, and the dogs were thereafter classified as 'military

²⁶ Rama Lakshmi, "Fear of more terror attacks drives demand for sniffer dogs in India," Washington Post, March 29, 2010, available at:

<http://www.washingtonpost.com/wpdyn/content/article/2010/03/28/AR2010032802722.html?noredirect=on>

²⁷ See supra note 11

²⁸ Note that not all policies and processes covering the welfare of MWDs are publicly-available due to their military classifications in a number of countries. See for examples of laws, policies and procedures covering MWDs in the U.S. - Public Law 112-239, Jan. 2, 2013, "National Defense Authorization Act for Fiscal Year 2013, available at <https://www.congress.gov/112/plaws/publ239/PLAW-112publ239.pdf>; Congressional Research Service Report, "FY2016 National Defense Authorization Act: Selected Military Personnel Issues," December 17, 2015, available at: https://digitalcommons.ilr.cornell.edu/key_workplace/1468/; "Air Force Policy Directive 31-118" concerning MWD Program, available at https://static.e-publishing.af.mil/production/1/usafe/publication/afi31-118_usafesup/afi31-118_usafesup.pdf

²⁹ See supra note 1, Professor Marco Roscini, "Animals and the Law of Armed Conflict"; also see K. Nowrot, "Animals at War: The Status of 'Animal Soldiers' under International Humanitarian Law", 40 Hist. Soc. Res. 128 (2015), ^[SEP] and An Inquiry into the Status of a General Principle of International Law on Animal Welfare", 49 *Can. Y.B. Int'l L.* 3, 9 (2011), available at:

<https://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1466&context=facpubs>

³⁰ See supra note 21, Shira Anderson, "Canine Combatants"

equipment.³¹ It was at this time, and seemingly due to their status as military equipment, the lack of proper procedures and the associated costs, that a corresponding effort to bring the MWDs home from war was not carried out once the U.S. withdrew from Vietnam. Tragically, MWDs were either euthanized or left behind.³²

Since that time, a number of progressive steps have been made in U.S. law and policy to implement welfare protections for MWDs.³³ This includes “Robby’s Law” enacted in 2000 in the U.S.³⁴ Named after the case of a former military dog handler who made all efforts to adopt his military dog Robby, this law initiated the requirements for formal adoption processes for retiring MWDs and the ability for their former handlers to adopt them.³⁵ Following this law, subsequent policy changes were made in Department of Defense policies to address welfare concerns for retiring MWDs.³⁶ In 2016, there was a very productive step forward made in the legal status of MWDs, whereby Title 10 of the U.S. Code was amended to codify the change in their military classification status from “military equipment” to “military animals”.³⁷ Most recently, defense appropriations have required that the military provide transportation back to the U.S. for decommissioned MWDs.³⁸ Efforts for the provision of veterinary care for retired MWDs are still ongoing with legislative provisions currently proposed in Congress.³⁹

Today United States military protocols hold MWDs in high regard. In the U.S., MWDs are often given military ranks one station above their handlers to signify their importance to their troops as well as to provide for their welfare; any mistreatment towards them will be

³¹ See supra note 1, Sarah D. Cruse, “Military Working Dogs”

³² Id.

³³ Jonathan Yardley, Opinions, “War Dogs, by Rebecca Frankel,” The Washington Post, Oct. 17, 2014, (review of book “War Dogs: Tales of Canine Heroism, History, and Love,” by Rebecca Frankel, Palgrave MacMillan), available at: https://www.washingtonpost.com/opinions/war-dogs-by-rebecca-frankel/2014/10/17/76594a86-4d54-11e4-8c24-487e92bc997b_story.html?utm_term=.b38067f2e77c;

Spencer Ackerman, “\$19 Billion Later, Pentagon’s Best Bomb-Detector is a Dog,” Wired, Oct. 21, 2010, available at: <https://www.wired.com/2010/10/19-billion-later-pentagon-best-bomb-detector-is-a-dog/>

³⁴ Public Law 106-446; 10 U.S.C. Chapter 153 (“Robby’s Law”), available at: <https://strategicvets.com/wp-content/uploads/2017/09/Robbys-Law-Public-Law-106-446.pdf>

³⁵ Id.

³⁶ Air Force Instruction 31-121, “Military Working Program,” Department of the Air Force, Oct. 17, 2012 (Luke Air Force Base Supplement, February 11, 2014), available at: https://static.e-publishing.af.mil/production/1/lukeafb/publication/afi31-121_lukeafbsup/afi31-121_lukeafbsup.pdf;

Tech. Sgt. Amaani Lyle, Secretary of Air Force Public Affairs, “Officials outline adoption process for military working dogs,” U.S. Air Force, Aug. 28, 2009, available at: <https://www.af.mil/News/Article-Display/Article/119321/officials-outline-adoption-process-for-military-working-dogs/>

³⁷ 10 U.S.C. Sec 2583 - Military animals: transfer and adoption, available at: <https://www.govregs.com/uscode/10/2583>

³⁸ H.R. 5515: “John S. McCain National Defense Authorization Act for Fiscal Year 2019,” Section 352 (Transportation to Continental United States of Retired Military Working Dogs Outside the Continental United States that are Suitable for Adoption in the United States), available at: <https://www.congress.gov/bill/115th-congress/house-bill/5515/texttoc-HCABD45A2A43D48F18584969701842D6C>

³⁹ Ana Redelat, “Courageous K-9 in ISIS Raid Boosts Blumenthal Effort on Military Dogs,” The CT Mirror, October 28, 2019; available at: <https://ctmirror.org/2019/10/28/courageous-k-9-boosts-in-isis-raid-boosts-blumenthal-efforts-on-military-dogs/>

104B

considered an offense against a senior officer.”⁴⁰ Similarly in other nations deploying MWDs, there are more norms-based protocols of respectful treatment of MWDs during their service.

However, the lack of formal legal prescriptions for their welfare and rule of law applications for the legal status of MWDs worldwide impacts the consistent application of their welfare protections – both during their deployment, when in combat, and then at their decommission. The absence of globally-recognized basic legal welfare protections for these canine soldiers particularly impacts the MWDs at the time of their retirement and for their remaining ‘civilian’ lives after their service, in terms of lifetime veterinary care needs, transportation back to their home country, and adoption rights of their handlers. And most often military dogs deployed through contracts with federal government can fall outside of the direct purview of the national armed forces regulation; thus, while serving in the same capacity and with military dogs directly trained and deployed by branches of the armed forces, these contracted MWDs do not always have the same guarantees for their welfare.

Securing the Welfare of MWDs

Over the past two decades with the increasing deployments of MWDs and the nature of their service in combat akin to their human soldiers, there has been accompanying increased public attention to the treatment of MWDs, their veteran handlers’ concerns for their adoption, as well as overall elevated public consciousness of animal welfare and animals’ interests. The United States has undertaken efforts on some of the following recommendations for MWD well-being. We are unable to comment on the specific for the state of the law in other nations as often this information is not publicly available due to its relation to military matters and/or factors precluding disclosure.

- **Transportation for MWDs Back to Home Country**

Unfortunately, the historical record has numerous instances where canine soldiers were not brought home from wars – either euthanized due to lack of policy or funding, or worse, left in deployed countries to fend for themselves.⁴¹ Nonprofit organizations often have undertaken rescue missions to bring war dogs home through fund-raising efforts to cover the thousands of dollars in costs per dog for commercial flights back to their home country.⁴² But increased recent public attention to the service of military dogs and an outcry “to leave no soldier behind” have brought some policy changes, particularly to U.S. protocols, directing military forces to return MWDs back to their home country after

⁴⁰ Michael J. Kranzler, "Don't Let Slip the Dogs of War: An Argument for Reclassifying Military Working Dogs as 'Canine Members of the Armed Forces'," 4 U. Miami Nat'l Security & Armed Conflict L. Review 268 (2014), available at: <https://repository.law.miami.edu/umnsac/vol4/iss1/8>

⁴¹ See supra note 1, Sarah D. Cruse, "Military Working Dogs"

⁴² See supra note 39, Mission K9 Rescue

deployments. Most recently, the 2019 National Defense Authorization Act in the U.S. details that the Department of Defense provide transportation back to the U.S. for decommissioned military dogs.⁴³ Rule of law should be applicable on an international basis in this instance, as the impacts of MWDs not being returned home from deployments in other countries are also international in scope.

- First Priority MWD Adoption to Handlers

MWD retirement adoptions by handlers have mostly been facilitated in some cases in the U.S. and internationally by tradition, not by any formal process. In the U.S., it wasn't until Robby's Law was enacted in 2000 that there was a beginning legal recognition of a handler's interest and priority in adopting his/her retired MWD. With this developing legal precedent for adoptions, there has also been a changing mindset about MWDs -- to see the importance at decommission and adoption for their own welfare, as well as for the mutual benefits of their reunions with their veteran soldier handlers in retirement. However, there are still few procedures in place to ensure the first priority adoptions to veteran handlers are offered and carried out appropriately, and all adoption review procedures are vetted; and to date there are especially few accountability procedures for private contractors with governments to ensure the adoptions of contracted MWDs.

This concern was highlighted most recently in a Department of Defense Inspector General Report that cited the lack of proper procedures for the disposition of retired military dogs under the Tactical Explosive Detection Dog (TEDD) program, a temporary MWD contract for such specialized MWDs deployed with the U.S. Army from 2010-2014.⁴⁴

A 2018 award-winning short film entitled *Finding Satan*,⁴⁵ depicts the story of one TEDD handler's persistent and prolonged search for his retired MWD when the first priority adoption process was not properly followed by a military contractor. Sgt. Ryan Henderson searched for five years for his dog, Satan when he had been retired from duty, only to discover Satan had been sent to an adoption event open to the public without Henderson ever being contacted. With the pro bono assistance of North Carolina attorney Marilyn Forbes, Satan was finally reunited with Sgt. Henderson after the initiation of precedent-setting legal action to enforce his first priority for adoption as his

⁴³ See supra note 38, John S. McCain 2019 National Defense Authorization Act “, see Sec 253 amending Sec 2583 (f) of Title 10 “(3) (A) In the case of a military working dog located outside the continental United States at the time of retirement that is suitable for adoption at that time, the Secretary of the military department concerned shall undertake transportation of the dog to the continental United States (including transportation by contract at United States expense)...”; note that military working dog includes contracted MWDs under Section 2583(h) of Title 10.

⁴⁴ U.S. Department of Defense, Inspector General Report, "The Army's Tactical Explosive Detection Dog Disposition Process from 2011 to 2014," March 1, 2018, Report No. DODIG-2018-081, available at: https://media.defense.gov/2018/Mar/01/2001884674/-1/-1/1/DODIG-2018-081_FINAL_REDACTED.PDF

⁴⁵ "FINDING SATAN (Military Dog short film)," LZM Productions, LLC (2018) available at: <https://www.youtube.com/watch?v=AHlqGPwziW4>; Short Film Winner: Los Angeles Film Awards "Best Documentary" (January 2019), Top Shorts Online Film Festival "Best Documentary" (November 2018), Impact DOCS "Award of Merit" (January 2019)

104B

handler.⁴⁶ This film demonstrates how the welfare of both MWDs and their handlers can be enhanced by ensuring the proper first priority of adoption processes for reuniting human and canine soldiers in retirement through the implementation of necessary legal protocols.

- Provision of Veterinary Care for MWDs

During their military service, veterinary care is provided to MWDs by armed forces personnel; however, at retirement, most often the cost of their vet care becomes the responsibility of the individual who adopts the dog.⁴⁷ The prospect of high medical costs can be a deterrent to adoption.

Retired MWDs have special medical needs that can significantly impact their prospects of adoptability. Unless discharged early due to injury or medical condition, these highly-trained canines are usually retired no earlier than 7 years of age, and often at 10 years of age or older.⁴⁸ Typical medical conditions that result from their courageous military service can include cancer, gastrointestinal disorders, degenerative bone conditions, and severe allergies necessitating special attention including surgery as well as long-term care; and their medical needs are exacerbated by their mature age.⁴⁹ Debilitating behavioral conditions can also manifest as a direct result of their military service, including Canine Post-Traumatic Stress Disorder (“C-PTSD”).⁵⁰

The National Defense Authorization Act for FY 2013 authorized the Secretary of Defense to contract with a private nonprofit entity to establish and maintain a system funded by private donations to provide veterinary care for retired canine soldiers adopted pursuant to statute.⁵¹ Regrettably, the statute does not specify a timeline to accomplish this goal. Moreover, the law clearly states that “no funds may be provided by the federal government for this purpose.”⁵²

A few established non-profit organizations have sought to fill the financial gaps for adopters by offering limited financial assistance for veterinary care to individuals who have adopted war dogs, including some prescription costs and emergency medical care;

⁴⁶ Henderson v. Richardson, Case No. 17 CVS 409, General Court of Justice, Superior Court Division, Richmond County, North Carolina (April 18, 2017)

⁴⁷ See supra note 34, Tech Sgt. Amaani Lyle, "Officials outline adoption process for military working dogs"

⁴⁸ Mission K9 Rescue: "MWDs and CWDs: A Comparison," available at: <http://www.missionk9rescue.org/files/comparison.pdf>

⁴⁹ Katie Burns, American Veterinary Medical Association, JAVMA News, "Inside the Headquarters for Military Dogs," May 11, 2016, available at: <https://www.avma.org/News/JAVMANews/Pages/160601c.aspx>

⁵⁰ Kristi Rosa, "Battling Canine Post-Traumatic Stress Disorder," American Veterinarian, Aug. 16, 2016, available at: <https://www.americanveterinarian.com/news/battling-canine-posttraumatic-stress-disorder>

⁵¹ 10 U.S.C. Sec 994 - Military Working Dogs: Veterinary Care for Retired Military Working Dogs, available at: https://www.govregs.com/uscode/title10_subtitleA_partII_chapter50_section994

⁵² Id.

but these are small amounts as compared with overall annual vet care costs to cover care for deployment injuries and illnesses for each dog.⁵³

In the U.S., additional proposals are currently underway for legislation to cover at least the initial veterinary screening and care at decommission for retiring MWDs through military resources.⁵⁴

As an example of another effort aimed at enhancing veterinary care for MWDs, a recent fairly comprehensive veterinarian-produced U.S. study of MWD deaths during two major deployments concludes veterinary care and other protective measures provided to MWDs could be greatly enhanced by the establishment of a MWD Trauma Registry to consistently record, compile and analyze deployment-related injuries, illnesses/diseases and mortalities.⁵⁵ This uniform recordkeeping could lead to better veterinary care, handler and dog training, development of new treatment methodologies, as well as design of new protective gear and other measures to protect and save MWD and soldier handler lives.⁵⁶

- Government Oversight of MWD Welfare Processes/Procedures

Unfortunately, most of the handlers from the Army's surge deployment under the TEDD program have not had the same success in locating or adopting their "battle buddies" at retirement.⁵⁷ In December 2018, a Senate Resolution was adopted to honor the TEDD military dogs and their handlers, recognizing the lack of proper adoption protocols under the TEDD program contract, while also calling upon efforts to facilitate the adoption of the remaining TEDD dogs by their soldier handlers.⁵⁸

⁵³ U.S. War Dogs Association, Inc., "Rx Program for Retired MWDs," available at: <https://www.uswardogs.org/rx-program-for-retired-mwds/>

⁵⁴ Proposed legislation in FY2020 U.S. National Defense Authorization Act; approved by Senate, pending conference review by both houses during 2020 Appropriations review process (as of December 2019 update); see Press Release from Senator Richard Blumenthal (CT), May 23, 2019, excerpt as follows: "Caring for Military Working Dogs: As a longstanding champion for animal welfare, Blumenthal secured legislative language to ensure access to veterinary screening and care for military working dogs. This care will allow military working dogs to receive immediate, appropriate healthcare to address issues resulting from deployment – enabling military working dogs to better transition to civilian life – while relieving some of the immediate financial burdens of veterinary costs for adopters."

⁵⁵ Laura Miller, Gerardo J Pacheco, Jud C Janak, Rose C Grimm, Nicole A Dierschke, Janice Baker, Jean A Orman, Causes of Death in Military Working Dogs During Operation Iraqi Freedom and Operation Enduring Freedom, 2001–2013, *Military Medicine*, Volume 183, Issue 9-10, September-October 2018, Pages e467–e474, available at: <https://doi.org/10.1093/milmed/usx235>; see also, Laura Goldman, "Military Working Dog Trauma Registry Could Save 4-Legged Heroes' Lives," Care2 (April 16, 2019), available at: <https://www.care2.com/causes/military-working-dog-trauma-registry-could-save-4-legged-heroes-lives.html>

⁵⁶ Id.

⁵⁷ Concurrent Senate Resolution (TEDD)

⁵⁸ Concurrent Senate Resolution (TEDD)

104B

The TEDD program is just one instance that demonstrates that a norms-based or traditions-based process is not sufficient to guarantee their welfare. While the U.S. has taken a leading role by recently changing their status away from equipment, their welfare protections must be guaranteed in law in tandem with their status, accompanied by the proper and appropriate government oversight so that their care as living creatures is ensured.

Conclusion

In recognition of the valiant and vital service of MWDs in the armed forces in the U.S. and in nations worldwide, the ABA urges the U.S. government, other national governments, and multinational and international organizations around the world to amend existing laws or enact new laws and/or enforceable policies and procedures: (1) to provide military transportation back to home country at decommission or retirement; (2) to guarantee first priority adoption to military dog handlers; (3) to ensure that MWDs receive the necessary veterinary care during their deployments, and funded veterinary care upon decommission or retirement throughout their lifetimes, and (4) to designate government oversight of veterinary care, transport home and adoption processes at decommission or retirement.

Providing for the health and well-being of MWDs in turn also supports the welfare of their soldier partners during military service and their veteran handlers in retirement, and is consistent with legal precedents developing on both the national and international levels. Apart from accolades and medals, these canine soldiers who have served and protected us, deserve our guardianship and the guarantee of their welfare in law while in service and in retirement. And their veteran soldier handlers deserve the legal community's attention to ensure in law their ability to reunite with and care for their canine soldier partners in retirement.

Respectfully submitted,

Lisa Ryan
Chair, International Law Section
February 2020

GENERAL INFORMATION FORM

Submitting Entity: International Law Section

Submitted By: Lisa Ryan, Chair

1. Summary of Resolution

Urges the U.S. government and other national governments, multinational and international organizations to amend existing laws or enact new enforceable laws, policies and procedures that protect and provide for the health and well-being of MWDs in the areas of transportation to the home country at retirement, , first priority adoptions by their military handlers, veterinary care, and oversight of compliance and enforcement of such procedures.

2. Approval by Submitting Entity

This resolution is sponsored by the International Animal Law Committee and was approved by the Council of the Section of International Law at the August 10, 2019 Meeting.

This resolution is co-sponsored by the Government and Public Sector Lawyers Division as approved by the Division's Council on August 10, 2019, and is co-sponsored by the Tort Trial and Insurance Practice Section as approved by the Section's Council on October 17, 2019.

3. Has this or a similar resolution been submitted to the House or Board previously?

No

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

The ABA does not yet have a specific policies covering MWDs. This would be a timely adoption by the ABA following recent legal developments on MWDs' welfare in the U.S. and raising international legal awareness for other nations.

104B

This resolution protects the interests of the military service personnel and veterans who partner with canine soldiers, promotes the welfare and well-being of Military Working Dogs deployed in service and retired, is consistent with military protocols, promotes established animal welfare codes

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

N/A.

6. Status of Legislation (If applicable)

Applicable legislation has been enacted over past decade, additional legislation is proposed and pending in the United States.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates

Proposed legislation to Congress with accompanying administrative, policy and regulatory prescriptions; legal and policy changes in nations worldwide – note information on similar actions in other nations is not always publicly-available/released due to military protocols.

8. Cost to the Association. (Both direct and indirect)

None.

9. Disclosure of Interest. (If applicable)

None.

10. Referrals

This Resolution with Report was referred to the Chairs and Staff Directors of all ABA Sections and Divisions, especially:

Government and Public Sector Lawyers Division (received unanimous approval for co-sponsorship from Council, August 2019)

Tort Trial and Insurance Practice Section (received unanimous approval for co-sponsorship from Council, October 2019)

Administrative Law & Regulatory Practice

Military Lawyers' Coordinating Committee

Veterans' Legal Services Initiative

Standing Committee on Legal Services for Military Personnel (received supportive review)

11. Contact Name and Address Information. (Prior to the meeting, please include the name, address, telephone number and email address)

Jill Mariani, marianig@dany.nyc.gov, work (212) 335-9143

Frances Arricale, farricale@gmail.com, cell (718) 440-0086

12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, teleshopped number, cell phone number and email address.)

Frances Arricale, farricale@gmail.com, cell (718) 440-0086

Jill Mariani, marianig@dany.nyc.gov, work (212) 335-9143

104B

EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution urges the U.S. government and other national governments, multinational and international organizations to amend existing laws or enact new enforceable laws, policies and procedures that protect and provide for the health and well-being of MWDs in the areas of transportation to the home country at retirement, first priority adoptions by their military handlers, veterinary care, and oversight of compliance and enforcement of such procedures.

2. Summary of the Issue that the Resolution Addresses

Protect in law both the welfare of military and veteran personnel and their canine military partners while in service and at retirement.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Support from the ABA legal community recognizing that domestic and international laws and codes are coalescing to secure the welfare of Military Working Dogs will assist with promoting the adoption of legislation and laws and/or enforceable policies and procedures with accompanying administrative, policy regulatory action by the U.S. government and by other nations, multinational and international organizations; as well as further the global awareness for legal protections to ensure well-deserved care for the needs of MWDs throughout their lives and recognize the important human-animal bond between MWDs and their soldier handlers.

4. Summary of Minority Views or Opposing Internal and/or External to the ABA which has been Identified

None.