

OPINION NOTE

Australian Red Cross leadership in the promotion of international humanitarian law

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Editor's note: In this Opinion Note, Tim McCormack highlights the Australian experience of setting up and developing an IHL programme domestically as an

* The author gratefully acknowledges the insightful comments of Madeleine Summers and Natalia Jevglevskaja on an earlier draft of this article and thanks Vincent Bernard and Mariya Nikolova for their gentle but persuasive urging both to reflect on and to articulate lessons learned from the Australian Red Cross experience. Helen Durham was inextricably linked to so much described here, and the author was privileged to work with her so closely for so many years.

example of how IHL can be disseminated and promoted at the national level. The Australian experience is a great success story and can serve as an example for others seeking to do the same.



An intriguing set of numbers

For many years, the Australian Red Cross has enjoyed a reputation throughout the Red Cross and Red Crescent world as a leading National Society in the promotion of understanding of and respect for international humanitarian law (IHL). That reputation has not previously been tested in any scientific or objectively quantifiable way. Anyone so minded could perhaps have devised objective assessment criteria – such as *per capita* (or even overall amount) dollar value of resources allocated to salaries of National Society IHL officers and programmes, numbers of participants in training programmes or at public conferences and seminars, or local media coverage of IHL issues in reportage from conflict situations – and subsequently undertaken empirical research to confirm the assertions. Instead, representatives of other National Societies and International Committee of the Red Cross (ICRC) and International Federation of Red Cross and Red Crescent Societies (IFRC) officials and delegates have made their own observations, and the reputation has grown accordingly.

More recently, the *International Review of the Red Cross* has happened upon data prompting intrigue and concomitant enquiry.¹ Ever since Cambridge University Press (CUP) took over publication of the *Review* in 2011, statistics have been compiled on the number and location of hits to the *Review* website and of downloads of *Review* articles. A staggering picture emerges. By far the overwhelming number of hits and downloads emanate from “Down Under”. It might be assumed that this refers to *per capita* views, but no – the figures reveal that there are many more total views of articles from within Australia than from within any other country.²

This is a remarkable fact because despite the vast size of *terra australis* – at 7,682,300 square kilometres, the sixth-largest country on earth – the population of Australia is estimated at just over 23,700,000, meaning that there are forty-nine more populous countries on earth.³ Australia has a total of thirty-six law schools – some would say more than the country needs – but that number is

1 Information provided by the editorial team of the *International Review of the Red Cross*.

2 Out of the top twenty institutional users of the site, between 2011 and the end of July 2014, over 23% of full-text views (ie., views of the articles in full) came from Australian universities. From January to July 2014, over 24% of abstract views came from Australian universities, while over 20% of full-text views by frequent institutional users during that period came from Australian universities.

3 Statistics available at: www.worldatlas.com/aatlas/populations/ctypopls.htm (all internet references were accessed in April 2015).

dwarfed by the United States, for example, which has 203 law schools accredited by the American Bar Association to deliver and confer the first degree in law (JD) and many additional US law schools accredited by their respective State jurisdictions and/or offering distance learning courses online.

CUP's statistics beg the obvious question: what on earth is going on Down Under to generate such interest in IHL? The following observations may offer some lessons to be learned from the Australian national experience for different national contexts.

CUP statistics are, of course, most readily explicable by reference to a formidable Australian Red Cross IHL programme which is truly national and involves actively engaged audiences from Darwin in the far north to Hobart in the deep south and from Perth in the west to Melbourne, Sydney and Brisbane on the eastern seaboard. But there is a deeper story here about the receptivity of Australian audiences to the notion of legal constraints in war. Any failure to identify and acknowledge the sources of that national intrigue misses a crucial part of the story. The argument here is that the spectacular achievements of recent Australian Red Cross IHL initiatives have been possible because of a strong cultural commitment to humanity in war in Australia.

Australia's strong foundation of humanity in war

The German invasion of Belgium and the massing of German troops on the French border on 4 August 1914 provoked the United Kingdom to formally declare war. Instantly, that declaration ensured that Australia and the other British Dominions (principally Canada, New Zealand and South Africa) were also at war. There was an overwhelming outpouring of loyalty and support for the British Empire in Australia as literally tens of thousands of young men rushed to enlist. Far from resenting being dragged into someone else's war on the other side of the world, Australians' enthusiasm for Empire obviated the need for conscription. Altogether 416,809 young men from a total population of just over 4.5 million volunteered to fight, and of those, 324,000 were deployed to serve overseas. That remarkable figure represented just under 40% of all eligible males between the ages of 16 and 45 in the nation.⁴

This enthusiasm for Empire is not part of the experience of recent Australian generations. Despite retention of the British monarch as Australia's constitutional Head of State, Australia's economic and strategic interests now lie very much in Asia – its geographic region of the world – just as the United Kingdom's lie in Europe. In 1914, however, Australia was just a fledgling nation, by then still only 13 years old. For 113 years (1788–1901) following the arrival of the First Fleet into Port Jackson (now Sydney Harbour), the establishment of the penal colony of New South Wales and the dispossession of Australia's indigenous peoples of the land they had nurtured for millennia, the states and territories

4 Australian War Memorial statistics are available at: www.awm.gov.au/atwar/ww1/.

which now constitute the federal nation of Australia were independent colonies of the British Empire.

World War I was unique for Australia because it was the first war following independent nationhood in which Australian servicemen fought as a distinct Australian force. Australia's most significant national day of commemoration for its war dead is 25 April, the anniversary of the landing of the Australian and New Zealand Army Corps (ANZAC) at Gaba Tepe (now known as Anzac Cove) at Gallipoli in the Dardanelles.

The military campaign at Gallipoli was a disaster, resulting in thousands of deaths and a humiliating withdrawal of all Allied forces. Despite this dubious basis for commemoration, Australians flock to dawn services around our own nation and also, in growing numbers annually, at Anzac Cove in Turkey to remember the dead. Concurrently with our collective commemoration, we also celebrate not the military defeat but the coming of age of our fledgling nation expressed through our very own (with New Zealand) fighting force.

War is prominent in the Australian national consciousness, and the Australian Defence Force (ADF) enjoys strong societal support. Australia's military has operated at a relatively high tempo of overseas deployment for many years, and the country venerates its war veterans. During Australia's military engagement in Afghanistan, for example, the Victoria Cross, Australia's highest award for military valour, has been awarded four times to ADF personnel, and all four recipients have been lauded by Australian society.⁵ But here is an intriguing reality: neither these modern-day warriors nor their predecessors are Australia's iconic national military heroes.

The truly iconic Australian military heroes are all humanitarians: from World War I, a stretcher bearer from the Gallipoli Campaign who, wearing a Red Cross armband, carried wounded combatants down off the escarpments, often under fire, on a donkey;⁶ from World War II, a military surgeon whose leadership inspired many Allied prisoners of war to cling to life during the brutality of forced labour on the construction of the Thailand–Burma Railway;⁷ from the more recent 1999 intervention to stop atrocities in East Timor, the then two-star Australian commander of the International Force East Timor (INTERFET) coalition of forces who attained cult-hero status in Australia for the humanitarian effort and was promoted to the positions of chief of the Army and then chief of the Defence Force, and who is currently the governor-general of Australia.⁸

As this demonstrates, Australians are admiring of humanity in war, and an accompanying expectation that their own armed forces fight hard but fairly has

5 Australian Army, "Victoria Cross", available at: www.army.gov.au/Our-history/Traditions/Victoria-Cross.

6 See Australian War Memorial, "Private John Simpson Kirkpatrick", available at: www.awm.gov.au/people/P10675912/.

7 See Australian War Memorial, "Biographical Note: Sir (Ernest) Edward 'Weary' Dunlap", available at: www.awm.gov.au/encyclopedia/dunlop/bio/.

8 See Australian War Memorial, "Major General Peter John Cosgrove", available at: www.awm.gov.au/people/P10676762/#biography.

made it much easier for the Australian Red Cross to develop a highly successful IHL programme.

The foundation of the Australian Red Cross

The outbreak of World War I provided the catalyst for the establishment of the Australian Red Cross. The entire population was committed to the war effort, and although only young men were eligible to enlist to fight, there were many other ways to contribute to the war effort. The spouse of Australia's sixth governor-general, Lady Helen Munro-Ferguson,⁹ was perfectly suited for the task. She had been a founding committee member of the Scottish Red Cross (established in 1905) and founding president of the Fife Branch¹⁰ – the biggest Red Cross branch in Scotland. She was also intelligent, industrious, efficient and enthusiastic. Cometh the hour, cometh the woman.

Lady Helen published a letter in all major Australian newspapers on 8 August 1914 calling for the establishment of an Australian branch of the British Red Cross and urging her vice-regal spousal colleagues around the country to establish local chapters in each state and territory. On 13 August 1914, Lady Helen hosted the first meeting of the new entity at Government House in Melbourne, and other meetings around the country occurred in the following days. The response was immediate and overwhelming. Literally thousands of women around the nation formed local chapters of the Australian Red Cross, raised funds and made essential items for shipment to Australian forces on the front lines – in Palestine, in the Dardanelles and on the Western Front. Melanie Oppenheimer's excellent centenary history of the Australian Red Cross reveals a prodigious cottage industry as the women of the 108 local chapters across northern Tasmania alone hand-produced in excess of 40,000 items of clothing, blankets and bandages in the ten months to July 1915.¹¹ Lady Helen transformed the Grand Ballroom of Government House in Melbourne into a gargantuan Red Cross warehouse as hand-made goods flooded in from around the nation. And it was not just hand-made items. During the more than four years of the Great War, Australians donated a staggering £14 million – the equivalent amount in real terms in 2014 of more than AU\$1.5 billion.¹²

9 Lady Helen Hermione Blackwood was the eldest daughter and second child of Lord Dufferin (later the first Marquis of Dufferin and Ava), a professional diplomat who served in a number of senior posts including as Viceroy of India (1884–1888). Lady Helen married Sir Ronald Munro-Ferguson, who was appointed sixth governor general of Australia in 1914. For more detailed information, see Melanie Oppenheimer, "Lady Helen Munro-Ferguson and the Australian Red Cross: Vice-Regal Leader and Internationalist in the early Twentieth Century", *Founders, Firsts and Feminists: Women Leaders in Twentieth Century Australia*, eScholarship Research Centre, University of Melbourne, 2011, available at: www.womenaustralia.info/leaders/fff/pdfs/ferguson.pdf.

10 Sir Ronald and Lady Helen Munro-Ferguson's home was in Kircaldy, Fifeshire.

11 Melanie Oppenheimer, *The Power of Humanity: 100 Years of Australian Red Cross*, HarperCollins Australia, Sydney, 2014, p. 44, Table 21.

12 Using the Reserve Bank of Australia's Pre-Decimal Inflation Calculator, available at: www.rba.gov.au/calculator/annualPreDecimal.html. On an equivalent *per capita* basis, today's Australian population of just under 24 million would need to donate almost AU\$8 billion to match the generosity of the

The Australian Red Cross, like earlier entities within the emerging global Red Cross and Red Crescent Movement, was born in war and had a ubiquitous presence throughout that first global conflagration. But this, for Australia, was no ordinary war. The human toll was staggering, wiping out a substantial proportion of an entire generation of Australian men. Every town, village and hamlet across the nation has a cenotaph or a memorial board bearing the names of young men who paid with their lives. Of the 324,000 who deployed overseas, over 60,000 were killed and another 156,000 returned home injured.¹³ The chance of returning to Australia whole-bodied was less than three in ten, and those figures do not include post-traumatic stress or other mental suffering.

Australian Red Cross leadership in IHL

In the lead-up to the Diplomatic Conference in Geneva from 1974 to 1977, the government invited the Australian Red Cross to send a representative as a member of the Australian Delegation to the Conference. The then deputy secretary general of the Australian Red Cross, Noreen Minogue, subsequently a recipient of the Henry Dunant Medal,¹⁴ attended every session of the Conference on behalf of the National Society. The Australian Red Cross Archives have custody of all Minogue's correspondence with the National Society during the Diplomatic Conference.¹⁵ She understood the significance of her involvement in the Conference on behalf of the Australian Red Cross and, every evening following proceedings, she audio-recorded her reflections on the day's developments, a remarkable personal record of participation.

Minogue understood perfectly that IHL was a distinguishing feature of the Red Cross and Red Crescent Movement and saw clearly that the relationship between the Australian Red Cross and the Australian government on IHL set the National Society apart from other Australian humanitarian organizations. Consequently, she pushed hard on multiple fronts to ensure that Australian Red Cross took its duty to disseminate IHL seriously.

Following the conference, Minogue wasted no time transferring momentum from Geneva back to the Australian Red Cross National Headquarters in Melbourne. The contrast with Canberra, where the intended ratification of Australian signature of both Additional Protocols stalled and was not finally executed until 1991, could hardly have been more stark. Minogue's first initiative in 1978 was the establishment of a National Advisory Committee on International Humanitarian Law with relevant Commonwealth government agencies, principally the Foreign Ministry and the Attorney General's

Australian people during the Great War of 1914–1918. (Australia's population today is 5.33 times the 1914 population of 4.5 million; AU\$1.5 billion × 5.33 = AU\$7.995 billion.)

13 Australian War Memorial statistics available at: www.awm.gov.au/atwar/w1/.

14 See ICRC, "Henry Dunant medals awarded", News Release, 30 November 2003, available at: www.icrc.org/eng/resources/documents/misc/5ttb2c.htm.

15 For more information on the Australian Red Cross Heritage Collection, see its website at: www.redcross.org.au/heritage-collection.aspx.

Department. The Australian Red Cross claims to have been the first National Society to establish such a committee and, thirty-seven years later, that Committee continues to function. Protracted continuous existence is no guarantee of productivity or efficacy, but the Committee has been profoundly influential on Australian government policy-making on IHL-related issues.

Establishment of the Australian IHL Committee

The structure of the Australian Red Cross reflected the political arrangements of the Australian nation – a Division in each of the eight states and territories, with a single National Office. Those original eight Divisions continue to this day, but one key difference between the structure of the Australian government and that of the Australian Red Cross for the first ninety years was that revenue raising and control of finances lay with the Red Cross Divisions rather than with the National Office – and so ultimate decision-making authority lay with the Divisions. Noreen Minogue oversaw the establishment of IHL advisory committees in every state and territory, in addition to the National IHL Committee – the latter to liaise with the Commonwealth government while the Divisional Committees had responsibility of disseminating IHL within their own jurisdictions. That structure hardly made for the smooth development of a coherent national strategy for dissemination, as Divisions had their own priorities for target audiences, but it was a great foundation on which to subsequently build.

Divisional IHL committees all had uniformed ADF legal officers as members, as well as a mix of academics, teachers, medical professionals and legal practitioners. All Divisions employed IHL officers to assist their committees and to run IHL programmes and activities.

This author first served as a volunteer member of the National Advisory Committee on IHL in 1991. The Committee, working with both the secretary general and the deputy secretary general, had just successfully convinced the Australian government to ratify the two Additional Protocols – the first of a succession of concerted efforts to ensure our government committed itself to new IHL treaties as and when they were concluded and opened for signature. It was a great time to become involved in the IHL work of the Australian Red Cross.

The Australian Red Cross Chair of International Humanitarian Law at the University of Melbourne

Establishment

In 1995, the Victorian Division of the Australian Red Cross engaged external consultants to review the work of the Division and to make recommendations for greater efficacy. In relation to the IHL programme, the consultants identified IHL as a distinguishing feature of the Australian Red Cross – setting it apart from other humanitarian organizations – but the popular view of the Red Cross was of

the blood service, first-aid training, disaster relief and restoring family links. The consultants recommended that the Victorian divisional executive consider strategies for raising the public profile of the centrality of IHL to the work of the Division.

Although the consultants made no specific suggestions, the executive of the Victorian Division resolved to approach a university within the state of Victoria to discuss the possibility of either establishing a new “Chair of IHL” or an academic centre for the study of IHL. The executive reviewed the subject offerings of the various Victorian law schools and determined that Melbourne Law School had the strongest range of offerings in international law.

In the Australian tertiary education sector, not-for-profit organizations such as the Australian Red Cross do not walk into deans’ offices offering to establish new chairs on a regular basis. In 1995, Melbourne Law School had two other externally funded chairs – one in taxation law and the other in company law. The opportunity to develop a teaching and research programme to promote understanding of and respect for IHL was thoroughly appealing. So it happened that the Chair was established, applications were invited, and short-listed candidates were identified and interviewed. This author had the enormous privilege of being appointed the foundation Australian Red Cross professor of international humanitarian law, and occupied this position until appointed special adviser on international humanitarian law to the prosecutor of the International Criminal Court (ICC) in The Hague in March 2010.

The timing of the establishment of the Chair was highly propitious. The decisions of the UN Security Council to establish the International Criminal Tribunals for the former Yugoslavia (ICTY) in 1993 and Rwanda (ICTR) in 1994 acted as a major catalyst for the “mainstreaming” of IHL. For decades prior, IHL tended to be seen as a somewhat esoteric stream of public international law – the exclusive preserve of the global Red Cross and Red Crescent Movement, uniformed military lawyers and just a handful of interested academics. The prevalent popular view of IHL had been that it was honoured more in the breach than in the observance – that violations of the law were commonplace in armed conflict and impunity reigned supreme. The creation of the *ad hoc* international criminal tribunals challenged the prevailing orthodoxy. Individuals, at least from the Balkans and from Rwanda, faced the possibility of being held accountable for alleged violations of the law.¹⁶ In Australia, as elsewhere in the world, there was an increasing appetite for knowledge of IHL.

In addition to global developments, other Australian-domestic factors were at play at the time of the creation of the Chair. Following the Australian government’s ratification in 1991 of the Additional Protocols of 1977,¹⁷ the ADF was tasked with implementation of the obligation in Article 82 of Additional

16 For more on the flow-on effect of this changing reality, see, for example, Tim McCormack, “The Contribution of the International Criminal Court to Increasing Respect for International Humanitarian Law”, *University of Tasmania Law Review*, Vol. 27, No. 1, 2009, pp. 22–46.

17 See Australia in ICRC, “Treaties and States Parties to Such Treaties”, Database, available at: www.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=AU.

Protocol I (AP I) that legal advisers be available to advise military commanders, and so the policy decision was taken to deploy a uniformed legal officer to advise the commanding officer of every ADF contingent – those deployed overseas as well as those based in Australia. The ADF Legal Service (ADFLS) found it essential to significantly increase training of its officers in military operations law, which includes IHL.¹⁸ In an era of ADF commitment to increasing competence in IHL, the Australian Red Cross could not hope to maintain its subject matter expertise in the field without also up-skilling its own IHL officers.

It was agreed explicitly between the parties that the new professor would establish an IHL teaching and research programme as an employee of the University of Melbourne, with academic freedom to pursue research interests without the Australian Red Cross dictating the work agenda. That agreement was important in principle, but in reality the work of the Chair was very much linked to advancing Australian Red Cross IHL-related interests.

Achievements since the establishment of the Chair

Developing a specialist teaching programme in IHL

One of the first initiatives following the creation of the Chair was the development of a graduate coursework specialization in IHL, first taught in the Melbourne Law master's programme in 1997. The subject was oversubscribed on that first offering and has continued to attract excellent numbers in each successive year since; it was taught for the eighteenth consecutive year in 2014. More than 450 graduate students have now completed the subject at Melbourne Law School, and that, in and of itself, is a significant development in terms of the resultant increase in the sophistication of understanding and awareness of IHL in Australia (and in several other countries from which graduate students have come). Prior to the introduction of IHL into the Melbourne Law master's, only two other Australian law schools offered an IHL course. Now, at least eighteen Australian law schools teach the subject as an optional course in either undergraduate or graduate programs.¹⁹ The tertiary education sector in Australia, as with many other countries, is competitive, and the success of the IHL programme at Melbourne Law School did not go unnoticed.

After the initial success of the coursework subject, several stand-alone complementary subjects in the master's programme were gradually introduced: international criminal law; international human rights law; law of the sea and national security; law of peace operations; weapons, health and law; women and war; international law and the use of force; arms control and disarmament; maritime security law; and prosecuting the war on terror. As a consequence of

18 The ADF Military Law Centre was established in 2000 to oversee the specialist graduate training of ADF legal officers in core subject areas including military operations law, and training has continued since then. More information is available at: www.defence.gov.au/legal/mlc.html#jolt.

19 This author teaches IHL every second year at the University of Tasmania Law School's summer school in Hobart, for example.

this growth in the range of subject offerings, it is now possible for graduate students to undertake a graduate diploma or a master's degree exclusively in the general area of IHL at Melbourne Law School. That level of specialization is rare, in Australia and elsewhere in the world.

Without the initiative to establish the Chair, the IHL programme at Melbourne would certainly not have developed to quite the same extent. Here there are clear examples of synergistic benefits – students are attracted to the course in the first place because the faculty is seen to be taking the area of law seriously by establishing a Chair in the field. Student numbers have increased, and it has become feasible to increase the range of subjects to the level of a full specialization. Were it not for the establishment of the Chair, IHL would likely not be taught in as many Australian law schools as is currently the case.

In the late 1990s, as a consequence of the large number of ADF officers enrolled in IHL and related subjects, the ADFLS entered into discussions with the law school to develop a tailor-made graduate coursework programme in military law for the professional development of ADF legal officers. ADFLS staff were impressed with the relevance of the existing subjects on offer at Melbourne, the positive feedback from their own officers enrolled in the existing programme and the flexibility inherent in the intensive mode of delivery. From 2000 to 2006, all ADF legal officers – regular and reserve – were required to enrol in either a graduate diploma or a master's of military law at Melbourne. That specialist programme continues to this day through the Australian National University College of Law in Canberra.²⁰ IHL is an integral component of military operations law, and through this programme ADF legal officer training in IHL is now undertaken more systematically than at any earlier stage in the history of the ADF. This historic development emerged from a unique confluence of events – the establishment of the Chair of IHL (and the subsequent development of specialist master's courses in IHL and related subjects) coinciding with the implementation of Article 82 of AP I through the assignment of ADF uniformed legal officers on all military bases in Australia and also on all ADF deployments overseas. Increasing ADF operational tempo – in Somalia and Rwanda in the early 1990s, through the lead role in INTERFET in 1999 and in Iraq and Afghanistan in the early 2000s – only emphasized the importance of specialist training of ADF legal officers.

Establishment of a research programme in IHL

Early in the tenure of the Chair, it was considered important to develop a critical mass of research higher degree (RHD) work in IHL and related fields of study. The level of interest in RHD work in IHL was commensurate with the enthusiasm for specialist graduate coursework in the field, and that level of interest has never abated. As recently as 2007, the IHL professor was supervising fifteen RHD students (PhD, SJD and LL.M by thesis), almost all working in the

20 More information available at: <http://law.anu.edu.au/masters-program/military-law-program>.

field of IHL. That number of RHD supervisions was wholly unsustainable and will never be repeated – in part because those fifteen RHD students included Melbourne Law School colleagues (particularly Alison Duxbury, Bruce Oswald and Rain Liivoja) who, having completed their own PhDs, are now in a position to supervise students in their own right.

Since 1996, the Chair has supervised twenty-three RHD students to successful completion of their degrees, and it is currently supervising an additional nine PhD students. This group of enthusiastic and productive students undoubtedly constitutes the largest concentration of RHD work in IHL in Australia and, possibly, one of the largest groups in the world. There is no diminution of interest in RHD work in the field of IHL. The decision to establish the Australian Red Cross Chair of IHL sent a clear message that IHL was considered a serious field of academic study at Melbourne Law School, and the sheer number of RHD students engaged in IHL confirms just how enthusiastically that message was received.

The motivation to develop an IHL research programme was never only about attracting RHD students to Melbourne Law School. Another goal was to attract a core group of scholars and for our collective research efforts to have a positive impact in Australia and abroad. One initiative was to establish the world's first English-language IHL book series (jointly with His Excellency Judge Sir Christopher Greenwood), published by Kluwer Law International in The Hague in 1999 and, subsequent to the sale of Kluwer Law International to Brill, under the Martinus Nijhoff imprint in Leiden.²¹ At the time of writing, the series has published forty-six volumes and has several others in press. This author was also appointed an inaugural advisory board member of the Asser Instituut's *Yearbook of International Humanitarian Law* in The Hague and served as editor-in-chief from 2003 to 2009. Other Australian IHL scholars also rose to prominence. Dr Helen Durham was appointed to the international editorial advisory board of the *International Review of the Red Cross* in 2011 and remained in that position until her appointment as ICRC director of international law and policy. Associate Professor Alison Duxbury, Associate Professor Bruce Oswald and Dr Rain Liivoja have also developed their own international reputations for scholarship in the field of IHL and have each enhanced the intellectual environment at Melbourne Law School.

In Australia, the development of IHL research capability at Melbourne Law School under the imprimatur of the Australian Red Cross rendered it a straightforward choice for the commissioning of ICRC research projects. For example, this author managed the Australian national report for the ICRC Customary IHL Study and Helen Durham managed an ICRC project in the South Pacific on culturally relevant constraints on the waging of war. A number of ground-breaking IHL publications have emerged from Melbourne on topics including women and war, the law of peace operations, the law of targeting,

21 Details of the volumes in the IHL Series are available at: www.brill.com/publications/international-humanitarian-law-series.

military justice and the Tokyo War Crimes Trial.²² There is currently a research team finalizing publication of a comprehensive and systematic law reports series for all 300 of Australia's war crimes trials of Japanese nationals, conducted in eight separate trial locations between 1945 and 1951.²³

Influencing Australian government policy on IHL-related matters

The appointment of a professor of IHL working closely with the Australian Red Cross IHL department exerted greater influence over Australian government IHL-related policy than may otherwise have been the case. Two examples substantiate this assertion: the decision to ratify the Rome Statute of the ICC, and the decision to ratify the Ottawa Convention on Anti-Personnel Landmines.

In May 1998, on the eve of the Rome Diplomatic Conference for the negotiation of the Statute for the ICC, the Australian Red Cross, in conjunction with the ICRC and the Australian government, organized a regional inter-governmental meeting to discuss both the concept and the desirability of a permanent international criminal court. Representatives from twenty-three Asia-Pacific States attended the meeting, and the then prosecutor of the ICTY and ICTR, Louise Arbour, travelled from The Hague to speak in support of the new court. At the time, the ICRC indicated that this was the first occasion on which it had organized an inter-governmental meeting jointly with the Australian government, and it proved to be an important initiative. Both the then foreign minister Alexander Downer and the then attorney general Daryl Williams participated in the meeting and became more aware of the proposal for a permanent international criminal court as a consequence.

In July 1998, at the conclusion of the Rome Diplomatic Conference and the opening for signature of the Rome Statute of the ICC, Downer and Williams issued a joint press release indicating their commitment to Australian participation in the Rome Statute²⁴ – a position applauded by the Australian Red Cross at the time. The two ministers never wavered from this original position, and Australia would

22 See Helen Durham and Tracey Gurd (eds), *Listening to the Silences: Women and War*, Martinus Nijhoff, Leiden and Boston, MA, 2005; Bruce Oswald, Helen Durham and Adrian Bates (eds), *Documents on the Law of UN Peace Operations*, Oxford University Press, Oxford, 2010; Ian Henderson, *The Contemporary Law of Targeting*, Martinus Nijhoff, Leiden and Boston, MA, 2009; Alison Duxbury and Mathew Groves (eds), *Military Justice in the Modern Age*, Cambridge University Press, Cambridge, forthcoming 2015; Yuki Tanaka, Tim McCormack and Gerry Simpson (eds), *Beyond Victor's Justice? The Tokyo Trial Revisited*, Martinus Nijhoff, Leiden and Boston, MA, 2011 (also translated and published in Japanese by Otsuki Shoten, 2013, and currently in translation for publication in Chinese).

23 Very little has been published about these trials and they remain virtually unknown in Australia, let alone elsewhere, despite the fact that the trial transcripts are accessible through the National Archives of Australia. This project has been undertaken with Australian Research Council funding in collaboration with the Australian War Memorial and with the Legal Division of the Department of Defence. The publication of the report series will render the primary Australian trial material much more accessible and may also inspire colleagues in other Allied nations to undertake similarly comprehensive and systematic studies of their own national post-World War II trials. See <http://apcml.org/post-wwii-war-crimes-trials> for more information.

24 Minister for Foreign Affairs, Attorney General, "Australia Votes for International Criminal Court", Joint Media Release, 18 July 1998, available at: http://foreignminister.gov.au/releases/1998/fa096a_98.html.

certainly not have become an original State party to the Statute without their joint commitment.

The Report of the Joint Parliamentary Standing Committee on Treaties (JSCOT) on the Rome Statute for the ICC, released in May 2002, unanimously recommended Australian ratification of the Statute. It is well known that under the previous chair of the JSCOT, Andrew Thompson MP, it would not have recommended Australian ratification – at least not unanimously.²⁵ Suffice it to say that the Australian Red Cross had a profoundly significant role to play in influencing the recommendations to Parliament of the JSCOT,²⁶ as well as through public advocacy and a concerted media campaign to counter the often heated and regularly misinformed public debate on whether or not Australia should ratify the Statute.

This particular experience still constitutes the most effective example to date of public advocacy by the Australian Red Cross to influence Australian government decision-making on an issue of fundamental importance to IHL. The Australian Red Cross did not engage in public criticism of government policy because the Cabinet had already supported Australian ratification, and the main contribution of this was to shore up support for the government's position – including within the ranks of the government's back bench. The Australian Red Cross remains rightly proud of what was achieved. Importantly, the title of Australian Red Cross professor of IHL lent greater credibility both to submissions before JSCOT and to media representations.

It was relatively well known in the aftermath of the opening for signature of the Ottawa Treaty prohibiting anti-personnel landmines that Washington would have preferred Australia not to ratify the treaty. Consequently, the Federal Cabinet was split on the issue, with support against Australian participation as well as for it. The Australian Red Cross decided not to take a public stand in favour of Australian participation in the light of the Cabinet debate. Instead, it publicly supported the Ottawa Treaty and the comprehensive prohibition on anti-personnel landmines without taking a position on Australian government participation in the treaty and privately campaigned very firmly for Australian

25 The story of how Australia only deposited its instrument of ratification to the Rome Statute at the UN Treaties Secretariat on the morning of 1 July 2002 – the last opportunity for Australia to be counted amongst the original States party to the Statute – is too long and too complicated to be told here. For a detailed account, see The Hon. David Harper, "Australia's Road to Ratification of the International Criminal Court", *International Humanitarian Law Magazine*, Vol. 1, 2014, pp. 26–27.

26 See Joint Standing Committee on Treaties, Parliament of the Commonwealth of Australia, "Report 45: The Statute of the International Criminal Court", May 2002, available at: www.iccnw.org/documents/AustraliaCCRReport45.pdf. The JSCOT Report is replete with references to Australian Red Cross submissions to the Committee, both written and oral. Of the eleven recommendations in the JSCOT Report, six are direct adoptions on Treaties, Parliament of the Commonwealth of Australia, and an additional two are based on Australian Red Cross submissions. It is impossible to read the Report objectively and miss the significance of Australian Red Cross influence on the JSCOT process. This view was confirmed to me in person by the new chair of the Committee, Julie Bishop (now the Australian foreign minister). After Australian ratification of the Statute was announced, Ms Bishop thanked the author profusely for the contribution that the Australian Red Cross had made to her committee's deliberations.

ratification. This private advocacy involved successive meetings between the then secretary general of the Australian Red Cross and the relevant government ministers. The Australian Red Cross also worked very closely with departmental representatives on the National IHL Advisory Committee to present Australian Red Cross views on the importance of Australia's participation in the Ottawa Treaty.

Ultimately, the Australian government chose to disagree with the US government and to ratify the Ottawa Treaty.²⁷ The Australian Red Cross was informed by several senior government officials that its position and the manner in which it had conducted its campaign in favour of Australian ratification were highly influential in the government decision-making process.

Beyond domestic IHL outreach

There were lofty ambitions in the establishment of the Chair to influence increased awareness of and respect for IHL beyond Australia in neighbouring geographic regions. No specific strategies were identified in 1996 to achieve this ambition, but several years later an intriguing model emerged. In 2001 Melbourne Law School and the ADFLS jointly established the Asia-Pacific Centre for Military Law.²⁸ This was a first for both partners – the first time the Law School had established a collaborative centre with a partner external to the University, and the first time Defence Legal had entered into a formal collaborative relationship with an Australian Law School. In this author's view, the establishment of the Centre was the single most significant outcome of the creation of the Australian Red Cross Chair of International Humanitarian Law. The establishment of the Centre created an institutional structure with the potential to open up opportunities for the promotion of IHL in Australia and throughout the Asia-Pacific Region – a structure that the Australian Red Cross could not have created bilaterally with the Department of Defence, but which was facilitated by the establishment of the Chair and the Australian Red Cross's relationship with Melbourne Law School.

The purpose of the Centre is to promote respect for the rule of law in military affairs throughout the South-East Asia and South Pacific regions. This primary purpose has been pursued through various activities in Australia and in-country in the region. The core activity in Australia has involved regional military officers coming to Australia for one- and two-week training courses in, for example, military operations law (with a strong IHL component), the law of peace operations, maritime security law or civil–military cooperation. The Centre has also run conferences and seminars in various locations around the country, sometimes at universities and other times at military bases. Outside of Australia, the Centre has conducted several in-country training programmes (e.g. the Law of Peace Operations in India, Military Law and Ethics in Thailand and the Law of

²⁷ ICRC, above note 17.

²⁸ For more information on the work of the Centre, see its website at: www.apcml.org.

Military Operations in the Philippines) and conferences and seminars (e.g. a regional conference on national implementation of the Biological Weapons Convention).

Courses commenced in October 2002 with a two-week training course on military operations law for commanders and planning staff. Throughout that course, uniformed military officers from Indonesia, Malaysia, Singapore, Thailand, the Philippines, Papua New Guinea and Fiji interacted with ADF officers; these individuals encapsulated the realization of the rationale for the establishment of the Centre. Courses continue to this day, and the Centre provides a vehicle for promoting IHL regionally with the cooperation of the ICRC and other organizations. Although the Australian Red Cross and the ADF share a close working relationship already, the Australian Red Cross would be precluded from entering into a formal collaborative arrangement of this kind with the ADF because of the need to maintain neutrality and independence from government. However, the establishment of the Chair at the University of Melbourne enabled the law school to join the ADF legal service in a formal collaboration and to provide a role for the Australian Red Cross in the promotion of IHL among the militaries in the Asia-Pacific region which the Australian Red Cross would otherwise be unable to provide. This particular example exemplifies the facilitative role that the Chair was able to play.

Melbourne Law School's institutional commitment to IHL

Following the establishment of the Chair, Melbourne Law School prioritized the development of an IHL programme and, consequently, I had the freedom to develop a graduate coursework specialization in IHL and to supervise RHD students in the area of IHL. As already explained, in the course of the development of the IHL programme and the steady increase in the number of students enrolling in IHL and related courses, the law school actively recruited academic personnel with expertise in this area. The appointment of these colleagues has enabled the law school to extend the teaching of IHL into the undergraduate programme, to significantly increase coursework offerings in IHL and related subjects – including, for example, international criminal law; international human rights law; law of the sea and national security; law of peace operations; weapons, health and law; women and war; international law and the use of force; arms control and disarmament; maritime security law; and prosecuting the war on terror – in the graduate teaching programme, and to supervise a greater number of IHL-related PhDs. These colleagues have also dramatically increased the published research output of Melbourne Law School in IHL and have significantly enhanced the national and international reputation of the school in the field.

An institutional commitment of this nature takes years to develop and is a precious asset when it exists. The decision to establish the Australian Red Cross Chair of IHL provided Melbourne Law School with the motivation to take this field of study seriously and to honour the funding commitment of the Australian

Red Cross. It was suggested at one point that the Australian Red Cross Chair of IHL should rotate around various Australian law schools; in this author's opinion, however, any such rotational model would have provided no incentive to a law school to make an institutional commitment to the field and to allocate human and financial resources over a sustained period of time to build up a critical mass of academic colleagues and RHD students.

Australian Red Cross intellectual leadership in IHL

One additional, albeit unforeseen outcome from the establishment of the Chair has been a demonstrable increase in the Australian Red Cross's intellectual rigour and substantive expertise in IHL. The development of a tertiary specialization in IHL helped expose many of the complexities of the law in this field and set new benchmarks for Australian Red Cross personnel in IHL. It is no coincidence, for example, that since the establishment of the Chair, Helen Durham (then Australian Red Cross national IHL manager) completed her doctorate in IHL, and that when she left the Australian Red Cross to take up her appointment as director of international law and policy at the ICRC, the advertisement for her Australian Red Cross position specified a PhD in IHL as one of the selection criteria. Dr Phoebe Wynn-Pope, the successful applicant for Durham's position, is herself a highly regarded expert on IHL.

This level of expertise is not limited to the most senior IHL position at the Australian Red Cross. At least two Australian Red Cross IHL officers are currently undertaking PhDs in IHL, a number of volunteer members of IHL advisory committees around the nation are either currently undertaking or hold PhDs in IHL, and multiple IHL officers from various Australian Red Cross Divisions have completed their master's degrees in IHL. I am not suggesting here that it is mandatory for all IHL officers to have graduate qualifications in IHL: on the contrary, the Australian Red Cross has some outstanding IHL officers who are not lawyers at all. Much of the dissemination effort calls for effective communication skills rather than academic expertise in the law. However, the key point here is that the Australian Red Cross has been developing a pool of increasing IHL expertise, in part driven by the increasing level of subject matter expertise within the ADF. As a consequence of growing Australian Red Cross expertise, there is increased respect for the organization within the ADF as well as other relevant Australian government agencies, including the Department of Foreign Affairs and Trade and the Attorney General's Department.

By any measure, the development of the Australian Red Cross IHL programme has been a success. The National Society manages a robust and effective national IHL programme and boasts significant subject matter expertise in IHL amongst its staff and volunteer membership. The National Society is also actively engaged with the ADF and all other relevant government agencies and runs a series of high-profile public IHL-related events around the nation on a regular basis. Through the establishment of the Australian Red Cross Chair of IHL, the National Society has also facilitated outreach to the militaries of the

South-East Asia and South Pacific region to an extent and in ways that National Societies could not ordinarily hope to achieve.

In addition to the national and regional contributions of the IHL programme, the Australian Red Cross is also making a globally significant contribution to the development of IHL. In 2014 Dr Durham was appointed ICRC director of international law and policy – the first woman, the first Australian and the first National Society employee to be appointed to that position in the 150 years of the organization’s history. In her new position, Durham will profoundly contribute to the ICRC’s institutional contributions to the development of IHL and the policy decisions the organization takes on key future IHL challenges. In 2010 this author was appointed special adviser on IHL to the prosecutor of the ICC in The Hague to advise on every situation involving questions of the existence or not of an armed conflict, of the legal character of the armed conflict and of alleged war crimes. That these two positions are currently held by incumbents from the same Red Cross National Society, literally on the opposite side of the globe to Geneva and The Hague, is a remarkable contribution.

Helen Durham and this former chair both proudly identify themselves as products of the Australian Red Cross IHL programme. Both of us have enjoyed the privilege of contributing to the development of that programme, and to have done so collaboratively over much of the past twenty years. But the programme itself is bigger than any of the individuals mentioned in this opinion note, however significant their own respective contributions to its development. There is a new generation of Australian Red Cross IHL officers, of Australian IHL scholars and of Australian-based IHL RHD students, and the Australian Red Cross IHL programme continues to develop as a consequence of their respective contributions. Some of those individuals will undoubtedly also constitute part of the Australian Red Cross’s contribution to worldwide IHL expertise in the future.

Concluding remarks

On a visit to Australia in July 2007, the then prosecutor of the ICC, Luis Moreno Ocampo, spent a day at Melbourne Law School. The school held a roundtable with academic colleagues, RHD students, ADF legal officers, Australian Red Cross IHL officers and representatives of the ICRC. Mr Ocampo repeatedly claimed that he had never witnessed the interaction of all these groups around the subject matter of IHL and enforcement of violations of the law before, and he kept pressing for answers on how this could happen so easily at Melbourne Law School. The prosecutor’s intrigue sparked multiple conversations about the efficacy of the Australian Red Cross IHL programme and the beneficial effects of the establishment of the Chair.

One clear lesson from the Australian experience for other National Societies keen to develop a vibrant IHL programme is the fundamental importance of effective working relationships with those academics specializing in

IHL. Academics with IHL subject matter expertise working closely with National Societies will expose their students to the substantive law as well as to the global Red Cross and Red Crescent Movement. Those same subject matter experts are also likely to raise the intellectual credibility of the National Society and so render interaction with national armed and security forces much more likely. The establishment of a university professorship in IHL by a National Society is not necessarily a prerequisite to enhancing an existing IHL programme.

In Australia's case, however, the establishment of the Chair facilitated an unprecedented level of interest in, and promotion of, the study of IHL. The Australian Red Cross has greater depth in its in-house IHL subject matter expertise than at any previous stage in its 100-year history. More Australian law schools teach IHL, more tertiary students study IHL, more RHD work is undertaken on IHL, and more academics in Australia teach and research in the field of IHL, than at any previous stage in the history of the nation. ADF legal officers are better trained in IHL, and there is more basic training for ADF recruits and more pre-deployment training in IHL for ADF contingents, than at any previous stage in the Australian military's history. Australia is also more actively engaged in IHL outreach – particularly through the militaries of those countries in closest physical proximity – than at any previous stage of its history. Perhaps this experience will provide encouragement and motivation to other National Societies contemplating the development of their own IHL strategies.