NEW ZEALAND RED CROSS

WARS, LAWS + HUMANITY

New Zealand's engagement with International Humanitarian Law


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As a global Movement, Red Cross makes strenuous efforts to achieve greater understanding and respect for IHL.

NZRC / L. Keats

Armed conflict is the tragic reality that led to the establishment of the International Red Cross and the first Geneva Convention more than 150 years ago.

The nature of warfare has changed unrecognisably since that time. Has international humanitarian law (IHL) kept up with these changes? Our answer is that it has. The core principles of IHL remain as relevant and necessary as ever. The greatest challenge has nothing to do with the norms themselves and everything to do with respect and implementation of the existing legal obligations.

New Zealand Red Cross personnel working overseas experience this first-hand in their daily work, seeing the best and worst of humanity, and recognising the vital importance of IHL in protecting persons caught up in war.

Better respect and implementation of the rules requires knowledge and understanding of these key humanitarian laws and principles, not only for soldiers and fighters, but civilians as well.

Here in New Zealand, local Red Cross groups started activities during World War One, 100 years ago. In a world in which bad news often dominates, the stories collected in this IHL publication for the centenary of New Zealand Red Cross help to illustrate that even during armed conflict, and throughout New Zealand's recent history, IHL has been able to operate and change lives. We hope that these stories will introduce you to the ways in which IHL has touched the lives of New Zealanders, and New Zealand's influence on IHL.

Jenny McMahon, President & Tony Paine, Secretary General

Download the ICRC publication
"IHL: Answers to your Questions"
for further information about IHL
www.icrc.org

THE ORIGINS OF IHL

1860s SWITZERLAND

Text courtesy of the International Committee of the Red Cross (ICRC)

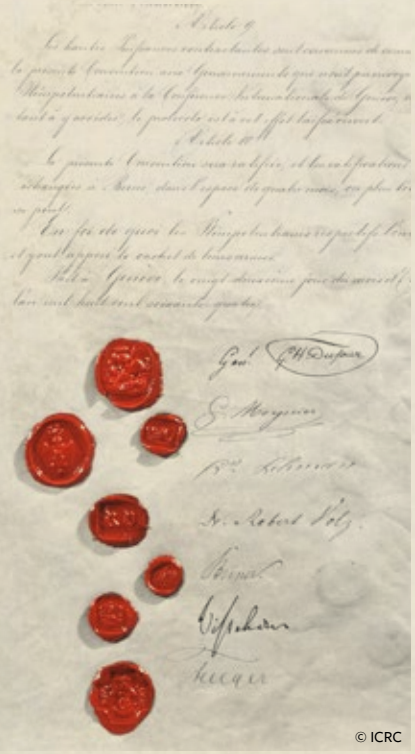
WHAT IS IHL?

International humanitarian law (IHL), also known as the law of armed conflict, is a branch of international law that consists of rules that, in times of armed conflict, seek – for humanitarian reasons – to protect persons who are not or are no longer directly participating in the hostilities, and to restrict means and methods of warfare.

IHL consists of international treaty or customary rules (i.e. rules emerging from State practice and followed out of a sense of legal obligation) that are specifically meant to resolve humanitarian issues arising directly from armed conflict, whether of an international or a non-international character. It regulates the conduct of parties engaged in an armed conflict and seeks to minimise suffering during war, notably by protecting and assisting its victims. It applies to all belligerent parties irrespective of the reasons for the conflict or the justness of the causes for which they are fighting.

Traditionally, IHL has two branches:

- the 'law of Geneva', which is the body of rules that protects victims of armed conflict, such as military personnel who are 'out of action' (hors de combat) if wounded or captured and detained, and civilians who are not directly participating in hostilities;
- the 'law of The Hague', which is the body of rules establishing the rights and obligations of belligerents in the conduct of hostilities, and which limits means and methods of warfare, in other words, rules on how the war may be waged.



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Geneva Convention of 22 August 1864.

MAIN RULES APPLICABLE IN INTERNATIONAL AND NON-INTERNATIONAL ARMED CONFLICTS

International armed conflict (IAC)	Non-international armed conflict (NIAC)
Four Geneva Conventions	Common Article 3 to the four Geneva Conventions
Additional Protocol I	Additional Protocol II
Customary IHL for IAC	Customary IHL for NIAC

THE FORMER ICRC DIRECTOR OF OPERATIONS, PIERRE KRAEHENBUEHL, EXPLAINED THE RELEVANCE OF IHL IN THESE TERMS:[1]

> "I'm convinced that the Geneva Conventions have stood the test of time. Now clearly, when you look at what's happening daily in Syria, Afghanistan, Congo and elsewhere, where women, children, civilians are caught up in atrocious conditions and huge suffering, it is a legitimate question to raise, and there was vibrant debate after September 11, about whether or not the Geneva Conventions were still relevant. But they were negotiated just after the single largest and worst calamity that mankind had inflicted on itself, which was World War Two. It has to be a body of law that is protected, enriched and further strengthened to remain vibrant on a daily basis."

WHAT ARE THE ORIGINS OF IHL?

Traditional cultural practices from around the world, as well as ancient religious texts, and even Shakespeare's plays, show various rules of war to protect individuals from the worst consequences of war, for example limitations on the time and place or methods of how war may be fought. However, it was not until the second half of the 19th century that international treaties regulating warfare emerged.

Two men played a vital role in the emergence of contemporary IHL: Henry Dunant, a Swiss businessman (pictured left), and Guillaume-Henri Dufour, a Swiss army officer. In 1859, while travelling in Italy, Dunant witnessed the grim aftermath of the battle of Solferino. After returning to Geneva he recounted his experiences in a book called A Memory of Solferino, and promoted the idea of aid societies and rules for their protection on the battlefield.

In 1863, together with Gustave Moynier, Louis Appia and Théodore Maunoir, Dunant and Dufour founded an international committee for the relief of the military wounded. This would later become the International Committee of the Red Cross.

A diplomatic conference was convened in 1864, attended by 16 States who adopted the Convention for the Amelioration of the Condition of the Wounded in the Field. This was the birth of modern IHL.

DO THESE LAWS REMAIN RELEVANT FOR TODAY'S COMPLEX CRISES?

IHL has evolved in stages to meet the ever-growing need for humanitarian aid arising from advances in weapons technology and changes in the nature of armed conflict. Looking at the main IHL treaties in chronological order shows that some armed conflicts had a more or less immediate impact on the development of IHL. One example is the use of poison gas, aerial bombardments and the capture of thousands of prisoners of war during the First World War. The treaties of 1925 and 1929 were a response to those developments. Likewise, in 1949, the international community responded to the tragedies of the Second World War by revising the conventions then in force, and adopting a new instrument: the Fourth Geneva Convention for the protection of civilians ■

Battle of Solferino, June 1859.

1860s NEW ZEALAND

MAORI RULES OF WAR AT GATE PA

Dr Vincent O'Malley, Historian

Robley, H. G., Earthworks and fence of the Gate Pa looking east from the breach, 30 April 1864.

The New Zealand Wars fought between 1860 and 1872 were a time of acute tension and conflict in the nation's history. But the wars were not without genuine examples of mutual respect among the contending Maori and British troops, along with occasional acts of great compassion and kindness towards enemy fighters.

In the Tauranga district a remarkable document that bore some striking similiarities with the First Geneva Convention signed months later in Switzerland also emerged during this period. In January 1864 several hundred British troops landed at Tauranga in response to reports that local iwi were providing support to Waikato Maori who had been under attack since July 1863.

It soon became apparent that the war was almost certain to spread to Tauranga. Local chiefs accordingly issued a series of challenges to the British, in accordance with Maori beliefs that fighting should be conducted in an open, honourable and brave manner.

Along with these invitations to fight came a letter setting out the laws that would be respected in any clash. Sent to the commanding officer of the British troops, it set out that wounded soldiers would be spared so long as they made it clear they no longer wished to fight and that those who surrendered would also be saved. Civilians, including all Pakeha women and children, would not be harmed.

These rules were drafted by Henare Wiremu Taratoa, a young lay reader in the Anglican Church who had been educated at St John's College in Auckland. Taratoa had spent time at the Otaki mission station before returning to Tauranga when war seemed likely.

British troops did not know quite what to make of Taratoa's rules, but they were closely adhered to by Maori when fighting occured at Gate Pa (Pukehinahina) on 29 April 1864. Although the British suffered a heavy defeat, wounded soldiers were left unharmed.

Heni Te Kiri Karamu, also known as Heni Pore (Jane Folely), risked death in order to take water to one of the British officers who lay dying inside one of the trenches. This gesture was later immortalised in a famous memorial at the Tauranga Mission Cemetery. It depicts senior chief Rawiri Puhirake's order to honour the rules of fighting, while in the background water is carried towards the wounded soldier.[1]

Heni Te Kiri Karamu.
Photo courtesy of Alexander Turnbull Library (Ref 12-041822-G).

Henare Taratoa was killed when British troops clashed for a second time with the Tauranga tribes and their allies at Te Ranga on 21 June 1864, resulting in over 100 Maori casualties. A copy of the rules of warfare he had drafted was found on his body, headed by a Biblical quotation – 'If thine enemy hunger, feed him; if he thirst, give him drink' (Romans 12:20).

The example set by Tauranga Maori came to be widely admired and celebrated over time, helping to challenge earlier stereotpyes of Maori as 'uncivilised' or barbaric. Instead, Gate Pa and the rules of warfare drafted by Henare Taratoa became a byword for chivalrous and dignified conduct at a time of great destruction and damage. They underscored the universality of human values and humanitarian principles, expressed by people in New Zealand at the same time as being formalised in Geneva ■

March 28, 1864
Potiriwhi,
District of Tauranga

To the Colonel,

Friend, Salutations to you.
The end of that.

Friend, do you give heed to our laws for regulating the fight.

RULE 1. If wounded or captured whole, and butt of the musket or hilt of the sword be turned to me, he will be saved.

RULE 2. If any Pakeha (a Maori word commonly used to refer to a European), being a soldier by name, shall be travelling unarmed and meets me, he will be captured, and handed over to the direction of the law.

RULE 3. The soldier who flees, being carried away by his fears, and goes to the house of the priest with his gun (even though carrying arms) will be saved. I will not go there.

RULE 4. The unarmed Pakehas, women and children, will be spared. The end. These are binding laws for Tauranga.

By Terea Puimanuka, Wi Kotiro, Pine Amopu, Kereti Pateriki, Or rather by all the Catholics at Tauranga.

WORLD WAR ONE

Protecting THE PROTECTORS

Marnie Lloydd, International Humanitarian Law & Policy Manager, New Zealand Red Cross

Despite the possible dangers, New Zealand health personnel, including New Zealand Red Cross aid workers, have offered their services to those affected by armed conflict around the world.

Christchurch Hospital Nurses Memorial Chapel. Photo courtesy of Friends of the Chapel.

Violence against health care must end. To learn more, see the **"Health Care in Danger"** project **healthcareindanger.org**

The humanitarian imperative of caring for wounded soldiers was at the heart of the creation of the Red Cross Movement and the first international humanitarian law (IHL) instruments. To ensure that the wounded and sick can be cared for during war, medical personnel and facilities – whether military or civilian – also need to be protected from the fighting and allowed to get on with their life-saving work. The Red Cross emblem is the distinctive sign of IHL's protection of these persons and objects.

And yet throughout the world's conflicts, health personnel have continued to come under great pressure and even attack, compounding difficulties for people to access healthcare at the time they most need it.

Despite the possible dangers, New Zealand health personnel, including New Zealand Red Cross aid workers, have offered their services to those affected by armed conflict around the world. More than 600 New Zealand nurses served overseas during the First World War:[1]

"New Zealand women accompanied New Zealand men to every theatre of war – Samoa, Egypt, Gallipoli, and France. Perhaps no New Zealand nurse ever set foot on Gallipoli, but they came close inshore on the hospital ship, Maheno, and evacuated the wounded from the Battle of Hill 60 ... The soldiers of New Zealand can never adequately express their thanks for the magnificent work of those Canadian and Australian women at Lemnos, and the British, Australian and New Zealand nurses who toiled so heroically on those awful journeys in the hospital ships from Anzac to Mudros, Alexandria and Malta."[2]

HOSPITAL SHIPS AND THEIR NURSING 'ANGELS'

New Zealand had two hospital ships during the First World War – the Maheno and the Marama – to rescue and care for wounded soldiers. They were marked distinctively with large red crosses and a thick green stripe. The Maheno worked off the Gallipoli beaches, helping the wounded and transporting them to other bases. Both ships later carried the seriously wounded from the Western Front back to New Zealand.[3] More than 1,000 medical staff served on the ships and they had carried 47,000 people by the end of the war.[4] One nurse recounted:[5]

"We took over 300 sick Serbians, and, oh! The condition of them was pitiful; you could hardly believe men could get so low and live; ... It was pitiful and heartbreaking – there were over 60 deaths in a three days' run!"

INTERNATIONAL HUMANITARIAN LAW SAYS:

- The wounded, sick and shipwrecked must receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. No distinction may be made among them founded on any grounds other than medical ones.
- Medical personnel, units and transports exclusively assigned to medical duties must be respected and protected.
- Attacks directed against medical personnel and objects displaying the Red Cross, Crescent or Crystal emblem in conformity with international law are prohibited.

THE SINKING OF THE MARQUETTE, 1915

100 years ago, tragedy struck when the ship "Marquette", with 26 New Zealand nurses aboard, was torpedoed in the Algean Sea on 23 October 1915 after sailing from Alexandria. On board was the equipment for the 'No. 1 New Zealand Stationary Hospital', nurses from the New Zealand Army Nursing Service and staff from the New Zealand Medical Corps.[6]

Ten of the nurses lost their lives, along with many others on board. Survivors struggled in the water for another seven hours: "Surely enough the crash came then, and we realised what it was (it was just a straight, thin, green line in the water and the swish could be heard distinctly. ... I swam about for hours but as I had had my right arm crushed between the boat and the ship, I was feeling very sick and sore. I really did not mind much what happened. ... We made for a submerged boat in the distance. My rescuer died soon after this from cramp or exhaustion. ... Men died on all sides."[7]

Specific rules about hospital ships were included in the 1907 Hague Convention on the Rules of War – the ships were to offer impartial medical care and not to be used for military purposes. In return, they were to be protected from attack. The Marquette was not in fact a hospital ship but a transport ship. British military troops and equipment – legitimate targets – were also aboard. It is not known why the nurses did not travel on a hospital ship. Following the loss of the Marquette, this became the practice for all New Zealand medical teams.[8]

"By putting the medical staff in an unmarked transport in a convoy carrying troops and ammunition, the authorities unnecessarily risked their lives" says Neill Atkinson, Chief Historian at the New Zealand Ministry for Culture and Heritage.[9]

A diving team located the wreckage of the Marquette in May 2009 in the Thermaikos Gulf in the North Aegean Sea. The British Embassy in Greece issued a protection order for the wreck.[10] A memorial chapel for the Marquette disaster stands near Hagley Park in Christchurch, although it was damaged in the Canterbury earthquakes. "The Memorial Chapel is a testament to New Zealand's pioneering nurses and to the thousands of nurses who were called away to the battlefields during times of conflict." [11]

GAZA 2014: A NURSING LINK FROM WORLD WAR ONE TO TODAY

Gail Corbett, a New Zealand Red Cross nurse from Levin, was seconded to the International Committee of the Red Cross (ICRC) operation in Gaza and was working during the intense fighting that broke out in July 2014.

"Gaza's the size of the Hutt Valley. It's a tiny area, you can't escape the shelling and the noise. And then sometimes there's profound silence on the streets and life is just not normal. ICRC and other humanitarian organisations are dedicated to ensuring that there are safe places for civilians and the injured, but that also is becoming increasingly difficult and challenging. It's been very hard on people.

"Even the healthcare workers, the ambulances, they're going out under the protection of the emblem, and yet they're still being either directly or indirectly targeted. It's terrible. Personally, we take considered risks; we have to balance things all the time. ICRC does remind all parties of their obligations to respect and protect the medical mission and the lives of civilians. When some of those basic obligations or rights are not being respected, it's very difficult to do the job that everybody is meant to do." [12]

On ANZAC Day while in Gaza, Gail and Australian colleagues visited the Gaza War Cemetery – a British cemetery in Gaza City, a green and peaceful oasis looked after by a local family, and well known locally for its avenue of cedars leading from the main road to the gate. It contains over 3,000 Commonwealth graves from World War One, including a number from New Zealand – from the Sinai and Palestine campaigns fought between the British and Ottoman Empires and their allies – and there are also some World War Two graves.

There is one nurse, in amongst the thousands of soldiers – she served in the Royal Alexandria Nursing Corps, and died at the age of 26. "It's quite a reminder of all the years of war in the region, not just the World Wars", Gail says. "Finding the nurse's grave for me was probably more significant than anything else – she must have had some character and courage to be where she was, when she was. Brave lady, short life... hopefully she believed in what she was doing." [13] ■

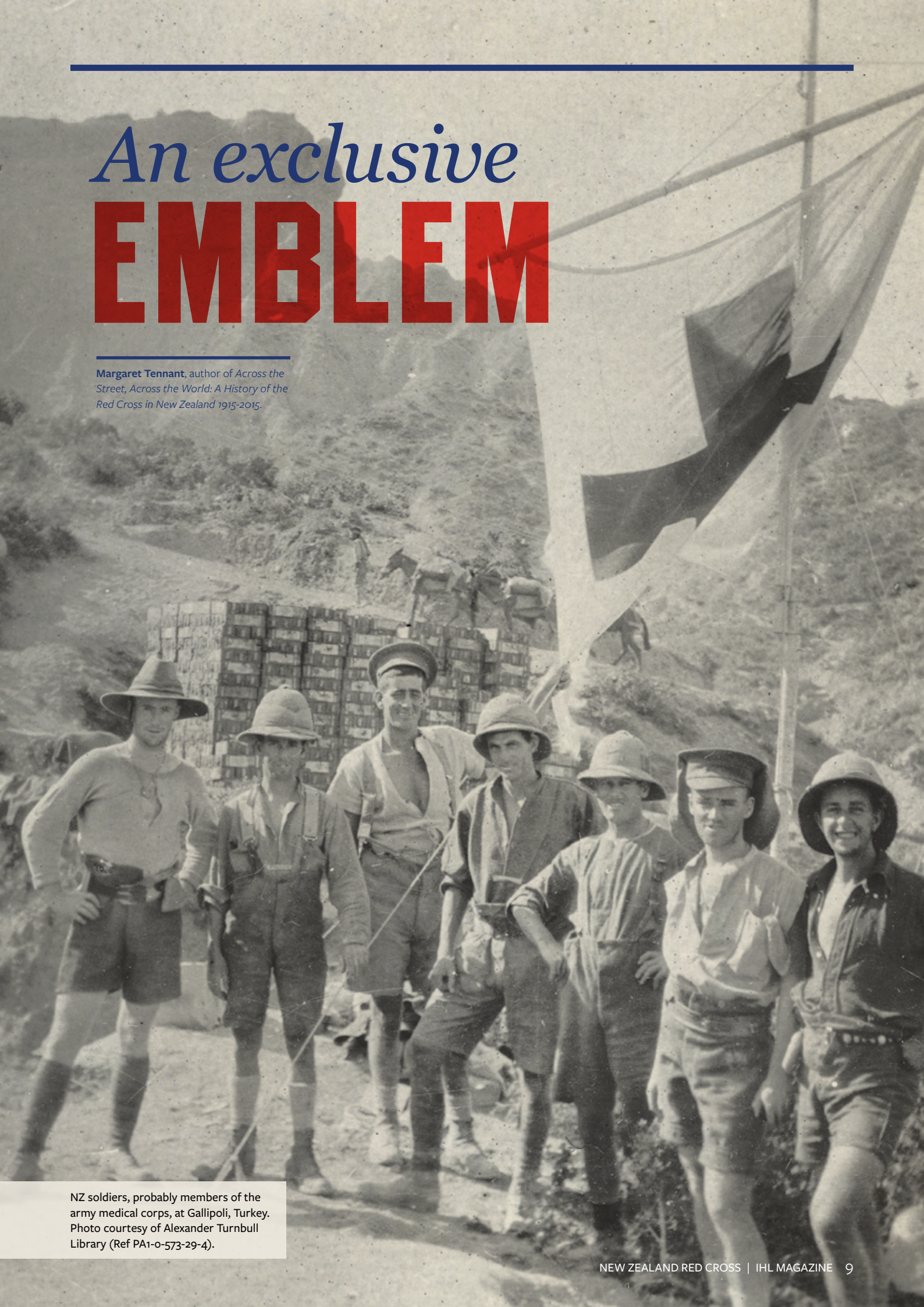
> "Wherever I have worked, the principles behind the Geneva Conventions have always had the versatility and universality to bridge any cultural gap, and ultimately to gain access to vulnerable people in need of aid."
>
> **Gail Corbett, New Zealand Red Cross nurse**

© Palestine Red Crescent Society

New Zealand Red Cross aid worker **Gail Corbett** (right) helps evacuate the wounded in Shuja'iyya in north-east Gaza, 2014.

An exclusive EMBLEM

Margaret Tennant, author of *Across the Street, Across the World: A History of the Red Cross in New Zealand 1915-2015.*



NZ soldiers, probably members of the army medical corps, at Gallipoli, Turkey. Photo courtesy of Alexander Turnbull Library (Ref PA1-o-573-29-4).

Given this year's commemorations, it will be no surprise that this 1915 image is of men at Gallipoli. The flag above them, though partially obscured, will also be familiar. Although the image is in black and white, many will know that the cross on it was red, the background white, and that it signified 'something medical'. But why was it red and white, what meanings are attached to this symbol, and why is it still highly valued and – more than this – protected under New Zealand and international law?

The history of the red cross emblem goes back to the establishment of the International Red Cross Movement following the Battle of Solferino in 1859. A Swiss businessman, Henry Dunant, came across the carnage, where injured soldiers lay without medical aid. Appalled, he enlisted surrounding villagers and other helpers to assist the wounded. Upon returning to Switzerland, he promoted an organisation, voluntary and impartial, which would assist the sick and wounded in war. The result was the 'International Committee for Aid to the Wounded in War' and the First Geneva Convention, signed in 1864. It gave protection to the sick and wounded of armies in the field and extended the concept of neutrality to army medical personnel.

The easily-recognisable red cross, the inverse of the Swiss flag with its white cross on a red background, became the emblem of the new Movement in 1863 as a compliment to the host country of the International Committee. It was later supplemented by the red crescent, first used by Muslim forces in the Russo-Turkish war of 1876–8. A third symbol, the red crystal, was approved by the Movement in 2005. The red cross is the emblem used by approximately 80 per cent of the national societies, including New Zealand Red Cross.

Entitlement to use the red cross emblem is bestowed by government. When used by a national Red Cross society, it generally has an indicative function, showing a link to the international Red Cross Movement and adherence to its principles. New Zealand Red Cross is permitted to use the symbol in defined ways when pursuing its humanitarian activities: even the cover of its own history, published in mid-2015, had to follow established guidelines when using the emblem.

The other use of the red cross, the one shown in the photograph, is protective. During armed conflict it conveys that a person, place, vehicle or equipment is not part of the battle. It is a sign that those under it are receiving medical assistance, or giving it, impartially, to those on either side of the conflict, and must be protected. It is essentially saying 'don't shoot'!

> "The protective meaning of the red cross can literally be a matter of life and death."

This is why since 1913 the law in New Zealand has prevented the commercial and other unauthorised use of the Red Cross emblem. Prior to this it was used for purposes as varied as hospital and charity collections, advertisements of pills and potions – even, in 1910 to promote a sling for lifting prostrate cows! In the First World War the government started to prosecute persons who abused the Red Cross emblem in this way, but misuse continued, especially in the retail and advertising sectors, mostly from ignorance. During demonstrations against the Springbok tour in 1981 New Zealand Red Cross faced resistance from medically-trained protesters who mistakenly saw the organisation as claiming ownership of a commonly-used first aid symbol. Road signs, computer games, medical centres, bikini waxes, garden centres, coffee shops and first aid kits have all appropriated the red cross emblem at various times in contravention of New Zealand's 1958 Geneva Conventions Act.

Why does this matter? The red cross is one of the most widely recognised symbols in the world. The Red Cross Movement argues that misuse of its emblem dilutes its meaning as a sign of protection for victims of armed conflict and those authorised to help them. For Red Cross international aid workers, and for military medical and religious personnel, for example, the protective meaning of the red cross can literally be a matter of life and death. There are alternatives for other purposes – first aid kits, for example, now feature a white cross on a green background, and hospitals use a blue and white cross.

The soldiers under the red cross flag at Gallipoli relied upon this recognition of an exclusive protective symbol. It is not any old 'brand' or trademark – it's exclusive for good reason. Let's keep it that way ■

Read the **Third Geneva Convention 1949 on PoW:**
www.icrc.org

NEW ZEALAND IN WORLD WAR TWO

JAPANESE POW IN FEATHERSTON

Grace Kahukore-Fitzgibbon,
IHL Officer, New Zealand Red Cross

On 9 September 1942, 114 New Zealand Army personnel arrived at the site of Featherston military camp to prepare for 400 Japanese prisoners of war (PoW) who were due there three days later. The PoW were captured by United States (US) forces during the hostilities in Guadalcanal. These hostilities signified a large failure in the Japanese drive through the Pacific, and were an important win for the Allied forces. The site had previously been used as a military camp dating back to 1916. New Zealand had agreed to hold the PoW on the request of the US.

By the end of 1942 there were 687 prisoners at the camp, increasing to 800 by early 1943. Members of naval and work units of the Japanese Imperial Army (mainly minority groups such as Koreans) were also later shipped to the camp. The naval officers, other ranks and members of the work units were held in three separate compounds.[1]

THE GENEVA CONNECTION

The conditions and treatment of the PoW were to comply with the Geneva Convention relative to the Treatment of Prisoners of War 1929. New Zealand and the US had both ratified this Convention prior to World War Two (WWII). Japan was a signatory to the Convention, yet had not ratified it before WWII. Today, the rights of PoW are set out in the Third Geneva Convention of 1949.

The International Committee of the Red Cross (ICRC) appointed a resident delegate for New Zealand. His name was Léon Bossard, a Swiss geologist living in Auckland. Dr Bossard was responsible for sending reports to the ICRC in Geneva, ultimately for the New Zealand authorities, detailing the treatment and conditions experienced by the PoW at Featherston. He visited the detainees, determined their needs, and obtained the necessary aid from Geneva for them. Importantly, with the assistance of New Zealand Red Cross, he also arranged for family news to be shared between the detainees and their relatives, and arranged searches to be made by the

ICRC DETENTION VISITS

In international armed conflicts, IHL provides that the ICRC must be granted regular access to all persons deprived of their liberty to verify the conditions of their detention and to restore contacts between those persons and their families.

In non-international armed conflicts, the ICRC may offer its services to the parties to the conflict with a view to visiting all persons deprived of their liberty for reasons related to the conflict.

Maori guard and prisoner at the Japanese prisoner of war camp near Featherston 1943. Pascoe, J. D. Photo courtesy of Alexander Turnbull Library (Ref: 1/4-000790-F).

Central Prisoner of War Agency. This was an ICRC clearinghouse established during WWII, which housed information on PoW and communicated essential information about them to their families.

Bossard reported positively on the conditions of the camp: "The general treatment is very good and the relations between the officers and men of the garrison and the PoW appear very satisfactory ... All of the PoW, whether interviewed with or without interpreter, voiced their appreciation of the treatment and accommodation as well as food they receive."[2]

1943 TRAGEDY

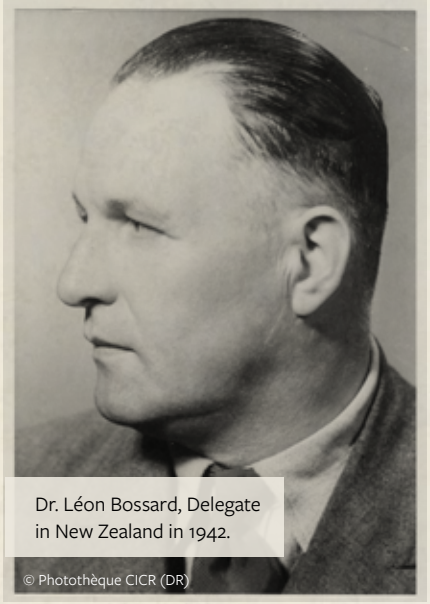
On the morning of 25 February 1943 the men of No.2 compound refused to parade for work, after several days of other defiant conduct. Following two hours of negotiations to get the men to do so, the Assistant Commander fired a warning shot and then another shot. The prisoners threw stones and rushed at the guards, who opened fire. Within moments 31 Japanese were dead, and 91 were injured, 17 of whom died later. Ten New Zealand soldiers and guards were wounded, while one guard died.[3]

It is believed that cultural misunderstandings contributed in some part to the tragedy. Whilst New Zealand soldiers during WWII were taught their rights and obligations under the Convention as PoW, the Japanese philosophy was very different. Their military code of conduct commanded: "Never live to feel the shame of being a prisoner of war."[4] In the military inquiry into the incident, one prisoner repeated that it was against Japanese traditions to work for the enemy; however the 1929 Convention foresaw PoW being employed as workmen provided that work was not connected with the war effort.[5]

Although it is possible that cultural ideas of shame amongst the Japanese may have remained more influential than knowledge of the Convention, one lesson learned from the incident was perhaps the importance of ensuring the Conventions are displayed in the detainees' language – Japanese translations were made available only after the incident – and that cultural differences between parties are reconciled to the extent possible in conflict situations.

DID YOU KNOW?

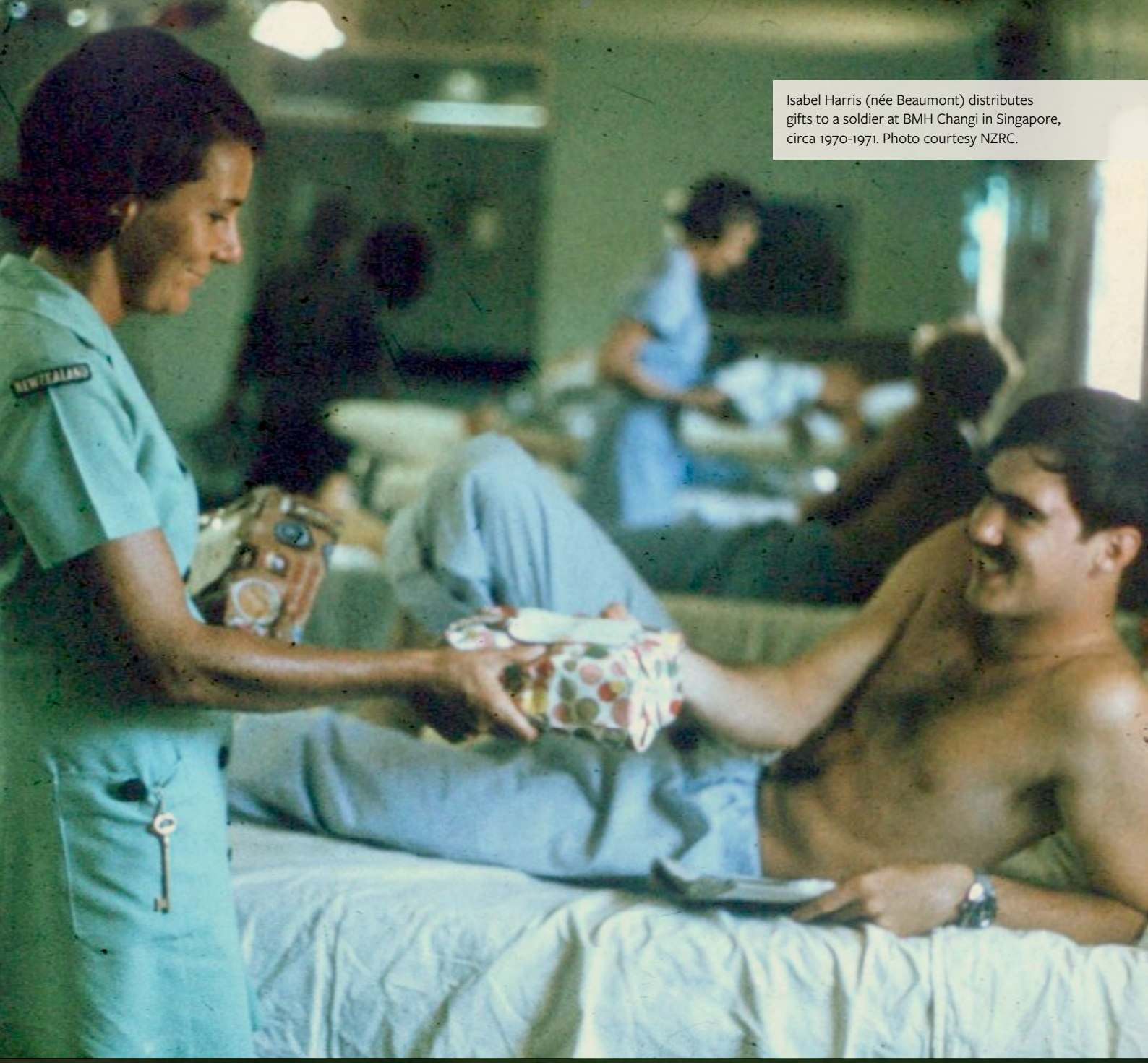
Matiu/Somes Island was used as a camp for civilian internees during WWII. Due to national security concerns, men of German, but also Italian, Japanese and other descent and nationality living in New Zealand were interned on Matiu/Somes Island in Wellington Harbour. New Zealand applied the 1929 PoW Convention to them. Today the rules surrounding civilian internees can be found in the Fourth Geneva Convention 1949.



Dr. Léon Bossard, Delegate in New Zealand in 1942.

AFTER THE WAR

Following the end of WWII, Dr Bossard continued to be involved in important work for the ICRC in New Zealand. He dealt with the repatriation of PoW and civilian internees, and later acted as an intermediary between the New Zealand government and Red Cross when the ICRC was entrusted with drawing up lists of former PoW in Japanese hands. Upon Bossard's death in 1964, the ICRC President Leopold Boissier sent condolences to Bossard's family, assuring them that Dr Bossard would "always be remembered as one of the most devoted of our representatives abroad."[6] ■



Isabel Harris (née Beaumont) distributes gifts to a soldier at BMH Changi in Singapore, circa 1970-1971. Photo courtesy NZRC.

KIWIS IN VIETNAM

THE 1960s & 1970s

Courtney Wilson,
Researcher, New Zealand Red Cross

The International Aid Workers Program of New Zealand Red Cross officially started in 1960 when Barbara Tomlinson, a physiotherapist, was sent to Morocco.

A few years later in 1963, as the Vietnam War escalated, the first New Zealand civilian surgical team was deployed to the Binh Dinh Provincial Hospital, north of Saigon. Two New Zealand Red Cross aid workers were based at the Australian Field Hospital at Vung Tau, including Isabel Harris (née Beaumont), pictured.[1]

Isabel Harris (née Beaumont), New Zealand Red Cross welfare support officer at the 1st Australian Field Hospital, Vung Tau, from April 1970 – June 1971. Photo courtesy of Bruce Young.

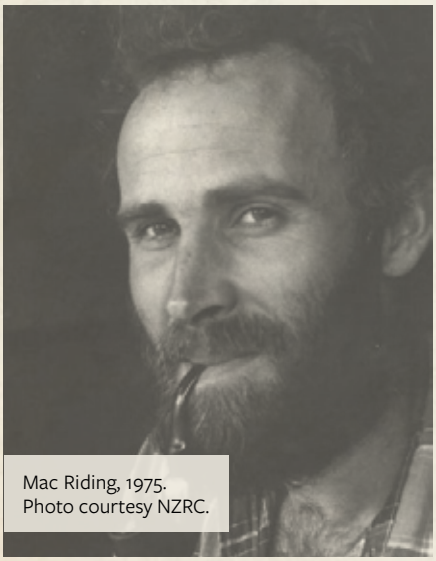
> "... I realised how easily people become vulnerable during war."
>
> **Jerry Talbot,** Vice-President, New Zealand Red Cross

New Zealand Red Cross had welfare teams in South Vietnam from 1968 to 1975. Jerry Talbot, future Secretary-General of New Zealand Red Cross, was with the New Zealand Red Cross Refugee Welfare Team at An Khe from February 1968 to 1969:

"We obviously were aware of the nature of the war from the media, but it's a bit different when you have your feet on the ground. ... I realised how easily people become vulnerable during war."[2]

Mac Riding, a charismatic and respected New Zealand Red Cross aid worker led the sixth welfare team in Vietnam from August 1974. Tragically, Mac Riding passed away in a plane crash near Pleiku, Vietnam on 10 March 1975, as he was returning to work from a vacation in Laos.

The first New Zealand Red Cross national IHL seminar was held 9-10 December 1978 in honour of Mac Riding. Speakers included Professor Quentin-Baxter, one of New Zealand's most eminent international lawyers, and Sir Kenneth Keith, the first New Zealander to be elected as a Judge of the International Court of Justice in The Hague ■



Mac Riding, 1975. Photo courtesy NZRC.

Leonie Clent (née Bowden) and Zuan, 6th NZRC Welfare Team, Vietnam, 1974. Photo courtesy NZRC.

© ICRC / KURZ, J.J.

Diplomatic Conference on the reaffirmation and development of IHL, Geneva 1977.

THE 1970s

STRENGTHENING THE LAW OF WAR IN THE 1970s

Sir Kenneth Keith ONZ KBE QC, Convenor of NZ IHL Committee

Sir Ken Keith, former Judge of the International Court of Justice, was a member of New Zealand's delegation to the Diplomatic Conference of 1974–1977 where the Additional Protocols to the Geneva Conventions, to strengthen protection for victims of armed conflicts, were negotiated and adopted. Some reflections.

Every generation or so, over the last 150 years, the world community has come together to respond to the challenges facing the law regulating armed conflict. So in 1864 the first Geneva Convention was a response to the horrors of the 30,000 casualties in the one day of the Battle of Solferino in 1859. In 1907 that Convention was adapted and applied to the shipwrecked and wounded at sea, the Second Convention, following the Japanese/Russian war of 1905 which occurred in part in the North West Pacific.

In 1899 and 1907 the Hague Peace Conference adopted the Hague Conventions and Regulations with respect to the law and customs of war which drew not only on European experience including the Franco-Prussian war of 1870–71 but also on the Instructions for the Armies of the North drafted by Francis Lieber and issued by President Lincoln during the American Civil War. Experience in the Great War showed that the protections of prisoners of war had to be enhanced, action which led to the Third Convention in 1929 on prisoners of war. Another response to that war is to be seen in the 1925 Protocol prohibiting the use of chemical and biological warfare.

A conference to adopt a fourth Convention on the protection of civilians, especially in occupied territory, was to be held in 1940, but tragically the Second World War with its related outrages against civilians intervened. That Convention was adopted in 1949 and the other three Conventions were revised, in particular with the inclusion of article 3, common to all of them, for the first time stating basic rights and obligations applicable during an internal armed conflict.

By the late 1960s certain matters called for attention. The first was the absence of any modern law protecting civilians and civilian objects from bombardment. Recall the bombing and shelling in the Second World War and contemporary events in South East Asia, especially the bombing of North Vietnam. (Indeed, the second session of the 1974–77 Conference ended the day the final American helicopters left Saigon.) The second was the great increase of civil wars and wars of national liberation from colonial powers – if the last was distinct. Much of the 1974 session was dedicated to the proposition, adopted in the end, that wars of national liberation were to be seen as international armed conflicts and accordingly subject to the full body of law applicable to them. A third matter was the need for better implementation of the law.
It was all very well for substantive law to be updated in the books but if it was not applied in fact, what was that law worth?

The first and second issues caused some real worry for those who adhered to the traditional Geneva view. In terms of the first matter, the First Additional Protocol relating to international

armed conflicts contains 44 articles on methods and means of warfare, combatant and prisoner of war status and the protection of civilians against the effects of armed hostilities. They were prepared following lengthy preparatory and conference sessions which made careful amendments to the preparatory texts. Many of those involved were experienced military officers including for instance those engaged on both sides in the Vietnam War. The New Zealand delegation at the diplomatic conference included senior retired officers with experience in the field going back to World War II. The process was concerned throughout to balance humanitarianism and military necessity. Central to that balance is the principle of distinction between combatants and civilians in the conduct of hostilities. There were similar challenges in the preparations of the provisions for determining whether an individual had combatant status and again much relevant experience was brought to bear.

The Second Additional Protocol was designed to provide more detailed and protective rules than those included in the 1949 'mini-convention' on internal armed conflict, the common article 3. Some delegations, especially from the third world, contended that with the adoption of the provisions in the First Protocol on wars of national liberation there was no need for the Second Protocol. Other delegations, such as the Norwegians, considered that no rational justifications could be given for distinguishing between international and non-international armed conflicts – from the point of view of the participants, particularly the victims, the conflicts had exactly the same impact. But the conference preparing the text was not persuaded by either position and prepared a text which was less detailed than that for international armed conflicts but extended well beyond common article 3.

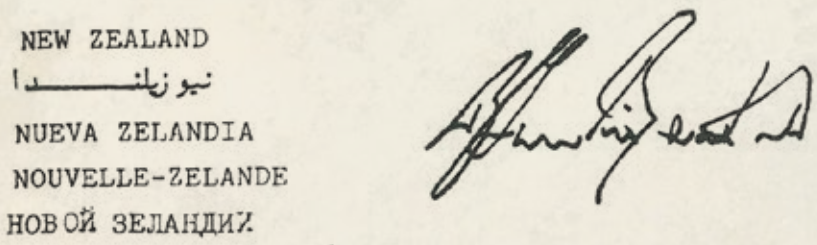
In the final sessions of the conference in 1977, unfortunately, much of that detail was removed. That was a response to the strong view of many States that internal conflicts were not to be subject to such close regulation. It is striking that the ICRC publication on the Customary Rules of International Humanitarian Law states that a larger proportion of the rules applicable to international armed conflict also apply to non-international armed conflicts. That text largely restores the earlier conference draft.

In terms of better implementation of the conventions and protocols, the conference emphasised and tried to strengthen the existing provisions on training and education of combatants and the public, the role of Protecting Powers and of the ICRC, and the prosecution of grave breaches, with new provisions being added. Amongst other things, it extended the prohibitions on reprisals, it provided for legal advisers on the battlefield (who might for instance advise on targeting and on the status of those captured and detained), added a set of rules for the establishment of the International Fact Finding Commission, and provided for meetings of the State parties.

The New Zealand delegation pursued two main purposes in the conference. The principal one was the need to update and strengthen the law, which was out of date in several respects. As indicated, the law relating to aerial bombardment had never been the subject of systematic official statement. Internal armed conflicts were now much more frequent and a more extensive body of law was called for. The delegation was disappointed at the deletion of so many stipulations at the end of the process. It was also disappointed at the final form of the provisions relating to the International Fact Finding Commission and in fact abstained on the adoption of that provision.

A second purpose of the delegation was to assist as actively as it could in the process of the preparation, refinement and acceptability of the texts. Given New Zealand's extensive experience of armed conflict there was a specific national interest in the state of the law as well as a more general interest in a rule-based international system, even in warfare. New Zealand emphasised to major powers that the 1974 decision on wars of national liberation was yet another manifestation of the UN view of the world and on that particular issue; moreover it was adopted at a time in which such wars were disappearing. The delegation also assisted by chairing the group that prepared the provisions for national liberation movements to make a declaration of undertaking to apply the Conventions and the Protocol. Other chairing tasks related to the definition of internal armed conflicts and to reprisals in such conflicts.

The concern for updating the law as required (e.g. in respect of private military companies, cyber-warfare and robotic weapons) and for better implementation continues. It engages the responsibility not just of the New Zealand armed forces and other agencies of government but also of New Zealand Red Cross in its important work of making this body of law better understood by the wider public ■



New Zealand signature on the Final Act, Diplomatic Conference to negotiate the Additional Protocols to the four Geneva Conventions, 10 June 1977.

Relatives of missing persons throw flowers into the sea in a ceremony to remember their loved ones who died at sea during the Bougainville conflict, 31 August 2015.

© ICRC / R. Roe

THE BOUGAINVILLE CONFLICT

1990s SOUTH WEST PACIFIC

Dr Roderic Alley, Senior Fellow, Centre for Strategic Studies, Victoria University of Wellington

Bougainville's conflict between 1989 and 1998 was easily the worst tragedy to befall the South West Pacific since World War Two. Neither a war between sovereign entities, nor a typical internal conflict, this bloody episode saw between ten and fifteen thousand lives lost, many others traumatised and uprooted, and the territory's social and economic structure devastated. A near decade of conflict and lawlessness, along with medical neglect and inter-clan violence, took more lives than those lost through overt hostilities. Following an eventual conclusion of the 2001 peace agreements, it was evident that years of physical repair, social reconstruction and psychological healing were needed before Bougainville would be able to consign its tragedies to the past. Uncertainties as to its future constitutional status within Papua New Guinea, allied to controversy over the resumption of mining operations, leave this territory unsettled.

Clearly, though, this conflict and its aftermath have generated difficulties that international humanitarian law (IHL) is increasingly confronting elsewhere. They include post-conflict community reconciliation; tracing the missing; weapons surrender; post-conflict gender impacts including sexual violence; and, not least, establishing accountability and professional IHL and human rights standards for those controlling the use of deadly force.

POST-CONFLICT COMMUNITY RECONCILIATION

This task is only part-accomplished on Bougainville, especially in the south of the island where long standing grievances over land ownership and mining impacts continue to rankle. The United Nations Development Programme, in 2011, brokered a ceasefire agreement between unreconciled factions in the southern Konnou district where fighting had persisted since the peace agreement. Australian and New Zealand Police advisory services continue to build capabilities of local police with a focus on installing a community-based policing approach.

Sport should not be underrated as a force for unity, reconciliation and healing on Bougainville. Recent years have seen substantial participation by otherwise disengaged youth in a variety of codes where they mix and compete nationally, and where local businesses have sponsored tournaments and offered prizes.

Despite resource constraints, local Red Cross assistance has supported reconciliation through disaster risk reduction, blood transfusion, first aid training and vehicle provision services.

TRACING THE MISSING

In September 2014 the Autonomous Bougainville Government identified failure to account for those lost in the island's conflict as a barrier to post-conflict reconciliation and development. Uncertainty about the actual fate of loved ones has maintained memories and suffering from the war, and inhibited confidence in a better future.

Work on obtaining accurate data about human losses from the hostilities requires seeking information about victims' whereabouts, identification of burial sites, exhumation and the forensic identification of remains before their return to relatives for burial. The International Committee of the Red Cross (ICRC) has assisted the Bougainville Government and its partners with advice and expert support for policy implementation. This aims to address the humanitarian needs of affected communities, but is not designed to bring perpetrators to justice or satisfy claims for compensation.

Perpetrators refusing to admit responsibility for the fate of the missing have sought certain assurances; yet fears of exposure have begun to fade, either by those responsible for previous killings or by suffering families. ICRC representatives in Papua New Guinea see families of those who have disappeared facing psycho-social needs requiring ongoing medical attention. Similarly the Leitana Nehan Women's Development Agency, a local non-governmental organisation, considers unaddressed trauma a direct factor contributing to high levels of alcohol and domestic abuse.

ICRC Delegate Tobias Koehler and a PNG Red Cross Buka branch volunteer casting wreaths into the sea as part of the ceremony to remember the people who went missing during the Bougainville conflict, 31 August 2015.

© ICRC / R. Roe

Some ceremonial activities marking acts of reconciliation have been held and are more than purely symbolic. In November 2014, the ICRC helped organise a sea burial farewell in the Buka passage to honour lives lost in proximate locations during the past conflict. This event was emotional and cathartic for the hundreds attending. A similar event was later staged at Wisai in Buin district.

WEAPONS SURRENDER

Weapons disposal was a key component of the 2001 Bougainville Peace Agreement, but its full implementation has been uneven. Gun collection, storage and disposal has occurred and much of central and north Bougainville has been designated largely gun free, but a 2008 estimate that some 3,000 small arms were in circulation remains unrevised. Women have been unhelpfully marginalised from discussions and negotiations about gun disposal through claims that it is not their concern. Papua New Guinea needs to sign and ratify the Arms Trade Treaty, and begin planning its implementation by utilising freely available model legislation.[1]


© ICRC / T. Koehler

Family members of those who went missing take part in a march in Buka, Bougainville to mark the International Day of the Disappeared in August 2014.

POST-CONFLICT GENDER IMPACTS

Problems related to gender continue to persist on Bougainville.[2] Civil rights campaigner Marilyn Havini has highlighted the need to identify the many victims of sexual violence who have suffered without counselling, medical assistance, judicial remedy, or the reparations needed to assist affected women and young girls.[3] However, investigative and prosecution incapacity persists, while the police lack the training needed to handle violence against women. Institutional capacity is also deficient for supporting the many widows, abandoned mothers, and single parents coping with raising and educating children born of rape or orphaned from war. They include victims of the many forced 'marriages' sustained during the conflict but which subsequently fell apart.

© ICRC / M. Kokic

Nagorno-Karabakh, 2012. ICRC collects data about relatives to help put them on a list of missing persons and to try to find out what has become of them.

IN DARKNESS, STILL WAITING: MISSING PERSONS IN BOUGAINVILLE

In September 2014, the Autonomous Bougainville Government unanimously adopted a policy on clarifying the fate of people who went missing during the crisis that affected this Papua New Guinea (PNG) island from 1989 to 1998.

The new policy acknowledges the continued suffering of relatives of missing persons, and the collective responsibility of all parties under IHL to clarify the fate and whereabouts of missing persons, wherever possible. "These are the voices of the voiceless," said the president of the Autonomous Bougainville Government.[5]

The Bougainville policy defines missing persons as "individuals, regardless of their affiliation (PNGDF, BRA, BRF or other) of whom their families have no news, whose remains have not been returned to the families or who, on the basis of reliable information, have been reported missing as a result of the Crisis."

The policy also calls on the International Committee of the Red Cross (ICRC) to provide technical expertise and act as neutral intermediary. ICRC's mission in PNG opened in 2007 and since 2012, it has been working with the Bougainville and PNG governments to have the issue of the missing included in efforts to promote peace and reconciliation.

IHL RULES ON THE MISSING

Under IHL, each party to a conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate.

The ICRC and the Red Cross network help family members separated by conflicts, armed violence or natural disasters to re-establish contact. The services offered include the tracing of missing people, exchanging family messages and reuniting separated families.

© ICRC / R. Roe

Families of missing persons staging a silent march through Arawa Town, Bougainville, 28 August 2015.

ACCOUNTABILITY AND PROFESSIONAL IHL STANDARDS

Appropriate standards of IHL observance, training, and dissemination have not been achieved on either Bougainville or, more widely, throughout Papua New Guinea. The egregious violation of these standards by all parties concerned in the conflict has been damaging. Bilateral military arrangements that governments maintain with Papua New Guinea need to raise the salience of humanitarian law in any training arrangements. This is also essential for any security structure that may emerge within a future Bougainville following its planned referendum on self-determination. To that end, and as in some other Pacific Island locations, Papua New Guinea Red Cross has worked on a handbook for parliamentarians that is designed to promote respect for IHL.[4]

It notes Papua New Guinea has not acceded to the Rome Statute of the International Criminal Court. Such an accession, which would give that entity jurisdiction over grave breaches of the Geneva Conventions, as well as other international crimes, is fully justified and warrants prompt attention.

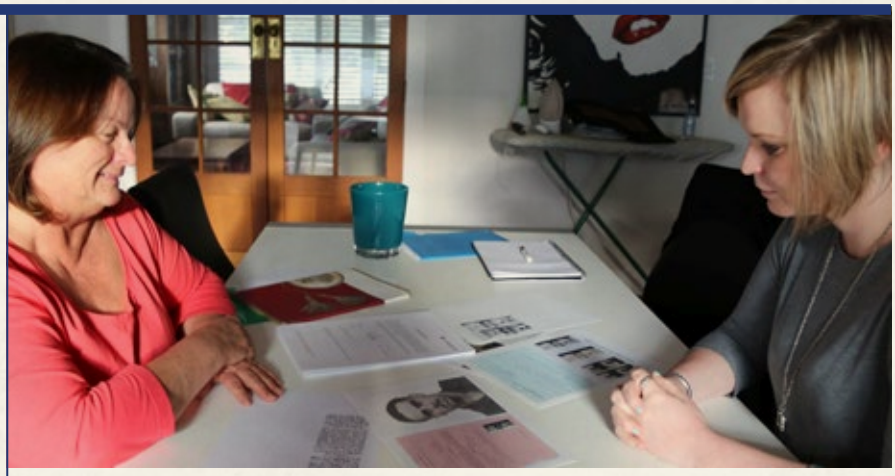
CONCLUSIONS

The Bougainville experience has highlighted a reality that IHL practitioners are now facing. This is one of fragile post-conflict environments that are fluid, that have multiple and overlapping sources of authority, and where rule provision and observation require working relationships with non-state actors operating under hybrid systems of authority. On Bougainville, the post-conflict period has seen a re-invigoration of traditional authority structures, the challenge here being one of articulating IHL standards in ways that resonate locally, but without compromising those rules and principles.

The Bougainville Autonomous Government's 2014 decision to adopt a clear policy on the missing is a good example of such adaptation, but more is needed through better inculcation of relevant humanitarian law and principles in police, corrections, weapons surrender and community violence reduction services ■

DETENTION CERTIFICATES

An 'Attestation of Detention' is a document provided by the ICRC (facilitated by the local National Society) certifying that a person was visited by ICRC delegates while he or she was detained, when it is not possible for that person to obtain proof of his or her detention from the authorities. The attestation can be requested by the individual concerned or their next of kin if the person is deceased.
New Zealand Red Cross receives about five requests annually for ICRC Attestations of Detention.



ATTESTATION OF DETENTION: PIECING TOGETHER HISTORY

Alison Curtin's kitchen table in Auckland is covered in bits of paper – records, photos, certificates – that tell a story about her birth father.

Alison grew up in Australia, where she was adopted as a baby. It wasn't until later in life as an adult she began the search for her biological family. Quickly, links and parts of her heritage were pieced together, but sadly her birth father had already passed away.

"I am curious by nature and I knew I wanted to find out as much as possible. I was unable to meet him, it's very sad, but I continued my research," Alison says.

She found out her birth father, William, was in the Australian Army during World War Two. His army records showed that he was detained in Italy as a prisoner of war and it was here that Alison thought of Red Cross.

"I knew that Red Cross did this work – visiting people in detention, prisoners of war and connecting people together – I'd seen it on films."

In January 2015 she crossed her fingers and contacted New Zealand Red Cross to see if, like she had seen in the movies, Red Cross had visited her birth father whilst he was detained. New Zealand Red Cross Restoring Family Links Advisor Michelle Dwight says they receive about five requests for proof of detention a year. These 'Attestation of Detention' certificates are usually requested to provide formal evidence for imprisonment compensation claims, or to add weight to asylum applications. Alison's request for her birth father's Attestation of Detention was an unusual one for Red Cross, as it stemmed from a genealogical inquiry, Michelle says.

"She was trying to piece together her history, her ancestry. In this case, the International Committee of the Red Cross is likely the only organisation that is going to have a detention record for him."

Under the Geneva Conventions the International Committee of the Red Cross (ICRC) is mandated to visit prisoners of war. While most certificates are issued for administrative purposes, the certificates can also have an emotional significance.

"Some people request certificates to share with family, to say 'this is a record of what happened to me or my family member. This was a traumatic experience'. They're very valuable documents for a lot of people," Michelle explains.

Michelle contacted her colleagues at the ICRC Archives in Switzerland and two months later emailed Alison with the good news. The ICRC had indeed visited Alison's birth father and in their archives they also had certified copies of his identity cards and letters between her birth father and ICRC from 1942. Alison says the Attestation of Detention certificate told her more about her birth father and made her realise how important it is for people to know what has happened to their loved ones.

"War is a horrible thing, it was then and it is now. It is important to find these brave people who get lost in it."

World War Two. Nagasaki. A few moments after the 9 August 1945 bombardment.

Right: World War Two. Nagasaki. First aid for a victim burned by the atom bomb.

THE FIGHT TO ELIMINATE NUCLEAR WEAPONS

1990s NEW ZEALAND

Lyndon Burford, University of Auckland

New Zealand has played a leading role in promoting consideration of humanitarian concerns in the global discussion of nuclear disarmament, concerns voiced by the International Red Cross Red Crescent Movement since the devastating effects of the bombings in Japan in 1945.

Starting in 1988, a non-governmental initiative known as the World Court Project, started and led in large part by New Zealanders, lobbied to have the International Court of Justice (ICJ) give an advisory opinion on the legal status of nuclear weapons. In 1994, New Zealand was the only Western-aligned country to vote for the UN General Assembly resolution requesting such an advisory opinion. The resolution succeeded, despite what the Canadian Ambassador described as 'hysterical' opposition from the Western nuclear weapon states.

In the ICJ hearings that followed, the New Zealand Government argued that nuclear weapons reduce international security, and advocated the outlawing of nuclear weapons: 'the answer to the question put to the Court should be no; the threat or use of nuclear weapons should no longer be permitted under international law'. New Zealand also stated that international humanitarian law (IHL), sometimes known as the law of armed conflict, applied to nuclear weapons, just as it does to all other weapons. New Zealand highlighted in particular key tenets of IHL including military necessity;

> It is difficult to envisage how any use of nuclear weapons could be compatible with the requirements of international humanitarian law, in particular the rules of distinction, precaution and proportionality.
>
> International Red Cross and Red Crescent Movement, 2011.

proportionality; distinguishing between military personnel and civilians and avoiding severe environmental damage; as well as respect for the sovereignty of non-participating states. New Zealand concluded:

"Even if it may not yet be possible to say that, in every circumstance, international law proscribes the threat or use of nuclear weapons, there can be little doubt that the law has been moving in that direction. In New Zealand's view, the sooner that point is reached, through the progressive development of international law, including the negotiating process, the more secure the international community will be."

In 1996, the ICJ delivered its Advisory Opinion on nuclear weapons, finding unanimously that, 'there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to complete nuclear disarmament under strict and effective international control'. The Court also found that any nuclear weapons use must respect IHL, and that 'a threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law.'

Since that time, New Zealand has consistently affirmed the incompatibility of nuclear weapons with IHL, and the need to comply at all times with IHL. In 2000, for example, when it ratified the Statute of the International Criminal Court (ICC), New Zealand made an interpretive declaration to the effect that regardless of whether a State was acting in self-defence, 'it would be inconsistent with principles of international humanitarian law to purport to limit the scope of Article 8 [dealing with war crimes] to events that involve conventional weapons only'. In effect, New Zealand asserted that any use of nuclear weapons was very likely to constitute a war crime, and that the ICC could have jurisdiction to prosecute the individuals involved in the use of nuclear weapons.

Following the first mention of IHL in the context of the Nuclear Non-Proliferation Treaty (NPT) diplomatic conference in 2010, New Zealand again led the international community in calling for consideration of humanitarian issues in the context of a use of nuclear weapons.

In 2010, parties to the NPT expressed 'deep concern' at the 'catastrophic humanitarian consequences' of nuclear weapons use, and affirmed that States are obliged to comply with IHL at all times. Since then, New Zealand has helped lead efforts to highlight humanitarian issues related to nuclear weapons. New Zealand's Ambassador for Disarmament, Dell Higgie, has played a central role in building international support for a statement on the humanitarian consequences of nuclear weapons, with support increasing from 16 countries in 2012 to 159 in 2015. New Zealand's statement to the 2015 NPT Review Conference recalled the 1995 statement from National Party Prime Minister, Jim Bolger: "Just as we have international treaties which debar the use of chemical or biological weapons, we will eventually move to a similar sort of treaty ... regarding nuclear weapons."

Leadership from the Key Government in this area has not been so clear, however; it disbanded the position of Minister for Disarmament in 2011. The Key Government has also not endorsed the 'Humanitarian Pledge,' which commits signatories 'to cooperate with all relevant stakeholders, States, international organisations, the International Red Cross and Red Crescent Movements, parliamentarians and civil society, in efforts to stigmatise, prohibit and eliminate nuclear weapons in light of their unacceptable humanitarian consequences and associated risks.' This omission is incongruous given the leadership shown by New Zealand officials in this area, and given that New Zealand's closest partners in the nuclear field, the New Agenda Coalition, have all endorsed the Pledge ■

HOW CAN I HELP?

It is essential that we all work together to ensure that these weapons are eliminated and never used again.

Please support the call for the elimination of nuclear weapons.

Fold a paper crane and take a photo of yourself with it (or a photo of just your crane). Upload to social media and use #hiroshima70

@nzredcross

facebook.com/NewZealandRedCross or tag New Zealand Red Cross

@NZRedCross

hello@redcross.org.nz

Tag your friends in your post to spread the word – the more photos, the greater the impact.

Hearing before the International Court of Justice on the legality of the threat or use of nuclear weapons 1995.

© Studio Van der Plas/ICJ/UN Photo

© Control Arms

Ambassador Higgie at event on Ratifying the Arms Trade Treaty, 2013.

WEAPONS AND IHL

2000s AND TODAY

Interview with Her Excellency **Dell Higgie**, Disarmament Ambassador, Ministry of Foreign Affairs and Trade

Why is New Zealand active on the various disarmament issues?

I think every New Zealander knows how strong an element disarmament is in New Zealand's foreign policy – certainly that's been true at least since the 1980s with respect to nuclear disarmament but it's also the case more broadly. The soundings we took from within the UN system as part of our campaign for election to the Security Council suggested that disarmament was indeed one of the strongest features of the multilateral 'brand' associated with NZ. It goes with our general support for multilateralism and the rule of law – and for our values-driven quest for global outcomes that can add meaningfully to the well-being of humankind.

Where do you think the interest and specialist knowledge in these humanitarian issues linked to weapons comes from?

Many MFAT staff with the interest and commitment that assist with representing New Zealand in this area have been able to build on their grounding – for example, in legal or strategic studies – by being seconded to one of New Zealand's overseas posts where weapons-related issues are part of the agenda. Most obviously this is the case for our Mission in Geneva where the Conference on Disarmament meets and where most international discussion related to disarmament or international humanitarian law (IHL) topics takes place. But it is also true as regards our posts in Vienna (which represents New Zealand in the International Atomic Energy Agency as well as at the Comprehensive Nuclear Test-Ban Treaty Organisation); The Hague (Organisation for the Prevention of Chemical Weapons); and, of course, New York where the United Nations General Assembly First Committee (tasked with disarmament and international security issues) holds session. Back-stopping these streams of work is, of course, the Wellington-based team.

I believe without the slightest shadow of doubt that those lucky enough to work on disarmament issues feel privileged to be advancing what is often described as a "global good", and to have the opportunity to ameliorate – however incrementally – the variety of risks so many communities face from weapons of mass destruction, inhumane conventional weapons or irresponsibly traded small arms.

Having now dedicated several years of your life to disarmament-related issues, why has it been important to you, personally? Which experiences were your most inspiring or memorable?

I've been lucky to have a very varied career with the New Zealand Foreign Ministry: human rights; NZ's first dispute settlement cases in the World Trade Organisation; tackling counter-terrorism and counter-radicalisation; and, most recently, as Ambassador for Disarmament – although through it all, international law has remained my first love (well, that and Shakespeare!)

I would expect that most New Zealanders coming to disarmament and arms control issues even without a legal background would soon become pretty passionate about IHL, and humanitarian causes more generally.

I have had six years now as Ambassador for Disarmament, and Permanent Representative to the Geneva-based Conference on Disarmament. Having represented New Zealand at all the meetings over four years which ultimately resulted in the adoption of the Arms Trade Treaty (ATT), **the thing I am proudest of is having pushed consistently for that Treaty to set high standards to govern arms transfers.** Together with Mexico, Nigeria, Norway and Trinidad and Tobago, New Zealand was part of a grouping called "The Progressives" and we worked with civil society to outflank those promoting loose controls or wanting loopholes in the Treaty. So I was particularly honoured when, at the end of this long process, I was sent to

Beirut.

© ICRC

New York to formally sign the Treaty on behalf of New Zealand – that's something I'll certainly never forget. And now with the text of the Treaty settled, New Zealand has remained active in its next stage – pushing for strong rules to govern its operating procedures and to ensure an effective secretariat.

I also feel proud of New Zealand's achievements as Coordinator for the Humanitarian Initiative on Nuclear Disarmament. At the time when New Zealand took over this role in 2013, there were 80 countries that had signed on to the Joint Statement supporting this Initiative. By the time we relinquished the position at the start of 2015 we had raised that number to 155. Together with the three conferences that have been held on this issue (in Oslo, Nayarit and Vienna), this Initiative has heralded a shift in the way many countries approach nuclear disarmament – and there is now significant new momentum pushing for this.

The thing that continues to fill me with the greatest frustration is the state of the Conference on Disarmament (CD) in Geneva. The CD was set up to be the international community's primary forum for negotiating disarmament treaties. New Zealand fought very hard to get a seat on this body throughout the 1990s (at a point when the CD was negotiating the Comprehensive Nuclear Test-Ban Treaty) and we are now one of its 65 members. But since 1996, the CD has been mired in procedural wrangles and unable to commence any substantive work. It operates only on the basis of consensus and that's a very difficult standard to reach.

> The sad truth is that up to half a million people are killed every year by small arms, which fuel crime and sexual violence as well as instability.

There are other bodies, too, which have had little recent success in putting new treaties in place. New Zealand was one of six countries that put forward a negotiating mandate on cluster munitions at the Convention on Certain Conventional Weapons (CCW) Review Conference in November 2006 but was not able to get agreement there. After that, New Zealand was part of the core group of countries leading the adoption of a new cluster munitions treaty in the mid-2000s, building on the precedent of the Ottawa Landmines Convention and taking the negotiation to prohibit cluster munitions outside the framework of the CCW – indeed outside any of the established global processes. This got around the blockages and vested interests which had prevailed within the CCW and we were able to get a treaty in place with strong rules that really could promise to stop the maiming of civilians caused by these indiscriminate weapons (in some cases long after the particular conflict in which they'd been used had ended). Our Convention has contributed significantly to the global stigmatisation of cluster munitions and is now an essential instrument of IHL.

New Zealand remains the Convention's Coordinator for National Implementation (which means that we're closely involved with efforts to assist countries in developing the domestic legislation they need to fully implement the cluster munitions treaty obligations). As part of this, we have developed a model law able to meet the requirements particularly of small states.

We're hearing a lot about "humanitarian disarmament" nowadays. It's been a factor in putting in place the Landmines Convention, the Cluster Munitions Convention – and now it's a motivating factor for nuclear disarmament.

I suspect many of your readers might be quite surprised to learn that there ever was any basis other than a human or humanitarian one for disarmament. But the fact is that, traditionally,

Event on Ratifying the Arms Trade Treaty, 2013.

disarmament discussions have indeed centred on state security – with the state as the primary, if not sole, point of reference for disarmament and arms control efforts and the plight of the ordinary citizen coming off very much at second best. This has meant that, at least until rather recently, the military and security needs of governments and their armed forces have dominated decision-taking as well as the shaping of IHL in all the usual multilateral bodies.

The "humanitarian disarmament" approach redresses this balance and focuses squarely on the interests and well-being of ordinary citizens. Instead of discussions underwritten by strategies relating to use (or deterrence of use) of particular weapon systems, this approach assesses the consequences of any such use – and from the prism of humanity. This reframing of the debate is something very much welcomed by the New Zealand government but not by every government.

"Humanitarian disarmament" was also a factor behind the push for the Arms Trade Treaty. You have talked already about this Treaty – can you explain why it was so important?

When people think about disarmament, they often focus on whether or not a weapon is inherently inhumane and whether, therefore, it should be explicitly banned (as has been the case, for example, with chemical and biological weapons or cluster munitions). But it is also the case that weapons not necessarily inhumane per se, or warranting prohibition across the board, can still have a hugely harmful effect – and this is certainly true for guns or other types of small arms in so many areas of conflict and insecurity around the globe.

It is these sorts of arms – the low-tech and cheap ones – which are the arms most widely used to violate human rights – whether the big-scale atrocities that hit the headlines or the daily, smaller incidents of armed violence. The sad truth is that up to half a million people are killed every year by small arms, which fuel crime and sexual violence as well as instability.

There are plenty of international rules and regulations to be worked through by traders of "normal" goods like bananas and butter but there was a complete loophole, no global standards whatsoever, covering the export of guns (or any of the weapons – including fighter planes, missiles and tanks – described as 'conventional' ones) let alone constraining their illicit trafficking. New Zealand – and all our partners in the Pacific Islands Forum – wanted to see this gap filled, and filled well, so that the arms trade would take place in a more responsible as well as a more transparent manner.

The ATT, adopted by the UN in 2013 and ratified by New Zealand in September last year, requires States Parties to have an export control system in place and to carry out a risk assessment before they allow exports of conventional weapons. Most importantly it requires them to ensure that they do not ever export these weapons to countries where they would be used to carry out genocide, crimes against humanity or war crimes. An internationally-agreed export control system like the ATT may not sound very glamorous – but it offers the real prospect of turning down the flow of weapons to undesirable users in vulnerable regions.

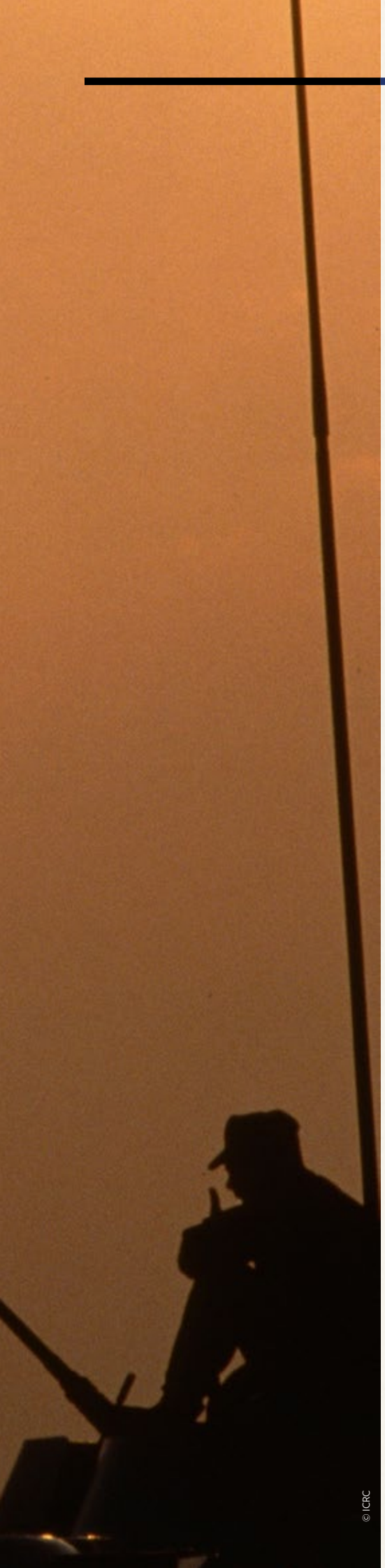
How can the model implementing legislation that New Zealand has developed on the ATT be of use for other countries?

Effective export controls involve a number of different branches of government and will need to be backed by laws and regulations in place in each ratifying country. The model legislation which we have drafted identifies for countries what they will need to enact in their domestic context in order to fulfil the terms of the Treaty. And it provides drafting for them in a way that can easily be customised to suit individual circumstances. From New Zealand's perspective, the model law is a logical way to ensure that States keen to join the ATT are not overwhelmed by the practicalities of doing so ■

Preserving Humanity

IN MODERN CONFLICTS

Alberto Costi, Associate Professor, School of Law,
Victoria University of Wellington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The centenary of New Zealand Red Cross provides an ideal opportunity to reflect on some of the achievements and challenges of international humanitarian law (IHL). New Zealand Red Cross was born during a 'traditional' war that pitted States versus States and soldiers against soldiers, fighting from trenches with traditional weapons under rudimentary norms emerging from a few conventions and unwritten rules of international law. Since then, a body of treaties has codified State practice and created a legal regime to protect civilians, combatants hors de combat, prisoners of war and many types of property.

Meanwhile, the environment in which IHL operates has drastically changed. Most conflicts now oppose non-state armed groups to government forces, many tasks traditionally the domain of the armed forces are outsourced to non-military personnel, and drones and increasingly automated weapons systems play a central role in the conduct of armed operations. Established rules are challenged, entire populations are displaced, and the fine line between combatant and non-combatant is eroded. Civilians are often targeted, cultural property is destroyed, and distinguishing properly defined armed conflicts from other situations of violence is increasingly difficult. It is thus imperative for the international community to address the relevance of IHL in its current form. As New Zealand Red Cross steps into its second centenary, the question is not *whether* IHL is relevant, but rather *how* to ensure it remains relevant. How can decades-old rules address modern armed conflicts? Should we contemplate an overhaul of the Geneva Conventions? Should new protocols be drafted to address new technologies? Should new treaties addressing specific issues be negotiated?

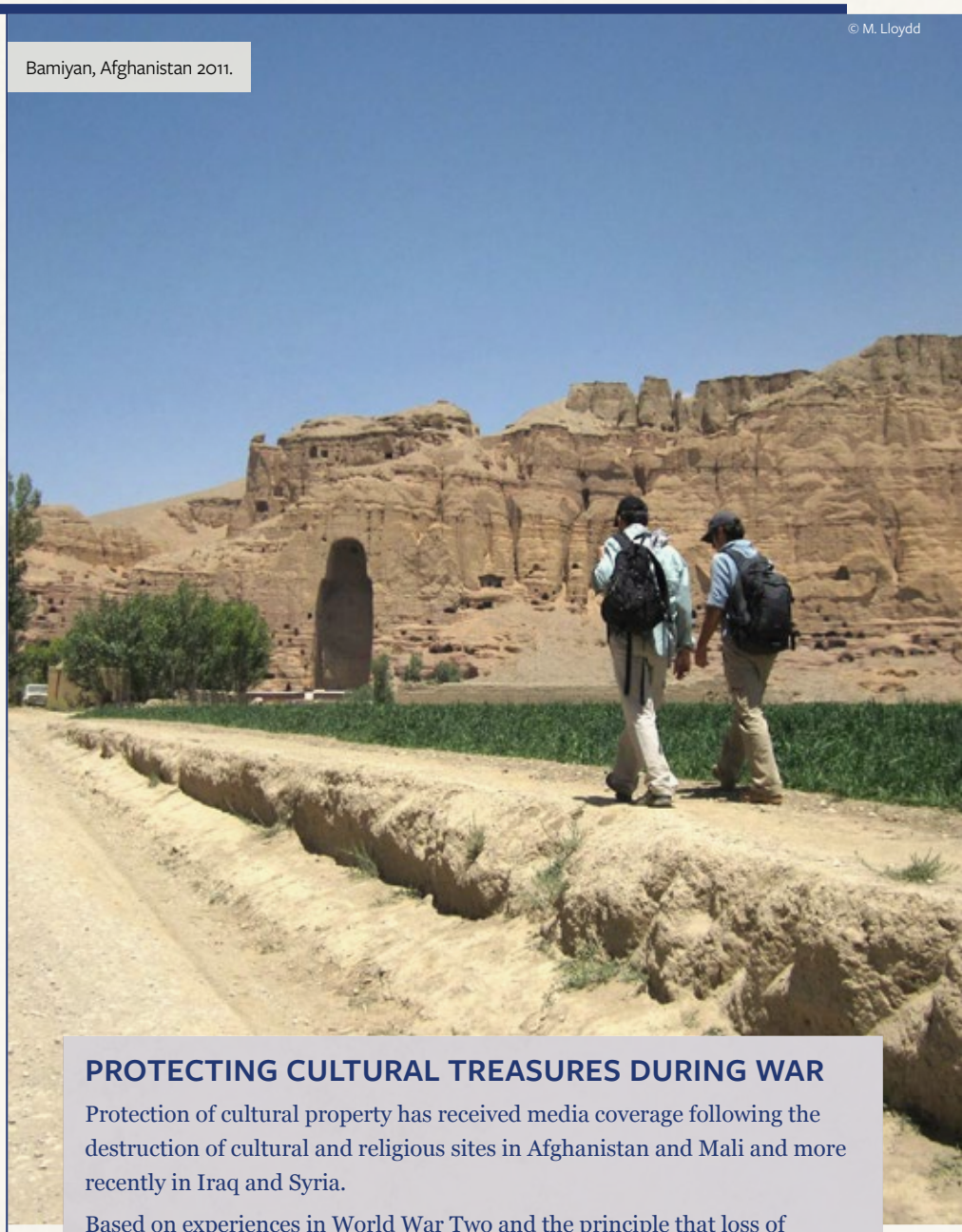
> IHL continues to provide a solid legal framework of widely accepted rules capable of tackling conflicts.

RECENT PROBLEMS OF PRIVATE MILITARY AND SECURITY CONTRACTORS (PMSCs)

The regulation of private military and security contractors (PMSCs) faces many complications and illustrates the difficulties in forging ahead. PMSCs operate across borders, perform a variety of tasks ranging from protecting persons in war zones to demining, and may be given immunity from prosecution by the host country. The first prominent attempt to regulate them lies in the Montreux Document, a non-binding instrument negotiated under the auspices of the ICRC and the Swiss government and endorsed in 2008 by 17 countries. It affirms that home and host States are subject to existing international law obligations and lists 76 good practices for the PMSC industry. The second attempt is an International Code of Conduct agreed in 2010 by a group of PMSCs seeking to set international standards and improve accountability. Both are forms of self-regulation based on good will. Despite best efforts, they have not been effectively implemented. Finally, a project of a draft convention has been discussed at the United Nations. It identifies the functions that States cannot outsource, sets up a domestic registration and licensing system, and creates mechanisms to monitor and oversee the activities of PMSCs. The draft convention has progressed little beyond the early stages. Regulating the industry effectively will require greater effort into negotiating compromises and building consensus among stakeholders, to avoid a repeat of incidents such as the killing of 17 Iraqi civilians by Blackwater guards in Baghdad in 2007.

Despite challenges, and until an international appetite for new treaties emerges, IHL continues to provide a solid legal framework of widely accepted rules capable of tackling conflicts. IHL has shown capacity to evolve and address challenges in the past. Although lobbying of armies might have shaped the early path of IHL, recent developments concerning landmines, cluster munitions and small arms are indicative of civil society's influence on the international community. The problem IHL now faces is one of compliance and implementation. The Geneva Conventions stipulate that all nations 'undertake to respect and ensure respect' for the Conventions. The ICRC remains at the forefront of efforts to enhance the effectiveness of IHL; New Zealand and New Zealand Red Cross are vocal advocates. Strongly supporting the ICRC, the government has condemned violations of IHL and expressed outrage at egregious violations of fundamental rights and destruction of cultural heritage sites in international fora. New Zealand Red Cross has intervened in times of emergency in the region and has been active in disseminating IHL at all levels.

As we celebrate its achievements, the Red Cross Movement in general continues to face daunting responsibilities. Application of IHL in cyber conflicts, compliance by non-state actors and quicker triggering of IHL in situations of armed violence are a few of the contentious issues facing academics, governments and civil society. The role of New Zealand Red Cross remains crucial, be it to assist and inform governments, or to promote IHL and ensure current and future generations see the need to further limit war and its apocalyptic effects ■



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Bamiyan, Afghanistan 2011.

PROTECTING CULTURAL TREASURES DURING WAR

Protection of cultural property has received media coverage following the destruction of cultural and religious sites in Afghanistan and Mali and more recently in Iraq and Syria.

Based on experiences in World War Two and the principle that loss of cultural property damages the cultural heritage of all mankind, the Hague Convention 1954 specifically prohibits attacks against cultural property and its use for military purposes. The Convention also prohibits theft, pillage and vandalism of protected cultural property. Similar protections are found in the 1977 Additional Protocols to the 1949 Geneva Conventions and the 1999 Second Additional Protocol to the 1954 Hague Convention.

New Zealand signed the 1954 Cultural Property Convention at the time of its adoption in The Hague in 1954 but did not follow up with ratification until more than 50 years later in 2008, following public consultation in 2007 by then Prime Minister and Minister for Arts, Culture and Heritage, Helen Clark: "New Zealand's forces overseas already operate in broad accordance with the Convention. Ratification will make this high standard of conduct by our military more visible."[1] New Zealand implemented the necessary domestic legislation – the Cultural Property (Protection in Armed Conflict) Act 2012 – and joined the two Additional Protocols to the Convention in 2013. While armed conflict is unlikely in New Zealand, a key question the Government will have to grapple with is defining the cultural property to be specially protected in New Zealand, including how best to deal with Maori heritage.

NEW ZEALANDERS ENFORCING IHL

Two New Zealanders – one just starting her career and one already established – share their experiences of working within special criminal tribunals trying individuals accused of war crimes and crimes against humanity.

Golriz Ghahraman has practiced law as a barrister for over a decade, specialising in criminal law and human rights. Internationally, she worked in defence teams on cases in the UN International Criminal Tribunal for Rwanda (ICTR) in Arusha and the UN International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague. In 2011 she shifted to prosecution, as part of the UN Assistance Mission to the Khmer Rouge Tribunal (UNAKRT) in Phnom Penh.

Why international criminal law? What grabbed your imagination?

I was innately interested in international criminal law and international humanitarian law (IHL) because I was born and spent my childhood in Iran, in the post-revolutionary decade of the Iran-Iraq war. My family and I eventually came to New Zealand as asylum-seekers, so I know how important international law protections are to those affected by war and other situations of violence.

I was lucky to be introduced to international criminal law by Professor Kevin Heller (now at the University of London's School of Oriental and African Studies), and got to work with one of the most skilled and inspirational advocates in international criminal law, Peter Robinson, at both the ICTR and ICTY. At the University of Oxford, my Masters Degree focused on human rights standards of specialised justice institutions.

Can New Zealand and New Zealanders be leaders in international criminal law issues if we have not experienced armed conflict in this country in recent history?

I have had the privilege of working with some great kiwi lawyers in every posting, and in the case of the Extraordinary Chambers in the Courts of Cambodia (ECCC) to prosecute in a court presided over by a home-grown judge, Dame Silvia Cartwright.

I think our strong Common Law tradition with its comprehensive procedural safeguards is a contribution well worth bringing to the international arena. Upholding the rights of the defence has been a challenge that international justice institutions have not met well in the past. Dealing with notorious mass atrocities often creates a presumption that the accused are guilty and the purpose of the trial is simply to create a record. At the ad hoc tribunals for the Former Yugoslavia and Rwanda this was first apparent when the prosecution was made an organ of the court but the defence was not. At the ICTR, defence counsel did not have access to the tribunal's database of case law or even printing facilities, let alone the vast investigative resources of the Prosecutor. The kiwi legal tradition of prioritising fairness, through concepts like equality of arms and the right to silence, are crucial to the integrity of international justice.

The International Criminal Court (ICC) has been facing a number of challenges. Do we expect too much of these institutions?

Although the ICC is undoubtedly an imperfect institution, I find it hard

In the international context, 'justice' for victims of continuing atrocities is more likely to mean securing safe passage out of conflict zones, ensuring access to clean drinking water, and ending violence through decisive diplomatic action.

to accept criticism of the Court that mistakes its role as a justice institution with that of other mechanisms for international peace and security.

It is important to recognise that any system of justice does not, and cannot, operate in a vacuum from the rest of the machinery of a just and secure society. In the domestic context the criminal justice system, though crucial, plays only a small part of the mechanisms that ensure the safety of the community. The purpose of criminal justice is to establish individual liability for crime, in a fair and reliable process. In a post-atrocity context, prosecutions help bring a return to the rule of law, ascribe individualised rather than group blame, and remove those responsible from positions of power. However, bringing about an end to complex war or humanitarian emergencies, especially while they are happening, is not within the ambit of the ICC's competence.

In the international context, 'justice' for victims of continuing atrocities is more likely to mean securing safe passage out of conflict zones, ensuring access to clean drinking water, and ending violence through decisive diplomatic action. The conversation about indictments for Syria, for example, seems misplaced while crimes are actually ongoing. In those circumstances, even if adequate investigations were possible and the ICC had jurisdiction, there is no evidence that indictments would improve the circumstances of victims on the ground. In fact, as we saw after the much-celebrated Darfur indictments, the first against a sitting head of state for genocide, victims may well be left more vulnerable. These types of considerations underlie the importance of the work of the ICRC, and particularly its testimonial privilege, which secures humanitarian access when it is most important.

As for other general issues, in most international criminal prosecutions, evidence gathering, preservation and witness protection are huge challenges. At the ICTR I was involved in a case where a key witness recanted testimony collected by prosecutors in Rwanda when interviewed by the defence in the absence of Rwandan government officials. This happened several times at the ICTR because of the oppressive climate once the RPF (the victorious party in the Rwandan conflict) consolidated political power. I'm currently dealing with a similar challenge in New Zealand in a case of an accused sought for extradition for genocide, war crimes and crimes against humanity. Our domestic authorities are not well equipped to provide the kind of witness protection and confidentiality frameworks needed to fairly conduct international criminal cases, where witnesses feel threatened to speak out against their governments.

How do you see the role of women in international criminal law?

Over the past 20 years international justice institutions have made huge progress in recognising and prosecuting gender-based crimes committed during war and other atrocity. We now have the crimes of rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and 'any other form of sexual violence' against women explicitly stated as crimes against humanity and war crimes.

Based on the experiences of the ad hoc tribunals we also now have detailed processes aimed at better prosecuting gender-based and sexual violence. These include confidentiality mechanisms for victims and witnesses, allowing for victim input into the types of protective measures applied during hearings, and ensuring victims have access to support or counselling throughout the justice process.

While the recognition of the need to better prosecute gender-based crimes, particularly sexual violence, has been a great achievement, there is a danger that women's engagement in transitional justice is relegated to victimhood of those particular crimes alone. In fact, women experience the full range of crimes as victims, witnesses and perpetrators, and of course must have a role in administering justice in the aftermath of atrocity. As victims, women are affected by war and other atrocity differently and often more detrimentally than men. This might be because they have less financial and political power, are less able to defend themselves physically and are often responsible for children.

Our work needs to focus on mainstreaming women's experiences and engagement. This includes prioritising gender equity in witness selection to ensure women's experiences of crimes are captured in the record. At investigation stage it might mean ensuring male and female investigators or interpreters are available to witnesses. The ultimate legacy and capacity-building aspect of any international justice mission also requires that women be employed in the work of the court, as judges, lawyers and administrators.

In 2015 the New Zealand Government has been drafting its National Action Plan for the implementation of United Nations Security Council resolutions relating to Women, Peace and Security. I'm hoping this will include strategies related to transitional justice in our future assistance missions and that gender mainstreaming is part of those strategies.

Rita Yip moved from Hong Kong to New Zealand as a child. After graduating, she pursued her interest in international law with an internship at the special chamber in the Cambodian courts established to try those responsible for the Khmer Rouge atrocities in the 1970s. Since May 2015, she has been based at the International Criminal Court in The Hague, working for the defence in the Court's first case about the administration of justice, related to the prosecution of Jean-Pierre Bemba from the Democratic Republic of Congo.

During an internship, I worked on an asylum case of a client from Rwanda. I wanted to understand more about what happened in Rwanda. I researched cases from the international criminal tribunals for Rwanda and the former Yugoslavia. This introduced me to international criminal law.

I was interested in working at the special criminal court in Cambodia – called the Extraordinary Chambers in the Courts of Cambodia (ECCC) – for a number of reasons. I was intrigued about Cambodia and why so many people were killed. I first found out about the ECCC from the documentary "Brother Number One" about New Zealand Olympian Rob Hamill's journey to Cambodia following the death of his brother at the hands of the Khmer Rouge in 1978. Part of his journey included giving victim testimony against Duch, the leader of the S-21 prison where his brother was killed. I was very touched by his story. The work felt meaningful and worthwhile considering how much Cambodia suffered as a country.

What was your greatest memory or lesson working at the Cambodian Tribunal?

A national staff member gave a speech at his farewell that surprised everyone in the office and brought tears to our eyes. He told us that as a former Cambodian soldier, he had to change his identity and lie about his past when the Khmer Rouge came into power. During the evacuation of Phnom Penh, he had narrowly escaped from being taken to prison, and had lived in fear, in case his military training – how he was taught to walk and talk – might be easily identifiable. He had to change everything about himself in order to stay alive. He explained to us that when the ECCC opened, he applied for his position because he wanted to find closure for the deaths of his family and to make sure that those responsible account for the suffering they caused.

Diplomatic Conference on the Establishment of the International Criminal Court, Rome 1998.

© UN

Although his story may not be the most tragic or shocking, it made me realise that Cambodians today are still emotionally and psychologically affected by those years and are still suffering from what happened. It was said that each person lost on average six family members. It made me realise how important these trials were for Cambodia and its people to seek justice and bring a sense of closure.

Legally-speaking, how does the Cambodian Tribunal differ from other tribunals for international crimes?

Unlike other international criminal courts, the ECCC is established within the Cambodian legal system, to prosecute the crimes committed between 17 April 1975 and 6 January 1979 in Cambodia. This means that the majority of the staff are Cambodians, but there are Cambodian and international judges, prosecutors and defence lawyers. Due to its hybrid nature, as well as international crimes, it also covers crimes under the 1956 Cambodian Penal Code such as torture, homicide and religious persecution. There have been other hybrid tribunals before in Sierra Leone, East Timor, Kosovo and Bosnia.

Working at the ECCC also widened my perspectives on criminal law practice. Unlike New Zealand where the parties collect the evidence to put forward to the court, the ECCC follows the civil law system (French model) where Investigating Judges independently investigate the evidence collected by the prosecutors and put forward all the documents for the proceedings before the Trial Chamber.

Another interesting feature at the ECCC is the role of civil parties. Due to the large number of victims who suffered during the Khmer Rouge period, they may participate in the trial proceedings as civil parties to seek moral reparations. I think this feature is particularly important for this case, because it gives Cambodians an opportunity to fully participate in the pursuit of justice and national reconciliation.

Why should New Zealanders be interested in international criminal law?

First, being a State party to the Rome Statute of the International Criminal Court is not about serving national interests, it is about taking part in the international community, condemning war crimes, being involved in the development of international criminal justice and fulfilling our responsibilities to secure global peace. During my six months in Cambodia, there were other New Zealanders working at the court, including two legal officers in the Office of the Investigative Judges (OCIJ). Unfortunately, I didn't have a chance to meet Judge Dame Silvia Cartwright who ended her six and a half year appointment as an international judge in the Trial Chamber one month before I started.

Being a State party to the International Criminal Court also ensures that New Zealand criminal law and military codes comply with international standards and are capable of dealing with war crimes should they occur. It is important to highlight that the International Criminal Court acts as a court of last resort, in case a national judicial system is unable or unwilling to investigate or prosecute the individuals who have committed the most serious crimes of international concern in a fair and genuine manner. It therefore provides New Zealand courts an insurance to deal with such matters if it is unable or unwilling to do so themselves ■

INTERNATIONAL CRIMINAL TRIBUNALS

When the First Geneva Convention was negotiated in 1864, Gustave Moynier, a member of the original Red Cross Committee in Geneva, foresaw the need for an international criminal court. Ideally it was the responsibility of each nation to prosecute citizens who breached the laws of war, but it was inevitable, he said, that a further international layer of enforcement would be needed.

Although the Nuremburg and Tokyo trials were established after the Second World War by the military victors to prosecute the crimes of the Nazis and Japanese military leaders, Moynier's vision of a permanent structure for prosecution of international crimes did not become a reality until 2002.

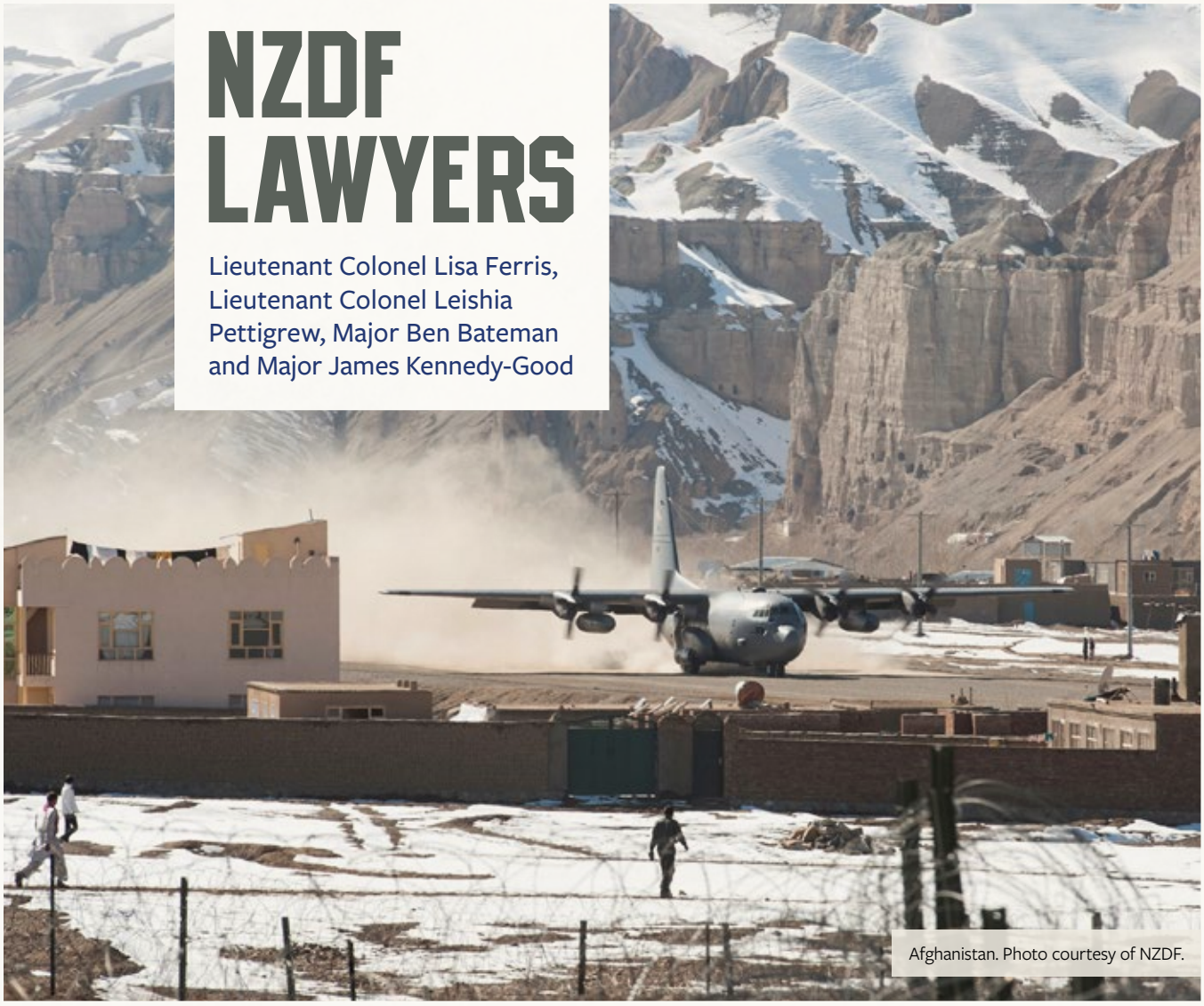
The International Criminal Court (ICC), set up by States under the Rome Statute, came into force on 1 July 2002. 123 States are now parties. It represents a milestone in the international community's fight to end impunity for war crimes, genocide and crimes against humanity. Though States have the primary responsibility for prosecuting suspected war criminals, the ICC may act – if the criteria required to establish its jurisdiction are met – when domestic courts are unwilling or unable to do so.

Before the ICC, International Criminal Tribunals for the former Yugoslavia and Rwanda (known as the ICTY and ICTR), were set up by the UN Security Council in 1993 and 1994 to try persons accused of committing war crimes during the conflicts in those countries. Penal repression of war crimes is also carried out by a growing number of 'mixed' or special courts, with elements of both domestic and international jurisdiction, established in States such as Cambodia, East Timor and Sierra Leone.

New Zealand has long supported the establishment of the Court. On 7 September 2000, it became the 17th country to join the Rome Statute. The Statute entered into force for New Zealand on 1 July 2002.

NZDF LAWYERS

Lieutenant Colonel Lisa Ferris, Lieutenant Colonel Leishia Pettigrew, Major Ben Bateman and Major James Kennedy-Good



Afghanistan. Photo courtesy of NZDF.

International humanitarian law (IHL) requires States to make legal advisors available to advise military commanders. Four experienced lawyers or 'legads' from the Legal Services team of the New Zealand Defence Force (NZDF) reflect on their role in New Zealand and overseas.

How do you describe your work?

- What some people find amazing is that the military retains lawyers in uniform fulltime and has its own unique justice system. I explain our role as that of a 'specialised general legal practice' in that we cover a wide variety of law but with a military focus. There are four main areas: operational law (international law, IHL/laws of armed conflict and rules of engagement), personnel law, administrative law and military justice. Our Head, Colonel Justin Emerson once put it this way: "It's widely acknowledged that we have one of the broadest practices in government. We have an organisation of over 12,000, we have naval bases, airports and ships and we move around the world – so the legal issues we advise on are incredibly broad."
- I explain my role as a mission-enabling, operationally-focused lawyer who gives advice to ensure operations are conducted in accordance with New Zealand's international and domestic legal obligations. Military lawyers are a vital component of certain types of modern military operation. I have noticed a huge increase of awareness in the NZDF about our role – military personnel understand that ensuring that all NZDF operations are conducted in full compliance with the law is fundamental to mission success.
- The work is incredibly varied and always depends on the type of operation. I was deployed in Afghanistan in 2010, 2011 and 2013, primarily working with Special Forces. I was also involved in joint reconnaissance for NZDF's Iraq deployment in 2014 and did two deployments to Bahrain in support of maritime operations in 2011 and 2014. Every operation throws up a different legal problem set, which will require a different focus. A good deployed legad is flexible and willing to professionally advise on all matters which arise. The practicalities of being deployed is that it is normally a sole charge position. As such, we are often a one-stop shop.

What challenges are there in applying the law on the ground in real and complex situations of armed conflict?

- Modern conflict, and peacekeeping, can be inherently complex. The challenges on the ground underscore the complexity of the law of armed conflict and accordingly the need for specialist legal advice in these areas.
- A legal advisor, as part of the team, assists in enabling commanders to make sound, lawful decisions. A key challenge is the fact that you are dealing with real people rather that just theoretical questions on a page; advice you give can have a real impact.
- The situation can unfold rapidly, so the application of the law can change in an instant and sometimes it can be difficult to ascertain facts. To perform well, I've had to, at no notice, be able to give accurate and timely advice for complicated and sensitive legal issues in a manner that a commander understands.
- I agree. Bringing the law out of the books is an art that is difficult to master. Fundamentally, a deployed operational legad must be able to communicate in an effective way that commanders understand and be a significant influence on good command decision-making; be able to give the tough advice when required whilst still maintaining the respect (and friendship) of professional colleagues. It is important not to quibble over every point but to stand 100 per cent firm on the non-negotiable aspects. In complex situations, I have faced dilemmas many times – for example on significant and highly sensitive challenges around fundamental IHL and human rights law and other legal issues – but have always remained principled, and prepared to stand up for the law in a respectful and justifiable manner. This has always worked for me.

How do NZDF legads work when deployed overseas?

- It's a combination of missions with combat forces and work at the base. I had a lot of direct contact with local authorities and local people affected by the conflict. In Afghanistan we also had contact on a regular basis with the International Committee of the Red Cross (ICRC), for example to discuss matters related to detention. More generally, our role is to ensure a commander's legal compliance on operations, and to enhance a commander's freedom of action where the law permits it.
- I spent a lot of time deployed with combat forces in Kabul and Bamiyan province. When we're working with local partners, for example training the national forces in Afghanistan or Iraq, language and cultural understanding are always principle challenges. In my experience, once local forces receive good training from Kiwis on matters like the law of armed conflict, they are generally very receptive. It's also important to understand local law and incorporate it into operations if and where this is appropriate. Where the deployment is part of a multi-national coalition, we also need to be aware of different countries' understanding of IHL, their different international treaty obligations, different Rules of Engagement and other policies, although fundamentally nations retain sovereignty of their own legal freedoms and constraints.

In my experience, once local forces receive good training from Kiwis on matters like the law of armed conflict, they are generally very receptive. It's also important to understand local law and incorporate it into operations where appropriate.

Afghanistan. Photo courtesy of NZDF.

Colonel Justin Emerson and Brigadier Kevin Riordan, incoming and outgoing Director of Defence Legal Services and Military Prosecutions NZDF 2013. Photo courtesy of NZDF.

- Legads can help with the development of IHL through networking and engagement, particularly with developing nations. I personally would also like to see legal advisers being considered as a deployable asset as a matter of routine when the UN Security Council considers deployments in a peacekeeping setting.

NZDF offers great support to the Red Cross national IHL moot court competition each year. Why is disseminating IHL amongst law students important to NZDF?

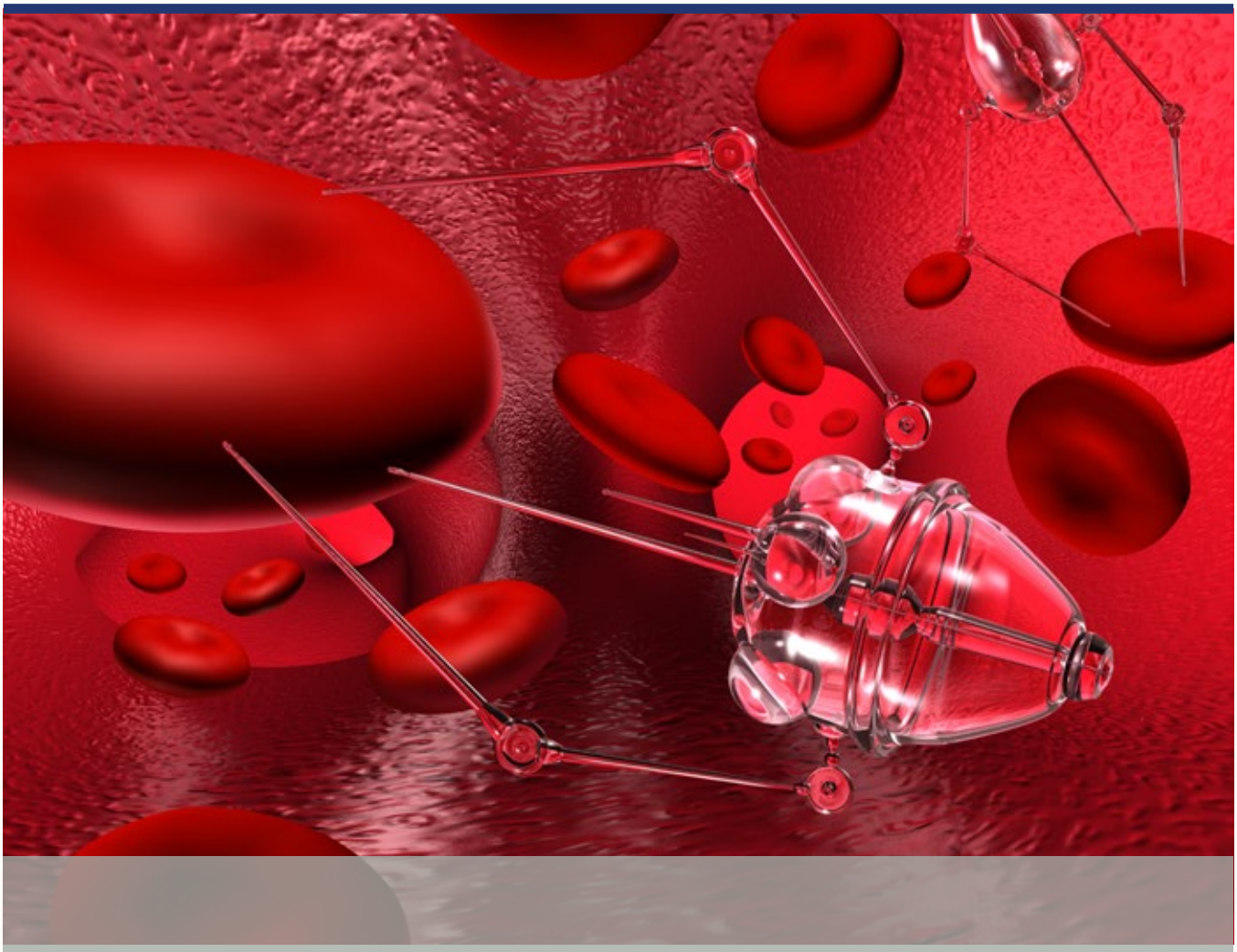
- Articles 82 and 83 of the First Additional Protocol – requiring military legal advisers – reflect the multi-faceted role of the legal adviser. A legal adviser not only has a responsibility for the provision of legal advice to command but also a broader role of upholding and enhancing the adherence to international law, specifically through the teaching of law of armed conflict. Accordingly, although our role can be quite flexible, at a minimum it requires all legal advisers to maintain an expertise in international law and in particular the law of armed conflict.
- We must continue to stimulate interest with law students to ensure our future lawyers and other leaders understand these issues and stand ready to debate them. The student IHL Moot competition raises awareness of a fundamentally important area of law that is not necessarily understood unless you work in the area. It raises students' consciousness of alternative career options and also some of the issues that arise in the international arena ■

Article 82, Additional Protocol I of 1977

The High Contracting Parties at all times, and the Parties to the conflict in time of armed conflict, shall ensure that legal advisers are available, when necessary, to advise military commanders at the appropriate level on the application of the Conventions and this Protocol and on the appropriate instruction to be given to the armed forces on this subject.

Article 83, Additional Protocol I of 1977

The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate the Conventions and this Protocol as widely as possible in their respective countries and, in particular, to include the study thereof in their programmes of military instruction and to encourage the study thereof by the civilian population.



From GATE PA to Nanotechnology

Kevin J. Riordan, Judge Advocate General of the Armed Forces, ONZM

When the government of Great Britain ratified the original Geneva Convention on behalf of the fledgling colony of New Zealand in 1865, this country was the seat of a bitter war.

The previous year British forces had suffered a stinging defeat at Gate Pa in Tauranga. Henare Taratoa's now famous "orders of the day" for Maori forces at that battle guaranteed that the British wounded would not be mistreated. Although Assistant-Surgeon Manley was awarded the Victoria Cross for remaining in the Pa to attend to the wounded, the defenders had, at risk to themselves, already provided what care they could before their strategic withdrawal. By the time the Convention was adopted it seems that the only real consternation caused was amongst the British medical staff who had, until that time, engaged in combat alongside their fellow soldiers.

Fifty years later New Zealand was again at war, this time on the distant Gallipoli Peninsula. One of the most recognised icons of that campaign is that of a wounded ANZAC being evacuated on the back of a donkey by New Zealander Richard Henderson of the medical corps.[1] Easily overlooked is a small red cross on a white brassard tied across the donkey's nose. This was intended to indicate that the Geneva Convention protecting the wounded and sick, medical and religious personnel and medical transports was being relied upon. In the constant balancing act between humanity and military necessity it was readily apparent that attacks upon the wounded and those who treat them served little useful purpose in relation to the suffering it caused.

These are but two examples of the development of international humanitarian law which affected New Zealand at seminal points in this country's history. The range of legal obligation which applied to New

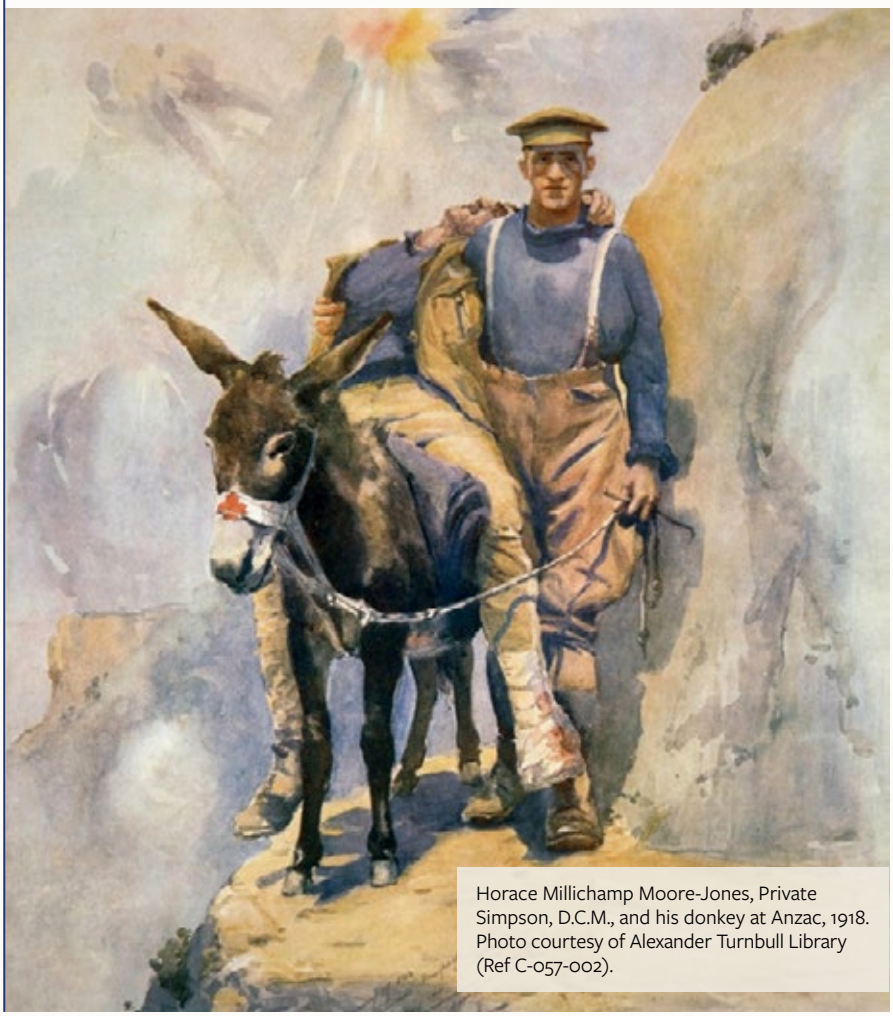
Zealanders in 1865 and 1915 was, in reality, comparatively limited in its scope and extent. Indeed the laws and customs of war were included in early military manuals expressly on the basis that they were only "for the guidance of officers". With rare exceptions, there seemed little by way of legal sanction for those who disobeyed it.

None of this is the case now. The law of armed conflict is now both extensive and detailed. It is unequivocally applicable to both States and individuals, and there is no longer any doubt that persons who breach its requirements face the prospect of criminal responsibility.

As we move deeper into the third millennium we cannot fail to notice the reality of warfare taking new leaps forward in its technological aspects just as it did during the 1860s and in World War One. Militarily capable States are on the very verge of developing deployable battlefield robotics. In future pre-programmed killing machines may well assess for themselves questions of friend or foe, combatant or civilian, fighting or hors de combat. They may do so through computer analysis of targets and calculation of "acceptable" levels of civilian casualties by use of pre-set formula. Air combat will be the province of ever more sophisticated drones, and nanotechnology may produce insidious weaponry capable of moving through the food or water supply targeted to kill identified individuals. Enemy soldiers of the future may find themselves stopped in their tracks, rather than killed, by sound or particle beams. Cyber warfare is already capable of bringing down computer systems, communications, power grids and weapons systems. It may challenge rules against perfidy as military computer systems are "hacked" so that they engage friendly forces or mistake civilian objects for military objectives.

Technology may also, of course, enable warfare to be conducted far more cleanly than was ever the case in the past. Battle robots will be incapable of fear, cruelty, hatred, revenge or racism – all powerful motivators for war crimes. They will be immune from the desire to rape or steal. However while robots may be immune from destructive human emotions and folly, the people who programme them, input their data, or deploy them, will not. Accountability for mistakes or criminally induced targeting may prove difficult. Who would face responsibility for such errors or crimes? Would it be the operator, designer, manufacturer or the commander?

While robots may be immune from destructive human emotions and folly, the people who programme them, input their data, or deploy them, will not.



Horace Millichamp Moore-Jones, Private Simpson, D.C.M., and his donkey at Anzac, 1918. Photo courtesy of Alexander Turnbull Library (Ref C-057-002).

Environmental concerns, which by now are a constant factor in our lives, may in the near future grow to such significance that conducting warfare without due regard for the environment may become the most serious war crime of them all.

We may wonder whether these developments spell the end of IHL in its familiar form. Will they require new laws to be written? Or will they merely require that the ones which already exist be applied with even greater vigour and vigilance?

Whatever the answer to these questions, there are some things that seem likely to hold firm just as they did in 1865 and 1915. Smaller nations such as New Zealand cannot hope to influence the major affairs of the world outside of the framework of a rules-based international society. New Zealand has been right to champion the principled development of international law. The fundamental principles which lead to the development of legal safeguards for the victims of war in our earliest wars will still provide a reliable yardstick for the proper and lawful use of force, until the need to use force disappears entirely ■

"Education is the most powerful weapon we can use to change the world."

Nelson Mandela

EVEN WAR HAS LIMITS!

With so many conflicts raging around the world today, never before has the need to understand the laws of war – or international humanitarian law (IHL) – been so vital.

As a party to the Geneva Conventions, New Zealand is committed to promoting knowledge of IHL as widely as possible, for its military and the general public. Red Cross supports the authorities in this humanitarian task – advocating for, and educating people on, wars, laws and humanity remains a key priority of New Zealand Red Cross. Public opinion can be an effective force in ensuring that IHL is observed and the suffering from war minimised.

Through workshops, talks, photo exhibitions, essay competitions and providing online resources, Red Cross advocates for IHL to be understood and applied, building knowledge of IHL.

Youth in particular are important as an audience but also as supporters and advocates. Red Cross offers programs for secondary schools looking at how war affects women, displacement and the laws of war. For tertiary students, an annual IHL Moot Court competition allows law students to debate a fictitious war crimes case, delving into the rules of law in armed conflict. The winning team from New Zealand travels to Hong Kong for the annual regional competition. For the campaign to eliminate nuclear weapons, youth representatives have also been sent to international conferences in Australia and Mexico.

These activities can spark an ongoing interest and understanding of humanitarian issues, providing an excellent opportunity for students intending to study law, journalism, political science, international relations or students wishing to pursue careers in the New Zealand Defence Force, the New Zealand Police, diplomacy, foreign reporting or international aid work.

Red Cross also engages with government on the implementation of IHL in New Zealand's domestic law. And did you know that New Zealand has a National IHL Committee that assists the government in implementing and spreading knowledge of IHL? New Zealand Red Cross acts as secretariat for this Committee, whose members include representatives of MFAT, NZDF, Police, the Human Rights Commission and independent experts.

Our lives are more interconnected than ever before, and young people are more engaged and keen to voice their opinion on issues. The New Zealand Red Cross 'Wars, Laws & Humanity' program will continue to capitalise on these connections to support united voices making a difference.

Sir Geoffrey Palmer heads the Bench at the NZ IHL Moot Final November 2014.

Below left: NZ Moot 2014 winning team from Victoria University with Swiss Ambassador Vogelsanger. They went on to win the Asia-Pacific IHL Moot 2015.

"Whether as an aid worker, nurse, soldier, police officer, journalist, tourist or teacher, every New Zealander is a better international citizen by being informed about these essential humanitarian rules and promoting them."[1]

Dr Rod Alley, former Convenor of NZ IHL Committee

Subscribe to the New Zealand Red Cross free monthly 'Wars, Laws & Humanity' E-newsletter by emailing **ihl@redcross.org.nz**

ENDNOTES

The Origins of IHL

1. Interview available http://www.icrcproject.org/interactive/150-years-in-conversation-with-eng.html

Maori Rules of War at Gate Pa

1. Some versions have it that Henare Taratoa or a man named Te Ipu was responsible for taking water to the officer, Lieutenant-Colonel Henry Booth. It seems likely that several similar acts of this nature were shown towards British soldiers wounded at Gate Pa.

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4. Gavin McLean, *The White Ship* (Ministry for Culture and Heritage, 2013); 'NZHistory, 'Angels of Mercy: the Maheno and Marama, www.nzhistory.net.nz
5. The National News, 1 May 1939, "The Royal Red Cross", page 9, citing an unnamed nurse, survivor of the sinking of the Marquette.
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Japanese PoW in Featherston

1. Except as otherwise noted, information for this article was sourced from M. Lowrie, The Geneva Connection (New Zealand Red Cross Society Incorporated, 1981), 61-62; J. Cromey, Featherston Prisoner of War Camp (undated, on file with New Zealand Red Cross National Office); Y. Ota, 'Shooting and Friendship over Japanese Prisoners of War' Thesis presented for M.A. in Social Anthropology, Massey University, 2013; and websites including Te Ara – The Encyclopaedia of New Zealand www.teara.govt.nz and New Zealand History http://www.nzhistory.net.nz/49-killed-during-riot-at-featherston-pow-camp. The author and editor are also grateful to the Archive Services of the International Committee of the Red Cross (Geneva) for archival information provided.
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4. C. Carr-Gregg, Japanese Prisoners of War in Revolt (University of Queensland Press, 1978), cited in O. Sanders, *Incident at Featherston* (Price Milburn, 1982), 6.
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From Gate Pa to Nanotechnology

1. Horace Moore-Jones painted "Man with a Donkey" in 1917. It was for many years described as a painting of Australian John Simpson Kirkpatrick.

Even war has limits!

1. Dr Rod Alley, former Convenor of New Zealand National IHL Committee, interviewed by New Zealand Red Cross, 2009.

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New Zealand Red Cross is part of the International Red Cross and Red Crescent Movement, the world's largest humanitarian network. Neutral and impartial, it endeavours to prevent and alleviate human suffering – in particular during times of disasters and conflicts. It works for greater understanding and respect for IHL.


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