



Australian Red Cross  
THE POWER OF HUMANITY

# IHL

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magazine

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Australia  
and  
**60** years  
of the  
Geneva  
Conventions

CRISIS CARE COMMITMENT

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Cover Image:  
Australian Soldiers.

Photo:  
Fairfax Image @ Glenn Campbell

12 August 2009 marks the 60th anniversary of the most widely ratified treaties in the world - the Geneva Conventions. Arising from the concerns of the founder of the International Red Cross/Red Crescent Movement, Henri Dunant, the Geneva Conventions are strong testament to the statement that 'Even wars have limits' and are a major part of an evolving body of international law known as international humanitarian law (or IHL).

This anniversary should remind us all of the protective power and universal status of this area of law as well as allow us time to reflect on the progressive and ongoing work that must still be done to encourage respect for all the laws that encompass IHL – not just the 1949 Geneva Conventions.

In this special edition of the International Humanitarian Law (IHL) magazine, Australian Red Cross has gathered together some of the many and varied stories from Australians – both long term residents and those newly arrived to our shores – who have benefitted from the protections provided by the Geneva Conventions either in their work providing humanitarian assistance, while caught up in armed conflict or when contributing to its development as lawyers or legislators. I would like to thank all those who have been generous enough to share their experiences and contribute to this volume to help us appreciate the importance and ongoing relevance of this body of law. Unfortunately we were unable to include all of the many wonderful stories collected, although all provided valuable insight into this extraordinary international law which seeks to bring humanity into the otherwise inhumane and harsh environment of armed conflict.

Our task, as we celebrate this anniversary, must be to honour the principles of humanity expressed by Henri Dunant, by ensuring the increased and continued respect for the laws, enshrined in international humanitarian law. This must occur among our own Australian government and indeed all governments of the world as well as all those in the position to limit suffering during times of armed conflict.

Robert Tickner  
Chief Executive Officer  
**Australian Red Cross**

# on the frontline with the laws of war

**Dr Helen Durham, Strategic Adviser,  
International Law and Special Projects,  
Australian Red Cross**

One hundred and fifty years ago the Swiss Banker Henri Dunant witnessed the devastation caused to human life at the Battle of Solferino. He responded in a practical manner and galvanised the local villagers to provide impartial assistance to those injured and dying on the battlefield. Inspired by the experience, he subsequently wrote a book called 'A Memory of Solferino', which led to the creation of the International Committee of the Red Cross (ICRC). In 1864, the ICRC encouraged the Swiss government to convene an international conference resulting in the development of the First Geneva Convention for the 'Amelioration of the Condition of the Wounded in Armies in the Field'. This Convention not only identified that those who were not participating in the conflict itself, or were unable to take part – such as wounded soldiers and the medical personnel treating them – should be protected and treated with dignity, but it also identified the red cross as a protective symbol. Later, this protective shield was broadened to include the armed forces at sea, as well as on land, to prisoners of war and, finally, to civilians.

In this edition of the International Humanitarian Law (IHL) magazine, Australian Red Cross wishes to mark the anniversary of the four Geneva Conventions of 1949 – when the international law of armed conflict was consolidated and integrated into four complementary documents. Australian Red Cross' IHL team has interviewed a variety of Australians who have engaged with the Geneva Conventions in a wide range of ways. Australians whose

lives have intersected with these remarkable laws have shared their experiences in an effort to shed light on the significance of the Geneva Conventions. In a world in which bad news often inhibits our ability to focus on more positive achievements, these stories have been selected to illustrate that even during the extreme situation of armed conflict, the Geneva Conventions are able to operate. Each story either represents situations when Australians have received the benefit of the protections put in place by Henri Dunant's work; or demonstrates the ways in which Australians seek to enhance those protections within our own State or internationally.

To that end, we hope that you will enjoy the pieces; from humanitarian workers such as Eddie Guldner who delivered aid for the International Committee of the Red Cross during the conflict in the former Yugoslavia and Christine Folletti, a nurse providing emergency first aid on flights to and from Sudan; to Frank Cox, a prisoner of war during World War II and Maddi Miller, a refugee from the internal conflict in Liberia. Forensic pathologist Dr Chris Lawrence painstakingly pieces together the necessary evidence to secure war crimes convictions and Reverend Professor Tate, working to ensure that Australia's domestic legislation reflects the highest international standards for IHL.

We hope that all these stories will introduce you to the ways in which IHL has touched the lives of Australians, particularly over the past 60 years, and help to demonstrate the importance of continued support for these vital international laws.



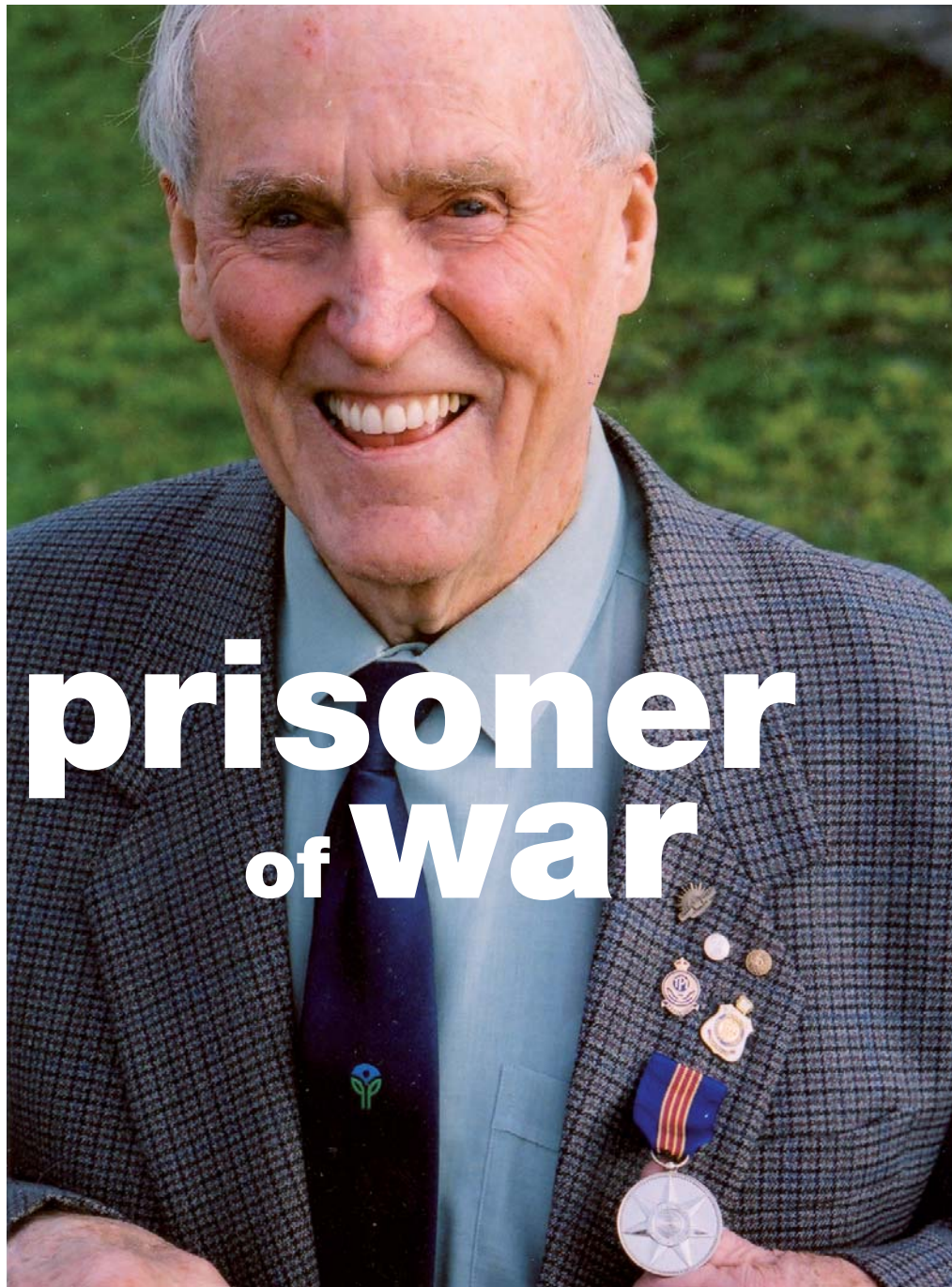
*Henri Dunant (1828-1910) around 1860.  
Witness to the tragic condition of the injured and  
wounded in the aftermath of the Battle of Solferino.  
Photo: ICRC © Frédéric Boissonnas*

**In a world in which bad news often inhibits our ability to focus on more positive achievements, these stories have been selected to illustrate that even during the extreme situation of armed conflict, the Geneva Conventions are able to operate.**

# the prisoner of war

Frank Cox interviewed  
by Bev Patterson,  
IHL officer, Victoria

**For Frank Cox the name Red Cross has a simple and quite clear meaning: it is synonymous with survival.**



*Frank Cox proudly displays his war medals. Photo courtesy of Frank Cox*

A former prisoner of war, Frank Cox is now 93 years old, but his eyes still sparkle with vigour as he tells his extraordinary story. “When I went to war, they didn’t tell us anything about the Geneva Conventions. But I soon learnt when those Red Cross parcels arrived. They were a ray of light in the sad dark world of the prison camp – if it had not been for those people with their packages of food – I, and many others, probably wouldn’t have made it home.”

Frank was a Signaller with the Signals 1 Australia Corps in Greece when he was captured by the Germans in April 1941. After being held for three weeks, Frank was

moved from Greece to Austria – finally to Stalag 18 B at Spittal-on-Drau. In all, his imprisonment lasted three-and-a-half years.

Conditions were appalling, especially in the bitterly cold winters. He and his fellow prisoners endured hard labour, building roads. Their boots soon fell to pieces, to be replaced by wooden clogs. Though awkward and uncomfortable, the clogs did help to elevate the feet and shield them from the snow. Food was meagre and the men’s diet unbroken – kartofel (potato) and lentils, stirred in one big pot, day after endless day. On very rare occasions there was horse meat ... “if one of the old nags in the quarry gave

up the ghost”. Typhus, caused by lice, killed many and seriously weakened the strength of others. Life behind barbed wire was claustrophobic, the tedium overwhelming. “Being a prisoner of war is a lot like, I imagine, being a prisoner in jail – but without knowing how long you would be locked up, or even if you would ever leave.”

Frank remembers the heroic efforts of the medical officers and first-aiders. Not only did they work to keep their mates alive, but they boldly argued with the Commandant the case of those too ill to work. On one occasion an English doctor refused to allow the men in his care to be inoculated



Frank Cox and the Signals 1 Australia Corps, before 1941. Photo courtesy of Frank Cox

**“I have a debt to pay the Red Cross,” says Frank, with some emotion “The difference the Red Cross made to our lives in that situation was simply enormous.”**

against typhus, fearing that they would not survive with immune systems weakened by the injections. He was proven right. While French soldiers and some German guards fell to the disease after their injections, not a single English prisoner died.

This concept of a ‘prisoner of war representative’, negotiating and dealing with the Detaining Party on behalf of prisoners of war, is indeed embedded in the Third Geneva Convention. “These were the smart operators”, Frank says admiringly. “They were our ‘men of confidence’ – we trusted our lives to their leadership.”

Though Frank never saw any Red Cross delegates visiting the camp at that stage, after 12 months or so the miracle occurred – the arrival of the first Red Cross food parcel. The prisoners fell about the contents with glee. Here was tinned meat, butter, sugar, chocolate and cigarettes – treasures as if from another time and place – and the sustenance that would keep many alive. Supposedly the packages were distributed once a week. In reality, Frank says they were ‘fairly regular’ – though the guards did tend to withhold them as a form of punishment. “We pooled everything, sharing it out in syndicates, giving extra to those in special need.”

Providing humanitarian assistance to Australian prisoners of war during World War II was one of the main tasks of Australian Red Cross.

[In many cases the parcels also contained clothing and medical supplies.] “I have a debt to pay the Red Cross,” says Frank, with some emotion “... for the 65 years of life I’ve had since. The difference the Red Cross made to our lives in that situation was simply enormous.”

Some time in early 1944 Frank Cox’s connection with the Red Cross was to take another fateful turn.

The mood at the camp was desperate and some prisoners of war were considering an escape – a rash attempt to join the partisans in the hills. But the rumour mill was also working ... a Red Cross visit was on its way. Could it be? Better, perhaps, Frank thought, to hold out hope and to ‘wait for the Commission’.

The International Red Cross Medical Commission did indeed arrive at Stalag 18 B. It comprised three European specialists who came to assess the medical conditions of those in the weakest and worst state. Frank, suffering from severe peptic ulcers, was one of eight inmates selected for X-ray and closer examination.

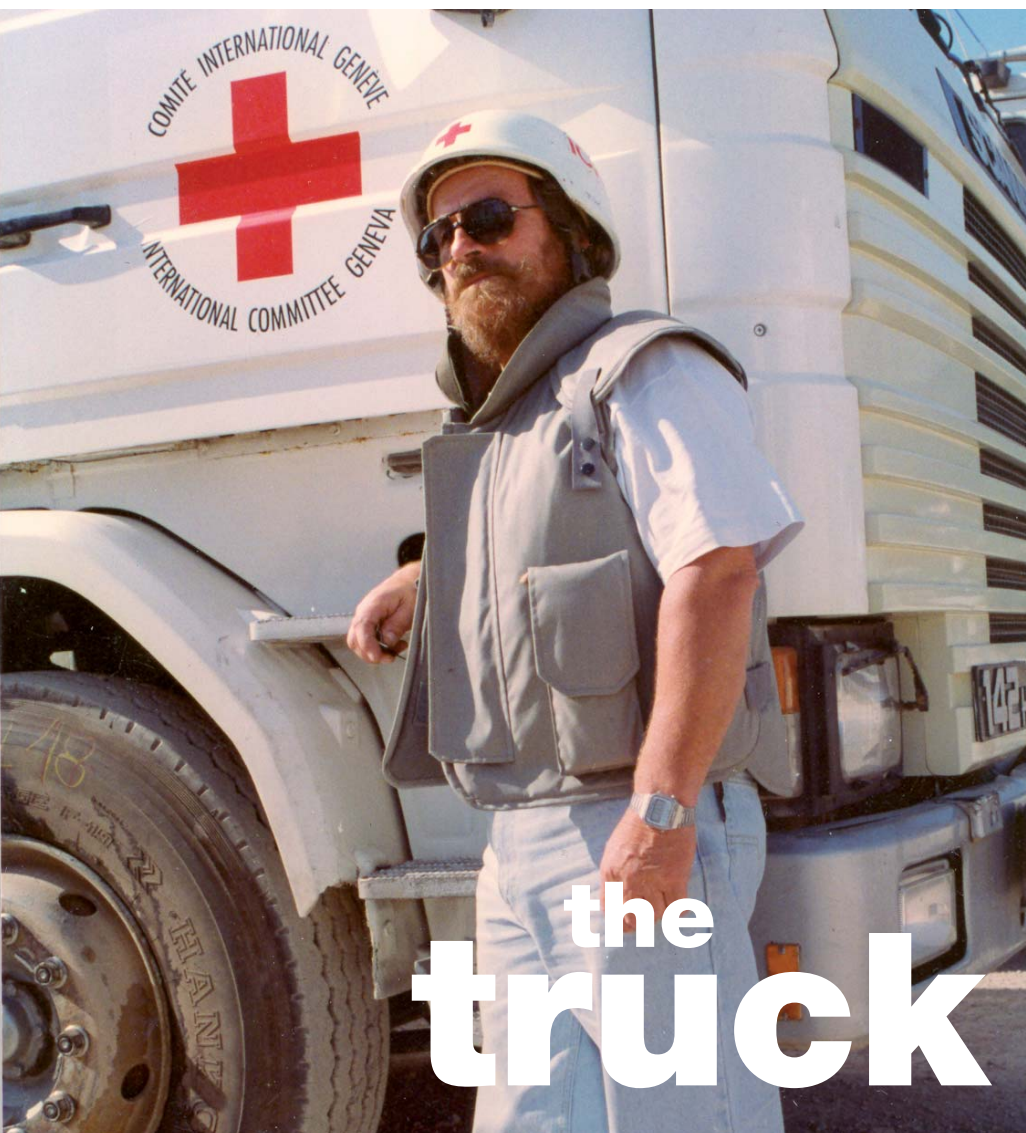
Decades after the event Frank still shakes his head in apparent bemusement, and slight disbelief. How on earth could he be so fortunate? Why was he the very one chosen for release? Unbelievable but true: the Red Cross word came through: “Well, Mr Cox, as part of

a POW exchange, we will make arrangements for your repatriation.”

Events moved fast. By mid-1944 Frank found himself on an ICRC hospital-train en route home. Even this was not without its dangers. Though the train was clearly marked with red cross emblems, it had to travel through dangerous regions to pick up other ill prisoners of war from across Germany – from Halle, from Hamburg and even from Berlin – where the threat of bombing by ‘friendly’ Allied fire was ever-present. At last, neutral Sweden was only a ferry ride away. Then came the last leg home, sailing out from Gothenburg to England on the troop ship the Arundel Castle. To Frank’s astonishment, German submarines escorted the ship, guiding it safely through German-laid mines.

In 2007 the Federal government awarded compensation and recognition to Australians held in Europe during World War II. Frank, along with fellow prisoner of war Mr John Crooks, decided to donate the first portion of the amount to Red Cross, in gratitude for the assistance given during their incarceration.

Nearing the end of a long and a very lucky life, it was, Frank Cox says, a way of repaying his debt – his debt to the International Red Cross.



Eddie Guldner with his ICRC truck. Photo courtesy of Eddie Guldner

Bosnia in the 1990s was a country devastated by armed conflict – with thousands killed, families torn apart and villages reduced to ruined shells. Civilians struggled to survive in isolated enclaves, with life in the bitter winters being particularly harsh. Throughout the conflict, the ICRC sought to fulfil its mandate under the Geneva Conventions, protecting the most vulnerable victims of war. Many were totally dependent on Red Cross aid for food and medical supplies. Courageous truck drivers were needed to deliver these vital supplies. Ingvar ‘Eddie’ Guldner, from Melbourne, was one such driver.

Eddie has always had a spirit of adventure. At just 19 he migrated to Australia from Germany, knowing no-one in his adopted country, with just 30 shillings in his pocket. Over the years he developed skills as a

mechanic that he was later to use in most unexpected ways. At 56, he found himself out of work and unsure of which direction to take. However, he spotted an advertisement seeking Red Cross truck drivers to work on overseas assignments. “I’d always admired people who do things for other people ... So I thought, ‘Why not?’ Yugoslavia looks good – this is my chance!”

Armed with a strong sense of commitment to serve, in early 1993 Eddie applied for an initial six months work – and life would never be the same. Following training at ICRC headquarters in Geneva, Eddie was assigned to Split in Croatia – the base from which the Bosnian convoys would roll. “Red Cross had just been a name to me before. Now all of a sudden I was part of one of the biggest relief operations Red Cross had ever done.”

**“Being pounded with questions about relatives, when I had no information, couldn’t even say whether their loved ones were alive or not – that was gut-wrenching stuff.”**

## driver

**Eddie Guldner interviewed by Bev Patterson, IHL officer, Victoria**

“I don’t think I fully understood how exhausting it would be.” The United Nations provided morning briefings, co-ordinating with the Red Cross about areas of particular security concern. “The policy was to return to our safe base each night. That meant 12 to 18 hours on the road.”

In rural areas roads were often a nightmare – some little more than dirt tracks, often littered with the debris of war. “You needed all your skill and concentration ... Imagine great big trucks, like the ones that deliver to Safeway ... heavy, loaded to the brim. Sometimes we pulled a trailer. Imagine having to zigzag through mountain passes with that behind, knowing there were mines laid on each side of the road. In summer there was the infernal dust; in winter the greatest danger was skidding in snow ... We could easily get a metre of snow

overnight ... And the constantly biting miserable cold: even with a bullet-proof windscreen three centimeters thick, the freezing weather never ceased to penetrate the cabin."

And the danger? "Oh yes," Eddie reminisces, "the danger was ever-present. We didn't deliberately set out in the middle of severe fighting – Red Cross always strives to keep the safety of its staff paramount – but there was always sporadic shelling, and grenade explosions. One day I'll never forget, Red Cross called for volunteers to take medical supplies to Mostar ... the snipers were shooting between our vehicles, as if it was a game. At one point we had to drive right through crossfire – in the dark, no lights, foot on the pedal ... We made it, but I've never been so glad to be wearing my bullet-proof vest and helmet."

So were the Geneva Conventions respected? Did the average soldier in Bosnia know the rules of war? According to international humanitarian law, relief workers should be protected and respected, and allowed free passage, only being stopped in cases of urgent military necessity. Was the neutrality of the Red Cross widely understood?

"Yes and no." Eddie muses, "There was far more knowledge in Bosnia than later on, when I drove [again for Red Cross] through Kazakhstan up to Tajikistan. Soldiers knew the rules [in Bosnia], I think, but often liked to challenge us at checkpoints ... always asking 'Why are you feeding the other side?' At each checkpoint we had to stop and argue our way through, convincing the military that this was assistance for civilians. They'd search everything we carried, pour over our Red Cross paperwork ... But we accepted that – Red Cross had nothing to hide and wanted its activities to be totally transparent. On the odd occasion that our convoy was blocked, we turned around and sought out another checkpoint, perhaps controlled by a different militia. Protest as they might, everyone knew the meaning of the Red Cross emblem, and that what we did for one side, we would do for the other, as need, not ethnicity required."

Villagers were always so glad to see the Red Cross arrive with food packages, sustenance measured out in calories to last one person for one month. "There was nothing like driving in, seeing faces of defeat light up with

renewed hope. They treated us like heroes – always tried to feed us, or produce a celebratory bottle of vodka." Eddie was always overwhelmed by this. "The poorest people in the most awful circumstances were always the most generous. They had nothing, yet wanted to give to us."

Years on, the memory of one incident momentarily chokes Eddie, bringing tears to his eyes. "I'd been asked to help with a prisoner exchange, driving a truckload of ex-prisoners of war back up into the mountains. Those who'd found their way back to their families were greeted with delirious joy, but what about the missing – those with sons and husbands who were not on my truck? Being pounded with questions about relatives, when I had no information, couldn't even say whether their loved ones were alive or not – that was gut-wrenching stuff ... War is such a futile business – it helps no-one ... I just had to do my bit to help."

Time after time Eddie re-applied. In the end he served for four years, until hostilities waned and ICRC operations scaled down. In 1996 Eddie was one of the last Red Cross truck drivers to leave the former Yugoslavia.



Eddie Guldner with ICRC convoy transporting humanitarian aid delivered into Bosnia, circa 1993-1996. Photo courtesy of Eddie Guldner



# the nurse

*Christine Foletti administering medical first aid, 1999. Photo courtesy of Christine Foletti*

## **Christine Foletti interviewed by Bev Patterson, IHL officer, Victoria**

The plane gathered speed along Lokichokio's hot tarmac.

Even at this busy airport, the centre for so many UN and non-government organisation relief efforts and a huge turn-around of cargo and personnel, this one plane stood out – emblazoned as it was with large red cross markings on fuselage, tail and wing tips: this was a flight of the ICRC.

Its mission was distinct – flying as it would from northern Kenya, into southern Sudan and back, collecting and bringing the most urgent cases of war-wounded back to Red Cross hospital care.

For eight months of 1999 New South Wales nurse Christine Foletti worked in the role of Red Cross Flight Nurse on such life-saving trips.

“Security was my number one concern,” remembers Christine, “I was the first Australian nurse back in after a colleague, Maree Worthington, had been abducted. She was eventually released, but Maree’s experience shaped my ground rules – no point trying to save someone else if you are lost yourself.”

How did the relief flights work? “We’d get a call over the radio at ‘Loki’, from where the fighting was most fierce ... the SPLA [Sudanese People’s Liberation Army] had forty wounded, mostly gunshots ... out near Malakal ... could we come?”

At its foundation, the answer would rely on the parties’ acceptance of the Geneva Conventions. The international rules of war insist on protection and care for wounded combatants and specifically talk about the place of medical aircraft:

“Medical aircraft ... shall not be attacked, but shall be respected by the belligerents, while flying

at heights, times and on routes specifically agreed upon between the belligerents concerned.” (First Geneva Convention, Article 36)

Both Kenya and Sudan were signatories to the Conventions and both abided by the general principles, allowing Red Cross flights to travel in their airspace.

Red Cross needed a guarantee of safe passage from both sides and the Sudanese wanted to know exactly where the Red Cross was working. “To land anywhere,” Christine recalls, “we needed clearance from the government – and so the negotiations would begin all over, for each separate flight.”

Was permission given readily? “Yes, overall. On average we waited 24 to 48 hours for the green light; the worst I can remember was three weeks. We had to be savvy. It wasn’t just about the medical work, but understanding the wider context, gaining the trust of the players; being up to date with who



**“It wasn’t just about the medical work, but understanding the wider context, gaining the trust of the players.”**

controlled what territory. Sometimes there were mind games; ‘Why should we let you help the rebels when we’re in conflict with them?’ but we did have a solid reputation for being neutral and impartial. If it ever seemed as though we were doing more evacuations for the SPLA rebels, that was only because they had their own doctors and nurses in the government-held zones ... We were never attacked, not once. Talking about Red Cross, who we were and what our emblem meant – that was ongoing, and vital, work.”

“The ICRC had two planes – one ... was tiny ... but when we gutted all the seats, we could squeeze in about 18, laid out sardine-style on mattresses on the floor.”

In line with Red Cross’ universal reach, the medical teams were of mixed nationalities, in this case an Australian nurse, working mostly with South African or Zimbabwean pilots. “Those bush pilots were fantastic,” Christine reflects. “How they landed where they did was amazing. ‘Air-strips’ hardly describes it – more like narrow dirt tracks. I’d worked in Central Australia, with the Royal Flying Doctor Service, but this was quite different. There the golden rule was to stabilise and manage as much as possible before transfer, but this was a luxury we didn’t have in southern Sudan. Often we might only have a 30 minute turn-around. Triage, stabilisation and transport had to be managed within a very short time ... Of course not all the patients were



*Christine Foletti safely arriving in Sudan on an ICRC plane, 1999. Photo courtesy of Christine Foletti*

war-wounded. Often I saw cases of obstructed labour or people attacked by a hyena or leopard. The war had made their access to medical care near impossible. ... This was the most sobering face of war – the indirect civilian victims.”

“I’ll never forget my first evacuation, landing on the edge of a salt-pan, shimmering with heat. ... All of a sudden, out of the mirage, came the patients – limping on rough sticks, or carrying others on hand-made stretchers, moving to wait under the trees. I was struck by the quiet. They were so desperate to get on board, yet so orderly, so patient, so quiet.”

ICRC opened the Lopiding hospital in Lokichokio in 1987 with just 40 beds. By 1999 it had grown to 440 beds, with a maximum capacity of 560. From 1987 to 1999 ICRC received and treated 17,000 patients: 70 per cent of those were suffering gunshot wounds and the vast majority were civilians. The hospital had also fitted 1,500 people with artificial limbs, vital to their full recovery. Christine

notes proudly: “We ran a world-class prosthetic and rehabilitation program for the war wounded – yet all under tents.”

“The most fantastic days saw the return flights, taking the patients home – sometimes after months away from home. All the amputees fitted with new limbs ... I still remember them getting off, striding off into the jungle, proud and confident, even though many had a two- to three-day walk ahead of them. That was a really emotional moment, giving people their lives back.”

Today, Christine lives in Newcastle where she works as a Refugee Health Nurse. “My Sudanese clients tell me the towns they’ve come from; they are amazed when I say I’ve been there and know the area. ‘Oh, so you really understand.’ Of course I don’t, my experience of the Sudan conflict was never the same as theirs ... But it’s still a great feeling when they nod and remember ... There’s not one of them from the south who doesn’t know that Red Cross plane.”



# the medic

*The ICRC team passing Erez checkpoint on foot to evacuate a wounded civilian from the Gaza strip into Israel, where an ambulance is waiting. July 2007. Photo: © ICRC / A.Gutman*

**“You know, no matter where I have been, the Geneva Conventions have always had the versatility to meet any cultural gap, to bridge the concerns of all sides to gain access to all those vulnerable.”**

**Nicolas Prince interviewed by Branka Gajic, IHL officer, NSW**

Nicholas Prince, a health delegate with the ICRC, has seen his fair share of humanitarian operations in the midst of war, its victims and countless calls for help at every turn. Nicholas remembers in Israel where, “paramedics were treating large numbers of civilians, and just about every place was at risk from bombings: cafes, restaurants, buses. For the ICRC it was a comprehensive relief operation. We were providing, in tandem, both the physical help of assisting with everything from blood donations and transfusions, but also emotional support for the local medical staff who were in grave need of counselling from the emotional traumas sustained.” Under the 1949 Geneva Conventions, ICRC is specifically named as a humanitarian agency with a legal mandate to carry out relief operations to minimise the suffering of those injured or affected by the violence of war.

Many of the casualties Nicholas would encounter were mostly from indiscriminate attacks, which are prohibited by IHL. In fact the rules

say that attacks must be directed solely against military personnel and objects, and even at such time every precaution must be taken to spare the civilian population. From the onset it was clear to Nicholas that apart from medicine, IHL was going to be central when dealing with all parties to the conflict. “A lot of the time we were teaching IHL through medicine.”

Among the gunfire and explosions, the military operations and shelling, ICRC never stopped working, with National Societies on the ground – such as the Palestine Red Crescent and Magen David Adom (the Israeli National Society) – and all parties to the conflict, providing medical relief for the wounded.

“Up-skilling the doctors was the bane of our existence. We called on all medical practitioners to treat every patient impartially for their wounds, and not based on their nationality or religion.” Relying on the right of access, ICRC worked to facilitate free passage into critical areas of Gaza and the West Bank to deliver

**“Taking no sides means different things in different contexts, but declining a military escort sends a message in no uncertain terms that ICRC is neutral.”**



*ICRC delegate negotiating with Israeli military authorities, Jenin. Photo: © ICRC/C*

medical assistance to those affected by the conflict and not involved in the fighting. War surgeons, medical equipment, ambulances along with tarpaulins, kitchen sets and temporary shelter were all being transported in convoys. “Access was our primary objective,” he says.

Nicholas recounts a time when he negotiated his way through a war zone, leading a convoy of ambulances and Red Cross workers to reach a hospital and transport the injured. “Everyone was nervous. We were in front of this large tank, in the middle of a vast field with all the soil bed disturbed from the explosion of ordnance from a couple of days before. There it was this enormous tank, with its turret moving from side to side as though it was an eye and I had to speak to it. It reminded me of a dalek from a Dr Who episode. I followed the orders – it is vital you keep your cool – the military are very precise with their requests. After the paperwork was checked, and their search completed they offered to escort us to our destination point. I knew I had to make it crystal clear that we were not going to accept.”

Neutrality, along with impartiality, is also one of the seven fundamental principles of the Red Cross Red Crescent Movement. Nicolas

continues, “Taking no sides means different things in different contexts, but declining a military escort sends a message in no uncertain terms that ICRC is neutral. It is difficult sure, for many reasons; there is your colleagues’ safety in question, balanced against getting to the urgent cases, but in order to maintain the dialogue and access to all sides you really need to state your case in everything that you do out there in the field.”

Under the Geneva Conventions ICRC is granted unobstructed access to the most vulnerable places to deliver humanitarian relief to the victims of armed conflict, including to civilians as well as injured and detained persons. Nicholas recalls that “the Geneva Conventions were the door-opener for us [ICRC] to gain access to conflict affected areas.” Negotiations took place at all levels, and between all parties concerned.

“It was just as important to obtain civilian access to food, employment and life resources necessary to carry out normal daily rituals. So long as everything you do is to reduce the impact of conflict on health and minimise the effects of conflict on civilian population you were well within the parameters of the Fourth Geneva Convention.”

Nicholas mentions particular medical activities carried out to reduce the impact of injuries sustained by rubber bullets. “We were receiving high number of casualties in some instances from rubber bullets fired over longer distances, which decreases their accuracy, causing serious damage to soft tissue, such as when lodged in eyes.” The means and methods of warfare are not unlimited, and the Geneva Conventions expressly prohibits infliction of unnecessary suffering.

Nicholas lists the countries he has been to with ICRC. “You know, no matter where I have been, the Geneva Conventions have always had the versatility to meet any cultural gap, to bridge the concerns of all sides to gain access to all those vulnerable. Without them, you would have to find other ways to do your work, and when you are faced with a hospital full of injured, or a village full of hungry people you are very limited as to how you can get to them.”

When asked whether he thinks the Geneva Conventions really work Nicholas pauses for a moment, “Without the Geneva Conventions there is very little to go with to the authorities. No one wants to imagine the alternative, you cannot imagine working without them. It’s the only way.”

**“When the war took place, there was nothing left. School was gone. Everything was gone. Everything that you think was normal was gone.”**

**Maddi Mille interviewed by Kelly Gwyn, IHL officer, Queensland**



*Maddi Miller at home in Queensland. Photo courtesy of Michael Neylan*

“Before the war Liberia was a place of peace,” says Maddi Miller in a soft voice. Maddi and her husband Abraham are sitting in their living room in Queensland. It seems a world away from their homeland of Liberia, and the story that Maddi is recounting is one that highlights the importance of the work of the ICRC and its National Societies.

Liberia was devastated by two civil wars from 1989-1997 and 1999-2003. These conflicts exacted an enormous human cost, in lives lost and the displacement of people.

“When the war took place, there was nothing left. School was gone. Everything was gone. Everything that you think was normal was gone. We were in the bush, the rain was falling on us. It’s hard to explain but

it’s something that you never forget. We were like animals when the war took place. We were moving from one bush to another forest, looking for food to eat. I saw corpses and acts of violence almost every day. That was it. That was our life.”

Maddi’s family took refuge in one of the many camps for internally displaced people. Life in the camp was miserable and they were frequently attacked by armed forces. Protection of civilians is a fundamental principle of international humanitarian law. The Fourth Geneva Convention and the Additional Protocols set out specific rules designed to protect civilians. In situations that are not covered by these treaties, in particular internal armed conflicts as in the case of Liberia, Common Article 3 of the Geneva Conventions and Additional

Protocol II of 1977 provide a basic minimum standard of protection.

“All the community was after was safety and then something to eat,” Abraham remembers. “Just survival ... Everyone was struggling. No one had time to go and get an education. Especially for that intensive period of war, something like 14 to 15 years of war, we could not think about school. Children were forced to take up arms, to participate in the war. Women suffered. Soldiers would do anything they felt like doing to them – harassment, rape. Things were just catastrophic.” Maddi agrees: “Seeing your husbands slaughtered in front of you, you don’t forget that memory.”

Both Maddi and Abraham ended up leaving Liberia, as children, to seek refuge in neighbouring Guinea. Maddi

# refugee

sighs as she remembers her life as a refugee. “Life became so different for us. We feared that we weren’t good anymore. We feared we were just useless to other people. So we kept to ourselves. We couldn’t do anything ... during the conflict we saw parents taking their children to go into prostitution to provide for the family. But our mum, she was a vicar in Liberia, so we started to bake together to sell bread instead of us going into prostitution.”

During those long years of war Maddi became separated from some of her family. Maddi’s father had been granted a visa to settle in Australia and began searching for his family through Red Cross Tracing Service. Red Cross workers helped to track Maddi down in a Guinean refugee camp and restored her family links with her father. In non-international armed conflict, parties to the conflict are required to take all appropriate steps to reunite a family that has been separated and to clarify the fate of people reported missing. The parties to the conflict must also encourage the work of organisations engaged in this task. The work involves tracing people who are unaccounted for, organising the exchange of family news and the transmission of documents when usual channels of communication have broken down, issuing travel documents and organising family reunifications and repatriations. This work is carried out by ICRC and National Societies.

Through that initial contact, Maddi and her father began to correspond regularly, and then Abraham and Maddi made the decision to leave Africa to start a new life in Australia with their family. During this time, Maddi was overcome with mixed emotions. “I was really happy, but



*The Lainé refugee camp located in the forested region of Guinea, near the Liberian border.  
Photo: © ICRC / Jean- Yves Clémento*

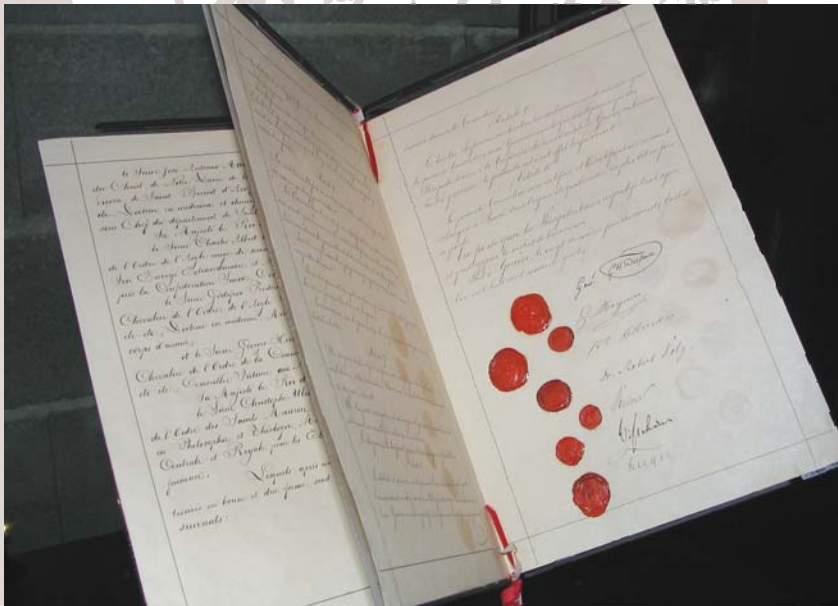
after the joy I felt sad because I was leaving friends in the same condition. Friends who had all stuck together and shared our feelings, they were left there. So it was like I couldn’t have joy, because people I loved were still in that situation. When we got to Australia my children were laughing. They said – Mummy, we’re okay. I would say – Have you forgotten so soon? There are those still in Africa who don’t have enough to eat.”

Today is an exciting day for Maddi – it is the first chance that she has had to meet Maria, the Red Cross tracing officer who helped to locate Maddi in Guinea and who put her in contact with her father in Toowoomba. The joy is evident in Maddi’s eyes as she finally gets to hug the woman who helped her re-establish contact with her family.

**“All the community was after was safety and then something to eat,” Abraham remembers. “Just survival ... Everyone was struggling.”**

# negotiating the Geneva Conventions and contributing to

# IHL



Original document of the first Geneva Convention, 1864. Photo: © Creative Commons Attribution, Kevin Quinn, Ohio, US

**Tim McCormack,**  
**Australian Red Cross**  
**Professor of International**  
**Humanitarian Law,**  
**Melbourne Law School**

**The negotiation  
of the four  
Geneva  
Conventions of  
1949 ... were  
concluded in  
the aftermath of  
World War II as  
a reaction to the  
devastation of  
'total war'.**

So much of the making of international law is reactive – to major new developments in international affairs or to some catastrophic event which acts as a catalyst to multilateral resolve. The negotiation of the four Geneva Conventions of 1949, all pillars of contemporary IHL, was no exception. These four treaties were concluded in the aftermath of World War II as a reaction to the devastation of 'total war' and in acknowledgement of the manifest inefficacy of the pre-existing law of war.

As early as February 1945, still months before the end of World War II, the President of ICRC initiated a process for treaty negotiations by writing to governments and national Red Cross and Red Crescent societies. The proposal envisaged revision and extension of the three earlier Geneva Conventions – 1864, 1906 and 1929 – with a particular focus on new protections for the

civilian population in war. In the ensuing four years, proposals were drafted, inter-governmental meetings held and preparations undertaken for a major diplomatic conference. Government delegations assembled in Geneva in May 1949 and, after 14 weeks of negotiations, concluded agreement on four new conventions each focussed upon minimum standards of protection for a specific category of war victim (wounded and sick combatants on land; wounded, sick and shipwrecked combatants at sea; prisoners of war; civilians).

A key priority for the Australian Government delegation at the Diplomatic Conference was to strengthen the relatively sparse protections for prisoners of war in earlier legal instruments – particularly the 1929 Geneva Convention. The widespread torture, mistreatment, abuse and arbitrary killing of Australian prisoners of war in Japanese custody

during World War II was by no means a uniquely Australian experience. But the treatment of our soldiers did provoke anger and resentment in the Australian populace and, consequently, provided a powerful incentive for Australian negotiators to work hard for a strengthening of the law. The third Geneva Convention, dealing with prisoners of war, is the most systematic and comprehensive of all four of the 1949 treaties, leading one commentator to claim that “none of the three other Conventions possessed as concentrated a character or invited such concentrated attention”. The significance of the third Geneva Convention as a real breakthrough in IHL is, unfortunately, regularly overlooked in favour of the simplistic assumption that prisoners of war were already the subject of legal protection prior to 1949.

The fourth Geneva Convention, on the protection of the civilian population in war, is rightly viewed as a milestone treaty because it is the first multilateral convention with this focus. Again, though, overly-simplistic assumptions are made about the scope of the fourth Geneva Convention and the reality of its innovation is heavily qualified. The fourth Geneva Convention only provides protections to the civilian population subject to foreign military occupation. Hague Convention IV of 1907 (and the Hague Regulations of the same year) also imposes limitations on military occupation including towards the civilian population. There is a real sense in which the fourth Geneva Convention, like the first, second and third, also constitutes a revision of existing law. The assumption that the fourth Geneva Convention, dealing with the protection of the civilian population in wartime, prohibits indiscriminate bombing, for example, is understandable but misinformed.

ICRC was certainly of the view that the massive and indiscriminate bombing of cities during World War II was illegal under existing IHL. Legal regulation of the widespread practice of saturation bombing of cities with conventional weapons instantly became much more urgent with the advent of atomic weapons in the final stages of World War II. Some

delegations in Geneva were convinced that the fourth Geneva Convention would lack credibility if its scope was not comprehensive. ICRC was more pragmatic. The organisation accepted that any attempt to introduce legal regulation on the means and methods of warfare (traditionally the subject of treaty negotiations in The Hague) could seriously jeopardise the entire agenda for the extension of protections for the victims of war. Swiss conservatism was vindicated by the intensity of opposition from those delegations insisting upon strict demarcation between protection for victims and limits on means and methods of warfare. ICRC had to wait almost 30 years for the adoption of Additional Protocol I of 1977 before, finally, the inextricable relationship between protection for the civilian population and military decision-making in relation to the means and methods of warfare found its codification in treaty prohibitions.

The 1949 Diplomatic Conference did not occur in an historical vacuum. By the time delegations assembled in Geneva, the Nuremberg and Tokyo War Crimes Trials had established the unassailable principle of individual criminal responsibility for violations of IHL. Many delegations at the 1949 Diplomatic Conference worked assiduously to avoid the language of ‘war crimes’ for violations of the Geneva Conventions (substituting the phrase ‘grave breaches’) so as not to equate any such violations with Nazi or Japanese World War II atrocities. However, it was also readily accepted that an enforcement regime was essential for the credibility of the new treaties and that serious violations of the Geneva Conventions ought to trigger penal sanctions. The Grave Breaches regime extending across all four conventions has profoundly influenced the subsequent development of International Criminal Law and enforcement of violations of IHL.

One final legacy demands consideration for it remains arguably the most significant contribution to the subsequent development of IHL. Article 3 common to all four Conventions establishes a *de minimis* list of protections applicable in non-

**A key priority for the Australian Government delegation at the Diplomatic Conference was to strengthen the relatively sparse protections for prisoners of war in earlier legal instruments – particularly the 1929 Geneva Convention.**

international armed conflicts. World War II represented a global war – an international armed conflict par excellence. Consequently, Common Article 3 is an example of the making of international law against the trend – proactively rather than reactively. Many delegations resisted any attempt to regulate the conduct of non-international armed conflicts on the basis that the use of military force within a State’s own sovereign territory was not properly the subject of international law. Here again though, the historical context with its dramatic challenges to the notion of the supremacy of State sovereignty, proved influential. The UN Charter had already been adopted and soon after it the UN Universal Declaration of Human Rights. The 1948 Genocide Convention had also been opened for signature in reaction to Nazi atrocities so often perpetrated against German nationals. States could not reasonably resist a minimal list of prohibitions on inhumane conduct in internal armed conflicts. Given the prevalence of non-international armed conflicts since World War II, Common Article 3 has become far more significant than any Geneva delegation could ever have imagined.



### 1859

- Battle of Solferino:
- Henri Dunant's 'Memory of Solferino' inspires establishment of the International Committee of the Red Cross

### 1868

- St Petersburg Declaration: First International Agreement prohibiting the use of certain weapons in war by 20 States Parties



### 1906

- Second Geneva Convention: for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field



### 1925

- The Geneva Protocol: for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare

### 1946

- Charter of the International Military Tribunal for the Far East in Tokyo

### 1949 FOUR GENEVA CONVENTIONS



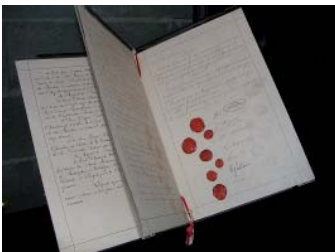
### 1954

- Convention on the Protection of Cultural Property in the Event of Armed Conflict

## developments in international humanitarian law

### 1899

- Hague Declarations: Including the prohibition on Asphyxiating Gases and on Expanding (dum-dum) Bullets



### 1864

- First Geneva Convention: for the Amelioration of the Condition of the Wounded in Armies in the Field



### 1929

- Third Geneva Convention: relative to the Treatment of Prisoners of War

### 1907

- Hague Conventions: including Convention IV: respecting the Laws and Customs of War on Land

### 1948

- Genocide Convention and Universal Declaration of Human Rights



### 1945

- United Nations Charter and London Charter of the International Military Tribunal in Nuremberg

### 1948

- Treaty of the Prohibition of Nuclear Weapons



### 1951

- Refugee Convention



## NTIONS



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### 1972

Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and their Destruction

### 1984

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment



### 1989

Convention on the Rights of the Child

### 1994

Statute of the International Criminal Tribunal for Rwanda



### 1997

Convention on the Prohibition of Anti-Personnel Mines

### 1998

Rome Statute of the International Criminal Court



### 2008

Protocol on Explosive Remnants of War and Convention on Cluster Munitions

# arian law and related international law

## 68

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-Proliferation of  
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### 1980

Convention on the Prohibition or Restrictions on the use of Certain Conventional Weapons



### 1977

Additional Protocols I and II to the 1949 Geneva Conventions

### 1995

Protocol on the prohibition of Blinding Laser Weapons

### 1993

Statute of the International Tribunal for the former Yugoslavia and Convention On the Prohibition of the Development, Production and Stockpiling and use of Chemical Weapons and their Destruction



### 2006

Additional Protocol III to the 1949 Geneva Conventions



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1977 Photo: © CICR/PAGETTI, Franco

1984 Photo: © CICR/BREGNARD, Didier

1993 Photo: © ICTY

1997 Photo: © CICR/IVLEVA-YORKE, Victoria

2006 Photo: © ICRC / Thierry Gasmann

2008 Photo: © CICR/SOHLBERG, Johan



UN Diplomatic Conference on the establishment of the ICC, 1998. Photo; © UN Photo/ Evan Schneider

**Article 1  
contained in each  
of the four Geneva  
Conventions 1949  
states that:  
“The High  
Contracting  
Parties undertake  
to respect and to  
ensure respect  
for the present  
Convention in all  
circumstances.”**

**Reverend Professor  
Michael Tate interviewed  
by William Underwood,  
IHL Officer, Tasmania**

But how is this ‘respect’ achieved? Reverend Professor Michael Tate AO has a long and distinguished history of involvement with Red Cross: both with and from within the Red Cross Movement to help promote acceptance and enforcement of the Geneva Conventions. He recalls three instances over the years when he believes this obligation was achieved.

Firstly, in 1991 while Michael was a Senator and Minister for Justice, he was responsible for obtaining the support of the Senate to ratify the 1977 Additional Protocols. “I was hoping to get bipartisan support,” he says. “In fact there was support from the Australian Democrats and Senator Harradine, the Tasmanian Independent ... but unfortunately the Liberal and National Party opposition felt unable to support the bill,” due to concerns relating primarily to multinational operations. “I didn’t really think that the concerns ... were valid ... Australian defence forces would still be able to work in a well-integrated way with our allies.” After all, Australian forces were at the time involved in operations

in the Gulf in which “21 of the 33 states participating were parties to Protocol I; 19 were parties to Protocol II. So operational compatibility and cooperative arrangements ... were not in jeopardy.” Despite the Opposition’s failure to support the Bill “in February 1991 this amendment to the Geneva Conventions bill was passed which enabled ratification of Protocol I.”

Michael never gave up the desire to see bipartisan political support for the Geneva Conventions. Therefore, in 1999 on the 50th anniversary of the Geneva Conventions he “floated the idea that the Parliament should not only pass a motion noting the 50th anniversary but also make it clear that implementation of international humanitarian law be done in an ... impartial way.” For the Reverend Professor, “the experience of the Australian Defence Force in the intervening eight years gave cause for confidence that our ratifying of the optional protocols did not in any way inhibit our successful engagement in multilateral military combat, and yet kept us within the proper parameters

of IHL ... The Democrats had already been thinking of something along these lines and in August of 1999 ... a motion was moved in the Senate ... noting the anniversary of the signing of the Geneva Conventions and noting among other things the role of non-government organisations and the ICRC in providing protection and assistance to those in distress."

But Michael "didn't think this was quite enough ... I wanted to get the Parliament to make it clear that its support for the Geneva Conventions and their optional protocols was unequivocal and unanimous." So he lobbied the Attorney General who, on 1 September 1999, moved that the House of Representatives not only note the anniversary and commend the Red Cross movement for its ongoing work; recall Australia's ratifications of the Conventions and

be eroded..." Together with Jim Carlton (then Secretary General of Australian Red Cross), Professor Tim McCormack (Foundation Australian Red Cross Professor of IHL) and Dr Helen Durham (then National IHL Manager at Australian Red Cross), Michael mobilised political support for the treaty. They gave submissions before the Parliamentary Joint Standing Committee on Treaties in favour of ratification.

"In the draft Australian legislation it spoke of Australia having primary jurisdiction for the relevant international crimes. I suggested that we go for the language of the Treaty and substitute the word 'primacy' which has ... a sense of real effective superiority ... So we put this to the Committee and in fact it accepted this submission which enabled it to recommend ratification." As he explains, "effectively

# legislator

Protocols and affirm support of that ratification but significantly "encourage the fullest implementation of the Conventions and Additional Protocols by the military forces and civilian organisations of all nations." The motion was successfully passed in both Chambers.

As he explains: "the Australian Parliament had given its full and unanimous support to the Geneva Conventions and their Additional Protocols ... I think that this in turn gives confidence to the Australian Defence Force that Australian political sovereignty is firm in its support." For soldiers, this means that "they can, with confidence, engage in ... military combat with allies on the basis that this is the sure and certain foundation for the waging of armed conflict."

Then finally, in 2002, as support waned in Australia for the ratification of the Rome Treaty creating the world's first permanent International Criminal Court (the ICC). "There was considerable concern in some quarters that Australia's sovereignty, particularly in its courts, could

... Australian Red Cross ... answered, in one simple word ... the objection to Australia's ratification based on the idea Australian sovereignty would be severely impaired by support for the ICC."

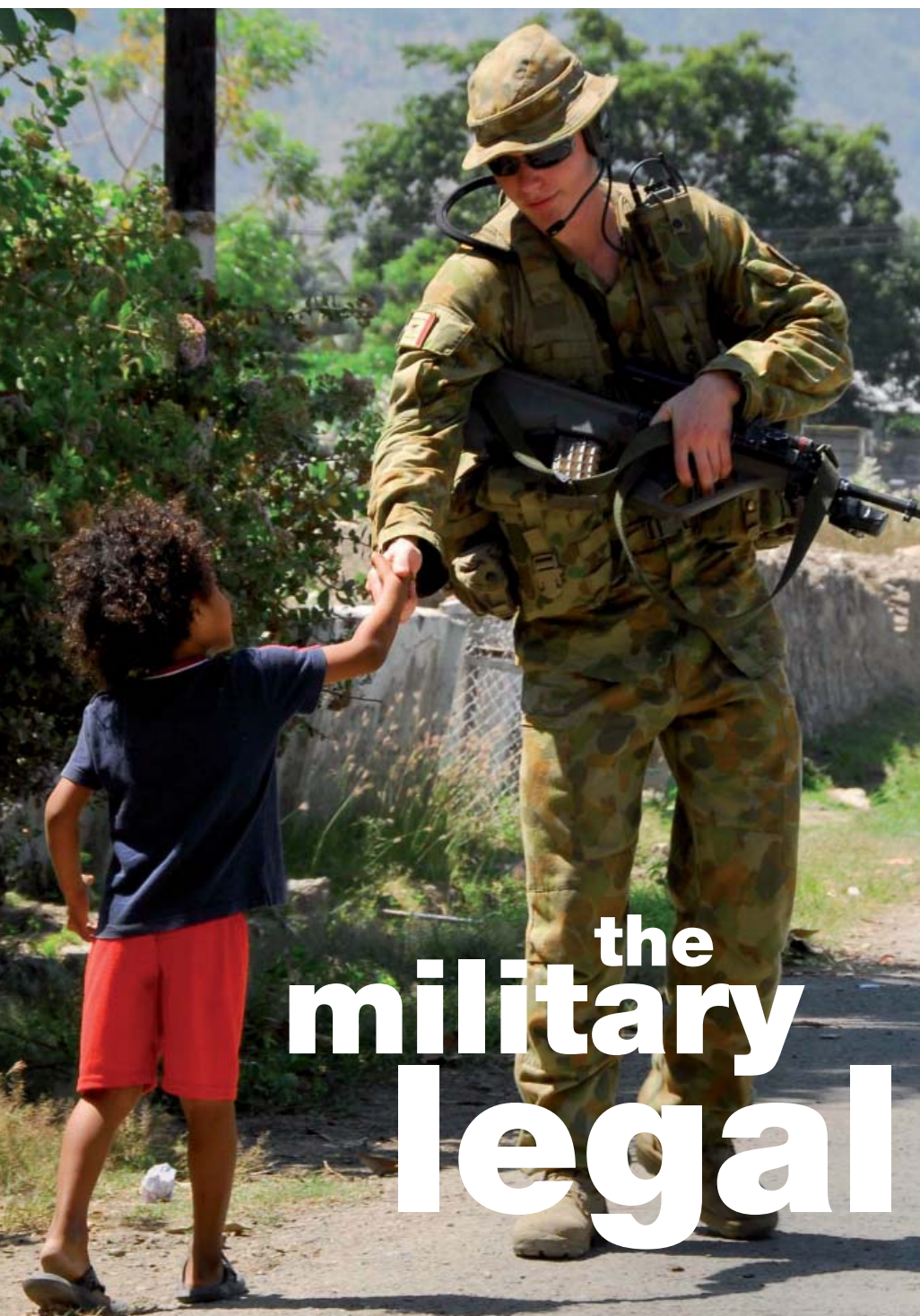
This clarification ultimately led to the successful passing of the legislation. On 1 July 2002 Australia ratified the Rome Statute of the ICC.

"Overall I think that relations with Australian Red Cross, the Attorney-General and Shadow Attorney-General formed over several years, but particularly in regard to the motion celebrating the 50th anniversary of the Geneva Conventions ... was part of the process which led the Howard Government to ratify the Rome Treaty."

On each occasion outlined, Professor Tate's work has contributed to an increased, and ongoing, 'respect' for the Geneva Conventions – an issue which is central to the Geneva Conventions success within Australia and globally.

## Senator Tate, Tasmania, Minister for Justice and Consumer Affairs, 19 February 1991

"The Senate is debating a most important measure, the Geneva Conventions Amendment Bill 1990, which will if passed enable the Australian Government on behalf of the Australian people to ratify protocol I additional to the Geneva Conventions ... It is important legislation and very apt at this time when we are engaged in the multinational force in the Gulf and where the question of the waging of warfare and the way in which it affects the civilian population is constantly before us as a matter of grave concern. It is important to mention that the protocol attempts to make it clear that while the civilian population and individual civilians enjoy general protection against dangers arising from military operations, it faces the reality of the waging of military operations. It deals with the unfortunate fact that it may be necessary in the attaining of military objectives to wage the conflict in a way that will affect civilian populations. But in that case there has to be a real assessment of the proportionality of the impact on civilian populations to the achieving of the military objective. A very stringent assessment of that balance has to be undertaken, but obviously in warfare great care has to be taken to make sure that the loss of civilian life, injury to civilians, and damage to civilian objects are not excessive in relation to that concrete and direct military advantage which is anticipated. But the real object of this protocol is to ensure respect for and protection of the civilian population and civilian objects. I am quite sure that that objective would commend itself to all members of the chamber."



# the military legal

**Ongoing training is critical to maintaining awareness of the obligations under the Geneva Conventions.**

## **officer**

**Michael Howarth interviewed by William Underwood, IHL Officer, Tasmania**

*An Australian rifleman greets a young local during a routine patrol around Dili, October 2007  
Photo: Courtesy Department of Defence © Commonwealth of Australia 2009*

A posting to the newly independent nation of East Timor was for reserve legal officer Lieutenant Colonel Mike Howarth, the culmination of years of training and a deep-seated interest in IHL. For Mike, “the opportunity to apply [IHL] at the operational level, [to] give advice, and then to see it followed” brought home not only the effectiveness of the Geneva Conventions but also the extent to which their principles are entrenched in Australian military operations.

In each of the four Geneva Conventions there is a requirement that all High Contracting Parties

“undertake, in time of peace as in time of war, to disseminate ... as widely as possible ... and, in particular, to include the study thereof in their programmes of military ... so the principles thereof may become known ...”

Mike was posted to East Timor for four months in 2007. His role was to provide legal advice and training

to approximately 1,300 Australian troops stationed in the country as part of an ongoing civilian and military assistance mission.

East Timor, a former Portuguese colony, is a small half-island nation located approximately 640 kilometres northwest of Darwin. In 2002, following a popular referendum, it gained its independence from Indonesia which had controlled the area since 1975. Since that time the country has experienced periods of internal armed conflict and civil unrest

including in 2006 when tensions between rival government forces led to riots in the capital city, Dili. It was during this period that East Timor invited Australia, as well as the UN and several nations, to provide military assistance.

This was Mike's first operational deployment since becoming involved in the Australian Defence Force Reserves. Since then he has provided training and advice to Australian troops on a variety of issues including the Geneva Conventions and the rules of engagement Australian troops must adhere to in order to meet Australia's international legal obligations.

After arriving in Dili and having received basic instructions, as well as a personal weapon and helmet he was taken to Camp Phoenix in the Eastern suburbs of Dili where many of the Australians and New Zealanders were based. There he provided training to the troops on their rules of engagement and the fundamental principles of the Geneva Conventions. "Whenever there was a rotation of new people coming in I'd give them a lecture – a series of lectures – on [the Geneva Conventions and IHL]."

Mike would also attend meetings where representatives from the UN and other countries engaged in East Timor discussed joint operations. There he would advise on the extent to which Australian troops would be able to assist based on their comparatively quite restrictive rules of engagement.

During Mike's assignment, Timorese rebel leader Major Alfredo Reinado escaped from custody, stole weapons from a police store and began to operate freely. A major focus of operations was therefore containing the activities of Reinado and his supporters. The Australians were tasked, among other things, with designing and building a new detention facility to house those who might be detained. Mike worked closely with senior military commanders to ensure the facility met the standards required



*Australian Engineer Regiment sappers carry out repairs at Camp Phoenix, Dili, July 2006  
Photo: Courtesy Department of Defence © Commonwealth of Australia 2009*

under international law. To ensure compliance, Red Cross was invited to inspect the facility. "We got the local Red Cross, [UN authorities] and others to come in and we showed them what we planned ... We had them come in and approve it all and we walked them through it as though they were a prisoner."

Mike believes that adherence to basic Geneva Conventions' principles played a significant role in maintaining the legitimacy of Australian operations among the local population. He says the Australians were by and large welcomed by the East Timorese and although there were some complaints regarding the troops' presence, none concerned breaches of IHL.

Scenario-based exercises, in particular, provide an excellent means by which to practice the application of the Geneva Conventions. Such training is particularly important as during a real conflict, decisions must often be made on the spur of the

moment under difficult conditions. As he describes in the context of East Timor, "[often] you're walking through banana plantations [or] little back alleys where there's no lighting and then – you know – rocks are thrown, a shot or two fired and then people are running. It would be very easy to just loose off a shot." Regular training, suggests Mike, enables troops to deal with such difficult situations.

Mike believes that the Geneva Conventions are well embedded in Australian military culture due to a combination of training, awareness and acceptance. "I was pleased to see that as far as I could ... ascertain our people were well educated ... They'd clearly had a good brief before they left [and] were amenable to being further briefed." Such awareness, in Mike's opinion, has permeated all levels of the armed forces but ongoing training, Mike argues, is critical to maintaining awareness of the obligations under the Geneva Conventions.



# the forensic investigator

**Dr Chris Lawrence  
interviewed by  
William Underwood,  
IHL Officer, Tasmania**

**“It was, in the end, a good story, not a bad one. [In Bosnia] there was very much a feeling that we are going to see justice done.”**

“It was ridiculous. It was stupid. It was madness.” So describes Dr Chris Lawrence the series of conflicts that spread across the former Yugoslavia during the early 1990s. “You just think, no matter what the political justification, this is wrong.”

Dr Lawrence spent a total of seven months working as a UN consultant in Bosnia-Herzegovina, Kosovo and East Timor. For the experienced forensic pathologist, each trip provided a different outlook on the Geneva Conventions and international criminal prosecutions but, “In Bosnia, I genuinely felt I was making a difference.”

Chris learned of vacancies for pathologists at the International Criminal Tribunal for the former Yugoslavia (ICTY) after meeting Richard Wright, a forensic archaeologist and chief archaeologist for the ICTY. He accepted a contract to join the team in 1998 investigating the 1995 massacre at Srebrenica where an estimated 8,000 Bosniak men and boys were killed. The

massacre occurred during the height of the Bosnian War of 1992 to 1995.

Chris flew first to ICTY headquarters in The Hague, then, following a brief period of orientation, on to Zagreb in Croatia. From there he made the trip to Bosnia by car. It was only on that journey that it became clear he was entering a war zone: “... all around [Sarajevo] airport were these blown-up buildings.” Safety was a common concern and the ICTY exhumation team was based in Tuzla in Muslim Bosnia, travelling only into Bosnian Serb-dominated areas when accompanied by armed guards.

Chris led the investigation's mortuary team who were mainly expatriate staff: “One of the problems for us was – as an international team – we had to be careful that we didn't become partisan ... The feeling was that if [we] had locals doing the digging then the Serbs would say: ‘oh look, this is a beat up’.”

Impartiality applied to all aspects of the team's work: “[I] would tell the

team that] they had to be satisfied in their own mind so if they had to go to court they could say ‘this is the cause of death’.” Maintaining a professional distance was not always easy. Chris recalls one instance where his team came across a little green jumper. “That green jumper would have fitted my 11-year-old son – and it had a row of bullet holes running across it ... One of the difficulties of the forensic pathologist is maintaining an emotional detachment ... the jumper was a wrench on my heart and [it] made me intensely sad.”

When not working at the mortuary, Chris made regular trips to the grave sites. The work was “complicated because the bodies had been buried, the sites had been picked up by US spy planes and so the Serbs dug up the bodies and buried them ... again. The trick was to work out ... where they’d been shot, which [graves] they’d been buried in the first time and which ones they’d been buried in the second time. [At one grave site there] were all these drink bottle containers; the drink bottle labels were from Kozluk ... and they went to Kozluk and they found the primary execution site ... so the trace evidence in the grave took us to another site we didn’t know about.”

Back at the mortuary Chris’ primary task was to gather evidence for prosecution at the ICTY. Importantly, forensic evidence was required not only to prove the crimes occurred but that they were committed as part of a systematic plan: “[As a prosecutor] you’ve got to demonstrate not only that this happened but also that there was organisation that went into planning it. In multiple sites we had exactly the same blindfolds cut with exactly the same shears; so someone had obviously said ‘we need hundreds of blindfolds’.”



*Poticari, near Srebrenica, memorial site to over 8,000 Bosnian men and boys killed at Srebrenica in 1995. Photo: © ICRC: Nick Danziger*

For a successful prosecution, evidence also had to be gathered which would prove those killed were civilians legally entitled to protection under the fourth Geneva Convention. Under Article 147 ‘wilful killing’ of a protected person is a grave breach of the Convention.

“One of the issues that came up was ... Were they combatants? Were they civilians? ... leaving blindfolds and ligatures on was a ‘no-brainer’, it made it pretty obvious. But a lot of the bodies in the graves didn’t have them, so that was always open to the Serbs to argue they were in fact combatants. But I think the problem was the mass of data and the movement of the bodies... it was overwhelmingly impossible to sustain [such] an argument.”

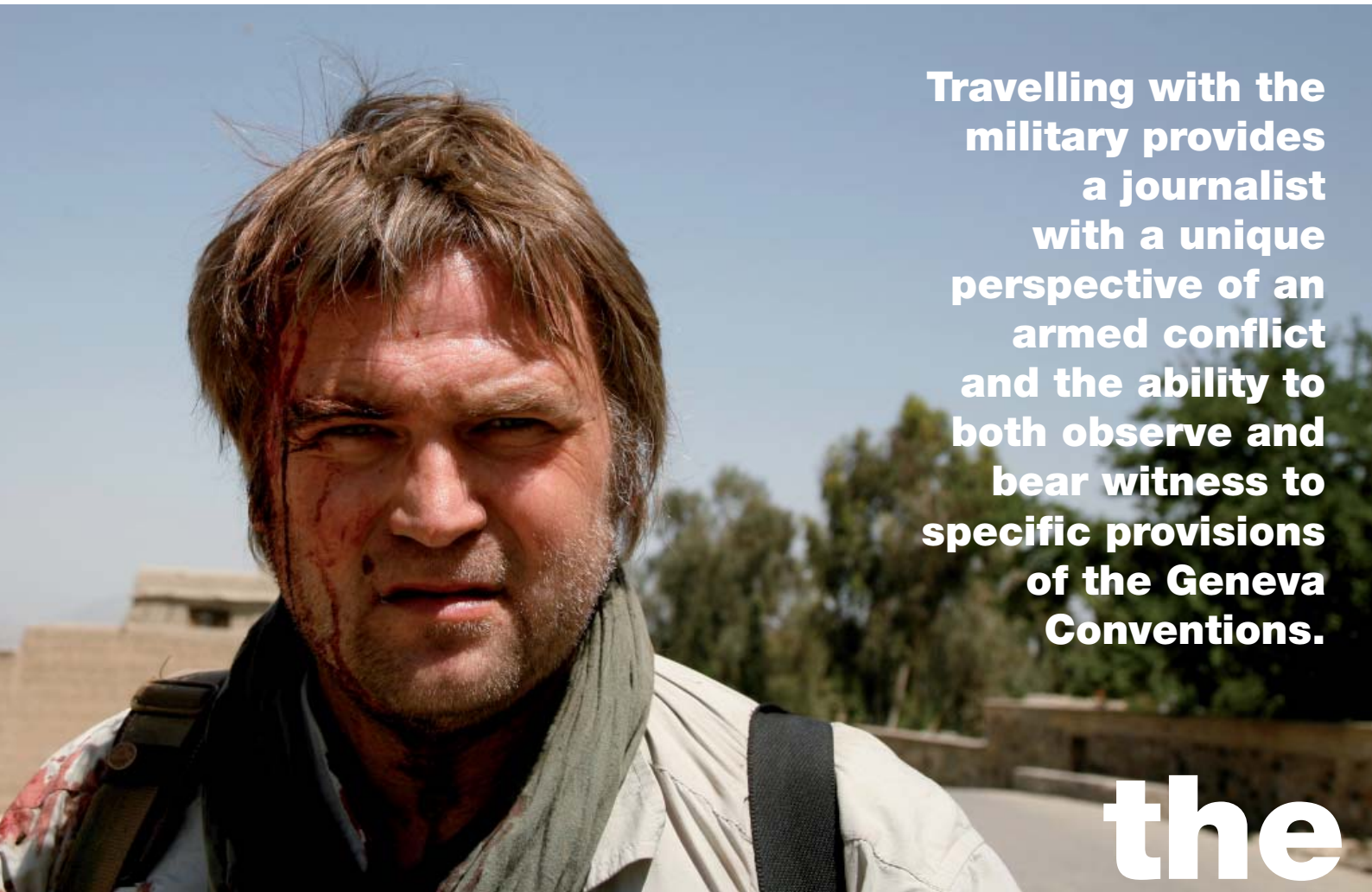
Evidence collected by Chris and his team in Bosnia resulted in the successful conviction of former Bosnian Serb Army commanders Radislav Krsti and Vidoje Blagojevi for crimes against humanity and genocide. He felt that the work of the ICTY in Bosnia was most effective “because the European’s were prepared to put in money [and] they were able to do [a proper] investigation ... Of the 7,000 odd missing people they knew – they’d actually viewed 3,000 of them ... It was the first time that really they’d applied proper

forensic technology and they did it brilliantly. Justice is expensive,” he remarks. “If you’re going to do it you need to organise it and pull all the pieces together.”

Despite at times questioning the capacity of international criminal trials to heal deep-seated wounds – and witnessing a multitude of horrors in the process – on the whole Chris remains upbeat about his experiences: “The interesting thing about the process was I expected to be depressed and I wasn’t. It was, in the end, a good story, not a bad one. [In Bosnia] there was very much a feeling that we are going to see justice done. I think that we all felt very strongly that this was a chance to make a difference.”



*Ligature used to bind victims’ hands in Srebrenica, unearthed during exhumation in Srebrenica, Bosnia and Herzegovina. Photo: © ICTY*



**Travelling with the military provides a journalist with a unique perspective of an armed conflict and the ability to both observe and bear witness to specific provisions of the Geneva Conventions.**

**the**

*Stephen Dupont following a suicide bomb attack, near Kandahar, Afghanistan, 2008. Photograph supplied courtesy of Stephen Dupont*

**Stephen Dupont interviewed by Branka Gajic, IHL officer, NSW**

There is no doubt that Stephen Dupont is a successful photojournalist and author, a fact which has led him to travel extensively, working in some of the most dangerous places in the world. One of Stephen's enduring passions has been capturing the life and history of Afghanistan following the Soviet withdrawal in 1989, as the country disintegrated into civil war.

Between 1993 and 2005, Stephen focused almost exclusively on reporting the Afghanistan conflict. As part of this investigative reporting, in 2005 Stephen deployed with the US Marine Corp in Kunar and the US Army's 173rd Airborne in Kandahar from August to October to complete his research through official press accreditation with US Military and the International Security Assistance Force (ISAF). As a result of Stephen's close involvement with this area of the world his work has entailed exposure to the operation of the Geneva Conventions.

Firstly, under Article 13 of the first Geneva Convention a 'war correspondent' is a protected person and must not be directly targeted by opposing forces. As such Stephen is specifically protected, while working in the field. However, travelling with the military provides a journalist with a unique perspective of an armed conflict and the ability to both observe and bear witness to specific provisions of the Geneva Conventions.

For Stephen to work with the armed forces in Afghanistan he had to obtain official accreditation with the US Military and ISAF. This meant following strict Press Office rules while accompanying the armed forces in the field, including particular limitations on what could be photographed or recorded. The rules had the obvious practical purpose of restricting sensitive national security information from public broadcast, and by default limited the journalists' involvement in the military information and process. Stephen was informed that the rules also specifically prohibited photographing

detainees. The Geneva Conventions 1949 are explicit in prohibiting cruel or inhumane treatment of prisoners of war. This includes a strict legal obligation under the terms of the fourth Geneva Convention for the detaining authorities with regard to protection of the detainees' dignity, which includes obligations not to subject detainees to public curiosity and scrutiny through, for instance, the publication of their images.

As part of his work, Stephen was officially given access to take photos and film the work of the US Army in southern Afghanistan. "The power of working on my own without other colleagues made me non-threatening." However, on one particular occasion Stephen and his recordings became the witness to an incident which would eventually see two US soldiers reprimanded for their actions.

In 2005 following a military operation in the hills above the village of Gonbaz, north of Kandahar, two Taliban fighters had been killed and their remains were burned the following day by





*Stephen Dupont embedded with US Forces, Afghanistan, 2005. Photo courtesy of Sean Hobbs*

# journalist

the US forces. Under the Geneva Conventions, mortal remains must be disposed of according to the cultural and religious instructions of the deceased person.

The cremations were accompanied by loud, publicly broadcast messages containing explicit language appearing to provoke the remaining Taliban fighters. Outrage over the incident sparked an investigation in the US.

“I told them what I had, and they confiscated nothing ... [but] I was very unpopular afterwards as a result of the investigation.” The evidence which Stephen provided in pictorial and sound form eventually led to a change in US military policy. The Psychological Operations Department changed its practices and was reprimanded for violating the Geneva Conventions. A cultural awareness booklet was also given to 20,000 US Military personnel in Iraq and Afghanistan.

On another assignment in April 2008,

Stephen was accompanying the special Afghan police force tasked with a counter-narcotics mission to destroy enterprises trafficking in illegal substances. “It was a ... catch 22 - to destroy the poppy fields at the expense of farmers’ income. You would see the destruction of poppy fields, because the [illicit] drugs were funding various [illegal] operations related to the conflict in Afghanistan, causing a chain reaction, and at the same time you knew that the farmers would be losing their only source of income to feed their families. There were no other options.”

While accompanying the Afghan police, Stephen narrowly survived a suicide bombing and witnessed its aftermath in the village of Khogyani near Jalalabad. “You could not know who the enemy was, [some] were farmers one day, AK47-wielding the next.” Under Geneva Conventions, civilians have the obligation not to take direct part in hostilities, otherwise they may lose their protections under IHL for such time as they do engage in the fighting.

Following the explosion, the area was sealed but Stephen sought refuge in a nearby US military compound and received medical help from the soldiers. More serious casualties were evacuated to a larger hospital in Jalalabad. Stephen reflects how the armed forces offered help to all the injured civilians. “They would try and take the family member with the injured person when evacuating them to the hospital. All injured were taken care of regardless of who they were...” Even in a situation of civil war (or non-international armed conflict as it is called in the Geneva Conventions) the wounded and sick should be collected and cared for. In his role as a war correspondent Stephen travelled further from the conflict zone itself and comments that the armed forces would, “even go into remote areas, where people never see a doctor ... the sheer patience of soldiers, [it] was touching to see this humanitarian side to them.”



Courtroom at the ICTY. Photo © ICTY

## The International Criminal Tribunal for the Former Yugoslavia

### The Prosecutor of the Tribunal -v- Dusko Tadic aka “Dule” aka “Dusan” Case No. IT-94-1-A

Tadic was charged in relation to attacks which took place against the towns of Prijedor and Kozarac in Bosnia during 1992. Following Tadic's arrest on 12 February 1994 he was transferred to the ICTY in the Hague on 24 April 1995. Dusko Tadic was the first person to be indicted by the ICTY and appeared before the tribunal on 26 April 1995. The trial commenced in 1996 and on 7 May 1997 Tadic was found guilty, on the basis of individual criminal responsibility, of violations of the laws or customs of war (cruel treatment) and crimes against humanity (persecution on political, racial and/or religious grounds, and inhumane acts). On appeal Tadic was further found guilty on 15 July 1999 of Grave Breaches of the Geneva Conventions of 1949: wilful killing, torture or inhuman treatment and wilfully causing great suffering or serious injury to body and health.

How does Grant Niemann describe prosecuting for Grave Breaches of the 1949 Geneva Conventions at the International Criminal Tribunal for the former Yugoslavia (ICTY)? “It was a chance for the international community to pump blood into the wings of IHL and see if the butterfly could soar,” says Grant, former senior trial attorney at the ICTY.

Grant, a barrister from Adelaide, had been involved in attempts by Australian national courts to try alleged Nazi war criminals in the late 1980s. He was subsequently invited to work at the ICTY, which he did from 1994 to 2000, and views the Tribunal as a Geneva Conventions' success story. It proved that crimes under Geneva Conventions' provisions could be successfully prosecuted, and its decisions continue to help interpret today's conflicts and powerfully regulate the behaviour of participants in those conflicts.

Grant explains that the concept of international tribunals, created to deal with breaches of international law, is a concept of longstanding. The famous post-World

# prosecutor

**Grant Niemann interviewed by Petra Ball, IHL Officer, South Australia**

War II trials at Nuremburg and Tokyo were set up to try serious breaches of IHL, however this was before the 1949 Geneva Conventions were drafted. Subsequent plans for a permanent international tribunal failed to develop because the Cold War intervened.

Nonetheless, when conflict broke out in the Federal Republic of Yugoslavia, a UN expert committee identified that serious breaches of IHL had occurred and there ought to be an international tribunal to try those accused of war crimes. Using its powers to restore international peace and security under Chapter VII of the UN Charter, the UN Security Council established the ICTY.

Grant reveals that when he arrived at the fledgling Tribunal in 1994, there was a sense that it might not exist for very long. Such tribunals are expected to deal with the most serious offenders, leaving it to State courts to deal with lesser crimes. In 1994, there was no possibility of this happening. No State would risk going into the former Yugoslavia to arrest the political leaders or military commanders in the respective armies engaged in the conflict to bring them to justice.

When Dusko Tadic, an ethnic Serb, was arrested in Germany, on crimes alleged to have taken place in Prijedor in Bosnia, Grant and the prosecution team urged that his trial commence at the ICTY. Ignoring critics who said it was a misuse of an international institution's resources, Grant argued that the prosecution of Tadic – a man who was alleged to have committed major crimes on a national criminal

level – was just what the ICTY needed to begin its work.

“The Geneva Conventions seemed to have been in a cocoon. At an international level, enforcement of serious breaches, particularly Grave Breaches of the Geneva Conventions had never been tested.” Grant and the international team of prosecutors were vitally aware that it would be the end of the Tribunal should a high-profile case fail if the Geneva Conventions revealed some major flaw preventing prosecution. Amendment of the Geneva Conventions to allow future prosecution was not an option. The prosecution knew that if you lost a ‘little case’, there was a better chance of recovery and the fall-out would be limited.

The ICTY was set up to investigate Grave Breaches of the Geneva Conventions. Many in the international community, including ICRC wished to establish these had been committed. However, Grave Breach provisions only applied in international armed conflict and the conflict within the former Yugoslavia had been classified as an internal armed conflict. This proved something of a stumbling block until the prosecution team convinced the court that the classification of conflict argument should not be an element of the offence. On this basis the court was able to say, “On the balance of probabilities, it was an international armed conflict, we don't have to be satisfied beyond reasonable doubt, so yes, go ahead.” Significantly, then, the Grave Breach provisions could be applied. “We now

know how to prosecute under the Geneva Conventions which we didn't know before,” says Grant.

If the ICTY, the first international tribunal operating in modern times, had been unable to prosecute for Grave Breaches, then “a big slab of humanitarian law is just abandoned, so the wings of the IHL butterfly in which the blood was infused in the cocoon [may have] crashed into the wall and died before it ever got anywhere.”

Achieving decisions and judgments at the ICTY gives us the continuing capacity to prosecute and interpret new situations, says Grant. Furthermore, they are essential because they give life to the Geneva Conventions. Enforceable IHL is a powerful deterrent. “It is all very well for the Geneva Conventions to appear on paper and for States to say nice platitudinous things about them but if nothing ever happens in terms of enforcement, then they are pretty well meaningless.”

Grant is convinced that because heads of state, military leaders and other participants in an armed conflict know they could be lined-up and told they are guilty of a war crime, a Grave Breach of the Geneva Conventions, for which they will go to jail for the rest of their life, IHL does indeed regulate their actions. That IHL is enforceable and changes behaviour is a significant ICTY legacy to the international community and highlights the continuing vital relevance of the Geneva Conventions and their underlying humanitarian principles.



# realising the **Geneva Conventions** and mobilising the **power of humanity**

*Image: The main prison, Monrovia, Liberia.  
Photo: © ICRC / B. Heger*

## **Rebecca Dodd, National Manager International Humanitarian Law**

Much has changed in the world since the first heady days when a Swiss doctor and a former navy captain took themselves off to the frontline of a battle in Northern Europe, one to each side. They were on official humanitarian business having been delegated by the International Committee of the Red Cross (ICRC). They travelled with the aim of monitoring the conduct of soldiers and officers. The doctor was brandishing a white arm band with a pronounced red cross – the first ever worn in this way on the battlefield.

It was 1864 when Dr Louis Appia and Captain Van de Velde were officially appointed as delegates for ICRC at the Schleswig-Holstein conflict.

And yet, there is much that has not changed.

The preceding pages have chronicled several stories of Australian delegates, among others, who have worked for ICRC. Each delegate has their own remarkable experiences to share, for that is one of the privileges of the work of the delegate: visiting places and people that you would be unlikely to reach otherwise and being by peoples' sides at times when they are in great distress.

Yet while every account is individual and every person's story unique, it is striking to see that the messages of the delegates remain constant: neutrality towards all parties, so that access can be gained to all sides; respect for the emblem – the only protection of a delegate and the need to spread the word and understanding of the Geneva Conventions.

When a young Australian delegate on her first mission entered a detainee camp in the south of Sudan, she was confronted by conditions that she had never imagined, let alone experienced. In the course of the visit, the soldier in charge of guarding the detainees casually told her: "we used to kill them all you know". How to respond to such a statement? She decided to answer based on the IHL message of impartiality: "we are visiting also your brothers on the other side". As she thought about it later, this young delegate marvelled at the work of previous delegates in bringing about a change in behaviour, behaviour based on the Geneva Conventions. Which delegate first succeeded in reaching these soldiers? Which delegate phrased the message just the right way, to make them understand their obligations under the Geneva Conventions, so they started detaining, rather than killing,

**Which delegate phrased the message just the right way, to make them understand their obligations under the Geneva Conventions, so they started detaining, rather than killing, the prisoners?**



*Private interview with a detainee. Anayancy Prison, Quibdo, Colombia. Photo: © ICRC / B. Heger*

the prisoners she was now visiting? It could be attributed not to one person, but to a long line of delegates all promoting the same law and reiterating the same key principles.

Principles that have not changed much in the history of the organisation.

What has changed dramatically is the way that delegates today share and get access to information in the field. In 1864, Dr Appia's reports came by way of letters to his wife. Today, instant communication through the internet and mobile phones dramatically increases the speed with which delegates can receive information and respond to emergencies. But they can't always be relied upon: and often in a complex emergency these means of communication are the first to fail. And so delegates need to be able to revert to more traditional methods.

To focus solely on the work of delegates is to overlook the broader contribution Australian Red Cross has made towards upholding the Geneva Conventions through the actions of its staff and volunteers. From its very

establishment as a branch of the British Red Cross in 1914, Australian Red Cross has sent people overseas to assist those affected.

As the first wounded arrived in Egypt from the front at Gallipoli during World War I, Australian Red Cross representatives were there to provide comfort to patients – not least with the provision of barber shops!

Article 26 of the first Geneva Convention of 1949 states that Red Cross volunteers can be employed 'alongside and on the same footing' as official medical personnel. From World War II onwards, Australian Red Cross sent the Red Cross Field Force as an official ancillary service to the armed forces. The sole purpose of the field force delegate was to help the sick and disabled in the field.

Australian Red Cross has deployed the field force far and wide: in World War II, a team joined the 2nd Australian Imperial Force (AIF) in the Middle East where a team of seven men with two trucks loaded with medical supplies went in advance of the AIF convoy; in Malaysia-Singapore the field force served from 1956 until

1988. The last such deployment was to Rwanda with the Australian Defence Force in 1994.

The Geneva Conventions of 1949 have not prevented atrocities from being committed and there is much to be done to 'ensure respect for the Geneva Conventions', as is required by all High Contracting parties. This magazine shows the many ways that this can be achieved – by the conduct of the military, legislation of parliamentarians, writing of journalists. For delegates, it is by humanitarian assistance and promoting the importance of and respect for international humanitarian law.

In 1949, when ICRC put forward its proposals for the Geneva Conventions to be revised and to include a Convention for the protection for civilians, it was based on solid experience. Sixty years later, ICRC continues to build on the depth of knowledge which comes from humanitarian action of delegates around the world, including many Australians. The challenge for the International Red Cross and Red Crescent movement remains that of ensuring respect for the laws that have been universally accepted by every country of the world.

## International Humanitarian Law (IHL) Program

Australian Red Cross is part of the International Red Cross and Red Crescent Movement, the largest humanitarian network in the world.

IHL is something Red Cross thinks everyone should be aware of. We run an IHL Program providing training and education highlighting IHL issues to key target groups identified as having a role to play in situations of armed conflict.



Photo: © ICRC / Boris Heger

**Red Cross has a mandate to promote an understanding of, and respect for, the law in times of armed conflict – International Humanitarian Law (IHL).**

The IHL Program focuses on the following target groups:

- Australian Defence Force
- Australian Federal Police
- Non-government organisations
- Commonwealth Government agencies
- Key professions (law, medicine, journalism)
- Tertiary and secondary education sectors
- Wider community.

The IHL Program specifically offers training programs to sectors of the Australian Defence Force such as military medics and military police, in addition to being invited to participate in Australian Defence Force training exercises. More broadly, we run education seminars for members of the general community who have an interest in humanitarian issues and whose work is affected by the application of IHL.

For more information on the IHL Program please visit: [www.redcross.org.au/ihl](http://www.redcross.org.au/ihl) or email: [redcrossihlinfo@redcross.org.au](mailto:redcrossihlinfo@redcross.org.au)

**In all activities  
our volunteers  
and staff are  
guided by the  
Fundamental  
Principles of the  
Red Cross and  
Red Crescent  
Movement.**



# fundamental principles

## **Humanity**

The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and ensure respect for the human being. It promotes mutual understanding, friendship, co-operation and lasting peace amongst all people.

## **Impartiality**

It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

## **Neutrality**

In order to continue to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

## **Independence**

The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.

## **Voluntary Service**

It is a voluntary relief movement not prompted in any manner by desire for gain.

## **Unity**

There can be only one Red Cross or Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

## **Universality**

The International Red Cross and Red Crescent Movement, in which all Societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.

*Philippines. A combatant reads a leaflet on ICRC principles. Photo: © ICRC/R. Tolentino*



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**National Office**

155 Pelham Street  
Carlton VIC 3053  
Tel 03 9345 1800

**Australian Capital Territory**

Cnr. Hindmarsh Drive &  
Palmer Street  
Garran ACT 2605  
Tel 02 6234 7600

**New South Wales**

159 Clarence Street  
Sydney NSW 2000  
Tel 02 9229 4111

**Northern Territory**

Cnr. Lambell Terrace & Schultz Street  
Larrakeyah NT 0820  
Tel 08 8924 3900

**Queensland**

49 Park Road  
Milton QLD 4064  
Tel 07 3367 7222

**South Australia**

207-217 Wakefield Street  
Adelaide SA 5000  
Tel 08 8100 4500

**Tasmania**

40 Melville Street  
Hobart TAS 7000  
Tel 03 6235 6077

**Victoria**

23-47 Villiers Street  
North Melbourne  
VIC 3051  
Tel 03 8327 7700

**Western Australia**

110 Goderich Street  
East Perth WA 6004  
Tel 08 9325 5111

**General enquiries** 1 800 246 850

**Mailing address**  
159 Clarence Street  
Sydney NSW 2000

**Donations** 1 800 811 700

**First Aid enquiries** 1 300 367 428

**Blood Donor enquiries** 13 14 95

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**IHL Program's Geneva  
Conventions 60th Anniversary  
Project Coordinator**

Dr Tony Morris

**Editor**

Annabel McConnachie

**Sub-Editors**

Kelly Chandler  
Janine Gray  
Dylan Lattacher  
Isabelle Rorive

**Designer**

Elizabeth Cook

**Printer**

Peachy Print