



Australian  
Human Rights  
Commission

# War and Peace: The Anzac spirit and human rights

SEMINAR • 2015



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# War and Peace: The Anzac spirit and human rights

**Australian Human Rights Commission 2015**

This publication is a series of papers given by the various speakers at the Australian Human Rights Commission's *War and Peace: The Anzac spirit and human rights 2014* seminar.

These papers represent the views of the speakers, not the Commission. Whilst some minor edits have been made to the original transcripts, the Commission has maintained the integrity of the speeches as they were delivered on the day.

All papers must be checked against delivery.



**Australian  
Human Rights  
Commission**

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*everyone, everywhere, everyday*

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# Message from Professor Gillian Triggs



**Professor Gillian Triggs**  
President  
Australian Human Rights  
Commission

Every year around Anzac Day, Australians and New Zealanders remember those who fought in all wars and conflicts over the last 100 years. As the national human rights institutions of Australia and New Zealand we wanted to mark the anniversary of the start of the First World War by examining the relationship between the Anzac spirit and the evolution of international human rights.

We therefore convened a seminar on the 1st of May 2014 that examined the following questions:

- What was it that New Zealanders and Australians believed they were fighting for during the First World War?
- Is it merely a romantic myth that the Anzacs fought for individual freedom and liberty against the threat of national aggrandisement and racial superiority? Was it a war of ideas between the individualist democratic enlightened French and English tradition and the German heroic ideal of sacrifice for the common good? In short, did such lofty ideas as liberty really stimulate the Anzac bravery in a conflict that was so many thousands of miles from us?
- How did the Anzac experiences from 1914-18 shape and articulate the global human rights based regime that we have 100 years later in the 21st Century?

The speakers who presented at this seminar were eminently qualified to provide some answers to these questions, and to take different perspectives in doing so. We are grateful to them for agreeing to publish their papers.

I would also like to thank Professor Joan Beaumont for facilitating an insightful and engaging discussion at the seminar.

I sincerely hope this publication will provide you with an insight into how Australia's and New Zealand's war experience shaped the development of the contemporary world order and how 20th Century conflicts framed our nations thinking about rights and freedoms.

A handwritten signature in black ink that reads "Gillian Triggs". The signature is fluid and cursive, with a long horizontal flourish at the end.

**Gillian Triggs**



Lt Gen David Morrison



The Hon Elizabeth Evatt



Mr Robert Ticker, Dr Damian Powell, Mr David Rutherford, Elizabeth Evatt (L-R)

# 1 WWI and the evolution of human rights

**Professor Gillian Triggs**

**President, Australian Human Rights Commission**

On behalf of all my colleagues at the Australian Human Rights Commission, may I welcome you to our event *War and Peace: The Anzac Spirit and Human Rights*. We have convened this event to mark the 100th anniversary of the First World War in August 2014.

It is my pleasure to welcome our speakers, the Honourable Elizabeth Evatt, Mr David Rutherford, Dr Damian Powell, Mr Robert Tickner, Professor Joan Beaumont and Lieutenant General David Morrison.

I would also like to acknowledge the traditional owners of the land on which we meet, the Gadigal people of the Eora Nation, and pay my respects to their elders past and present.

From my perspective as an international lawyer, it is important to acknowledge that many contemporary human rights principles evolved from the experiences and aspirations of the First World War.

It is generally true that law tends to reflect and respond to earlier cataclysmic events. Each conflict of the 19th and 20th Centuries has therefore stimulated its own legal responses to protect human rights. While there were, of course, many landmarks in the evolution of human rights philosophy and law pre-dating the First World War- not least of which was the Magna Carta that will be celebrating its 800th anniversary in June 2015- the conflicts of the modern era have catalysed a number of significant human rights developments. As such, in the 19th Century alone, slavery and racial discrimination were made illegal, calls by Florence Nightingale and Henry Dunant to ensure human treatment in conflict led to the negotiation of the International Committee for the Red Cross and the 1864 *Geneva Convention on the Amelioration of the Condition of the Wounded in Armies in the Field*, and the persecution of Christians, Armenians and Jews exposed the need to protect minorities.

It was, however, the carnage of the First World War that accelerated the development of a number of internationally recognised human rights principles. The need to care for the sick, wounded, and prisoners of war was recognised, along with obligations of belligerents to respect the rights of civilians in conflict. Recognition was also given to the contributions made by ethnic minorities in the armed forces, including Aboriginal and Torres Strait Islander people, which fostered the idea of self-determination. The tasks necessarily performed by women during the First World War also opened up opportunities for women that had been unthinkable before the war.

Furthermore, some key ideological lines that remain with us today were drawn during the First World War. American President Woodrow Wilson claimed that the United States valued human rights more highly than other rights, supporting the campaign for universal human rights such as personal autonomy and liberty, self-determination and equality. Vladimir Lenin, then leader of Soviet Russia, also espoused human rights, but emphasised collective social and economic rights rather than the individual civil and political rights championed by the Western Powers.

These evolving ideas provided the stimulant for provisions in the developing peace treaties to protect minorities, and established the mandate system, which would eventually bring former colonies (including what would become Papua New Guinea) to self-determination.

Perhaps most significantly for the development of international human rights, negotiations began for the Covenant of the League of Nations. The League of Nations was designed to ensure that the First World War would be the 'war to end all wars', by creating a global 'rule of law'-based regime to regulate international conflict through 'arbitration' of disputes and trade sanctions by members of the league.

While the idea of arbitration seems quaint in light of subsequent history, the Covenant and the League of Nations were described at the time as 'one of the noblest conceptions in the history of mankind.' Indeed, it was this treaty that most inspired me as a young law student to become an international lawyer. The Covenant explicitly protected human rights, included fair and humane conditions of labour, established a sacred trust for the development of peoples of the colonies, and created the mandate system. It also outlined obligations to protect freedom of conscience and religion, and to end the trafficking of women, children, munitions and drugs.

While the Covenant failed, due to a failure of parties to comply with their obligations, the potential for an international legal system based on human rights had gained widespread recognition. Nearly three decades later, at the end of the Second World War, the groundwork had been established for negotiations to begin on the Charter of the United Nations.

Importantly, this Charter recognised the link between international peace and security and human rights, with the Charter nations agreeing that:

*“To save succeeding generations from the scourge of war, which twice in our life time has brought untold sorrow to mankind [the United Nations will commit to the] promotion of respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”<sup>1</sup>*

These ideals were soon given further legal substance by the *Universal Declaration of Human Rights* in 1948, passed unanimously by the General Assembly of the United Nations under the Presidency of Australia’s Dr HV Evatt. This Declaration stated that:

*“Recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”<sup>2</sup>*

The Declaration was to provide the foundation for the seven major human rights treaties that now form the principles and mechanisms for human rights implementation that we know today; *the International Covenant on Civil and Political Rights* (ICCPR), *the International Covenant on Economic, Social and Cultural Rights* (ICESCR), *the Convention on the Rights of the Child* (CROC), *the Convention Against Torture* (CAT), *the Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), *the Convention of the Elimination of All Forms of Racial Discrimination* (CERD) and *the Convention on the Rights of Persons with Disabilities* (CRPD).

The international community continues to work to achieve an effective regime for human rights protection and the United Nations Security Council increasingly recognises that it can consider humanitarian intervention in conflicts and deploy peacekeeping forces to enforce human rights.

Therefore, while the current international regime remains subject to political will and national sovereignty, the ideals that emerged from the First World War and subsequent conflicts continue to inform our efforts to create a strong legally-based regime for human rights in the 21st Century.

The greatest challenge now is to translate the ideals of human rights law and international treaties into national laws and practice.



## 2 Human rights and the Anzac spirit

**David Rutherford**

**Chief Commissioner, Human Rights Commission of New Zealand**

I am really grateful to be invited to speak here today and would like to thank the Australian Human Rights Commission and acknowledge today's other speakers.

I also acknowledge the Indigenous peoples of Australia whose custodianship of this land began thousands of years ago.

In true Anzac spirit, I pay tribute to our shared Anzac history that began 100 years ago, on lands thousands of miles away.

I acknowledge also that this week Jewish people around the world have remembered Yom HaShoah or Holocaust Remembrance Day. They have remembered millions murdered by a European regime that tried to wipe out the Jewish people as well as the very idea of freedom, democracy and human rights.

Lest We Forget.

In New Zealand our Army calls itself *Ngati Tumatauenga*: the tribe of the God of War, Tumatauenga or Tu.

I once suggested to a former defence force head that if our Army was the Tribe of the God of War – then the Human Rights Commission could be the Tribe of the God of Peace, or Rongo.

Quick as a flash he looked me in the eye and said:

*“Tumatauenga has two faces. The face of Tu and the face of Rongo. We train our troops to maintain the face of Rongo unless they are in mortal danger.”*

And he was right. Our Army often maintains the face of Rongo, maintaining peace and respecting the dignity and rights of local people around the world, from Bougainville to Bamyang Province.

More than 70 years ago, John Mulgan – a writer, Rhodes Scholar and New Zealander serving in the British Army, was posted to the Middle East and Greece, where his heroism earned him the Military Cross, Mulgan wrote:

*“If the old world ends now with this war as well it may, I have had visions and dreamed dreams of another New Zealand that might grow into the future on the foundations of the old. This country would have more people to share it .. [people] who want the freedom that comes from an ordered, just, community .. they would fill the land and make it a nation.”*

But Mulgan never saw the dream he envisioned. Disillusioned and depressed, he took his own life on Anzac Day 1945.

Mulgan reminds us that our service peoples and veterans wellbeing must be at the heart of our human rights Anzac message.

We must remember them but we must also be there for them, protecting their human rights like the right to health. Today, in 2014, this message remains as crucial as ever.

We need to remember those who served. We must also remember what they were fighting for. The human rights New Zealand and Australia have promised to respect and protect in the modern United Nations system are born of promises and declarations made in the darkest hours of the Second World War. If those words are not to be platitudes then we must live up to them today for everybody, everywhere.

During World War Two, Australia and New Zealand fought and worked together for freedoms that are now found in the international bill of rights. National human rights institutions were born out of these same principles because we learnt that a world of nations that do not protect and respect human dignity and rights within their borders will be dangerous to peace. Mulgan felt he was witnessing the birth of a new nation as New Zealanders served in World War Two.

Our 28th Maori Battalion servicemen were told by their elders that fighting for king and country was the price of citizenship.

In World War Two, New Zealand and Australian men and women fought and died for freedom, democracy, human dignity and human rights. Even today, the Holocaust still shocks and sickens; the slaughter of millions of people who did nothing more than to be born Jewish, Romani, gay or disabled.

Millions of innocent men, women and children were murdered by a European government that had originally been democratically elected. This Twentieth Century European power turned two millennia of anti-Semitism into a government policy of genocide and mass murder.

The horrors of World War Two and the Holocaust stamped the words 'human rights' into the consciousness of the world. On New Year's Day in 1942 New Zealand and Australia signed the Declaration of the United Nations with over twenty other nations. They declared that they would fight together and never surrender because they were:

*"convinced that complete victory over their enemies is essential to defend life, liberty, independence and religious freedom, and to preserve human rights and justice in their own lands as well as in other lands, and that they are now engaged in a common struggle against savage and brutal forces seeking to subjugate the world."*

These were our darkest days when victory was not at all certain.

New Zealand and Australia's Prime Ministers were key members of the War Cabinet in Britain that had agreed to the words of the Atlantic Charter that preceded the Declaration of the United Nations. Towards the end of the war as victory seemed possible, the most powerful of the United Nations declared that they should be the world's "Four Policemen." In true Anzac spirit, Australia and New Zealand said 'no way' and fought hard for a system where smaller nations had a voice.

Since one of Europe's oldest, most powerful, so called 'civilised' European nations had been at the helm of World War Two's barbaric savagery; letting the powerful tell the rest of the world what to do was no longer an option.

So the Anzac spirit was alive and well when Australia and New Zealand worked with other smaller nations on the world's first international human rights framework, a *Charter of the United Nations* and a *Universal Declaration of Human Rights*. Australia's Deputy Prime Minister Evatt and New Zealand's Prime Minister Fraser were key architects, supported by many Australian and New Zealand diplomats, historians and lawyers.

In 1944 Justice Learned Hand, speaking to more than a million people in Central Park, defined one of the lessons of World War Two when he said:

*"And what is this liberty which must lie in the hearts of men and women? It is not the ruthless, the unbridled will; it is not freedom to do as one likes. That is the denial of liberty, and leads straight to its overthrow. A society in which men recognize no check upon their freedom soon becomes a society where freedom is the possession of only a savage few – as we have learned to our sorrow."*<sup>3</sup>

He then asked:

*"What then is the spirit of liberty? I cannot define it; I can only tell you my own faith. The spirit of liberty is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the minds of other men and women; the spirit of liberty is the spirit which weighs their interest alongside its own without bias..."*<sup>4</sup>

I cannot speak for Australia or Australians, however I believe that New Zealand must honour the price others paid by being living proof that diverse peoples can thrive together in a free and democratic land. Respect for the human dignity and the human rights of the whole human family are the keys to that. We must still, as our wartime Prime Minister said, "meet adequately our responsibilities."

We must do that every day, everywhere. If we do so New Zealand's mountains will "ever be freedom's ramparts on the sea." New Zealand will be "free from strife and war." New Zealand will be a place where "people of every creed and race will live in peace." Those are the words of New Zealand's National Anthem, written in the 1870's by an Australian-born New Zealander.

Six months before Hitler invaded Russia and before the United States entered World War Two, in his 1941 State of the Nation address, President Roosevelt said freedom means the supremacy of human rights everywhere. He looked to a future founded upon four essential human freedoms:

- Freedom of speech
- Freedom of religion
- Freedom from want
- Freedom from fear

Roosevelt's words were endorsed by the 1941 Atlantic Charter, the 1942 Declaration of the United Nations, the UN Charter and the International Bill of Rights.

Many people do not realise that there were united nations before there was a United Nations organisation. Australia and New Zealand were proud foundational members of both.

Few people realise that Hitler's forces were first stopped on the ground in July 1942 at El Alamein by a multiethnic, multifaith, multilingual united nations army. There were Indigenous and non-Indigenous New Zealanders and Australians, Christians, Indians, Hindus, Sikhs, Muslims, Indochinese, Buddhists, Africans, Greeks, French and Jewish soldiers in that army. This was a 'united nations' army fighting for freedom, democracy and human rights.

It was this army at the first battle of El Alamein that quite literally helped turn the tide of World War Two, and Anzacs were at the heart of this. New Zealand, Australia and India suffered 10,000 of the 13,000 killed or wounded.

In this fighting and in the second El Alamein battle that followed, the spirit of Anzac shone bright.

Mulgan said of the New Zealand soldiers at El Alamein:

*"They carried New Zealand with them across the sands of Libya... Through all the days of that hot panic stricken July they fought Rommel to a standstill in a series of attacks along Ruweisat Ridge. They helped save Egypt and led the breakthrough at El Alamein to turn the war."*

*"They had confidence in themselves such as New Zealanders rarely have, knowing themselves as good as the best the world could bring against them, like a football team in a more deadly game, coherent, practical, successful..."*

And yet, so many of those United Nations soldiers returned home to a country where their human rights were yet to be realised.

While Australians have your own histories to tell, in New Zealand we have the 28th Maori Battalion. Written by grandsons of men and women who fought and died in civil wars across our country, the battalion's song talks about fighting for the honour of your tribe and, now, fighting for the honour of your country and for peace and freedom.

In battle, the Maori gained a fearsome reputation. Performing *karakia* and *haka* not only terrified the enemy but gave our soldiers a unique edge. As Mulgan observed, as they went to war thousands of miles from home, our soldiers carried Aotearoa New Zealand with them. Seventy years later the *haka* and Maori culture is at the heart of our Defence Force's identity.

And yet after World War Two, after they marched back to their hometowns, Maori Battalion soldiers had to drink their pints outside because only Europeans were allowed inside. They missed out on many benefits, such as free farm ballots, as they were only available to Europeans.

That part of our history is not something to be proud of but it is our history. It is also an important lesson: human rights begin at home. Human rights are the touchstone for the settlement of Treaty of Waitangi grievances, the official status of the Maori language and recognition that the Treaty is New Zealand's founding document.

Freedom, democracy and human rights are what those young Australians and New Zealanders went to war for in World War Two. Respect for the four freedoms expressed in the International Bill of Rights is a fundamental part of our shared Anzac spirit and something I hope will always be part of our shared future.

Finally I would like to share with you a YouTube clip<sup>i</sup> that has had nearly three million hits so far. It is a *haka* by their comrades to honour Corporal Luke Tamatea, Lance Corporal Jacinda Baker, and Private Richard Harris, who were killed in Bamyán Province in Afghanistan in 2012.

i Available at <http://www.youtube.com/watch?v=xI6TRTBZUMM>.

### 3 Australia in the twentieth century: War and peace, human rights

**Dr Damian Powell**

**Principal, Janet Clarke Hall and Senior Fellow, School of Historical and Philosophical Studies, University of Melbourne**

Speaking recently to Australian Defence Force personnel returning from Afghanistan, the Prime Minister suggested that Australians fight “for the universal decencies of mankind – the rights of the weak against the strong, the rights of the poor against the rich and the rights of all to strive for the very best they can.”<sup>5</sup> Australians fight, Mr Abbott suggested, not “to conquer” but “to help, to build and to serve.” The Prime Minister reminds us that, more often than not, military service and human rights are conjoined in our sense of national identity.

Today I will offer a few thoughts about the way in which Australia’s engagement with human rights law was shaped over the course of the Twentieth Century by our response to war and to peace. I will try to distil some key markers in our legal response to human rights, both nationally and through international engagement. And I will try to explore this response in direct reference to military conflict and military service.

The Twentieth Century began with Australian soldiers deployed in Southern Africa (in the Boer War) and Asia (in the Boxer Rebellion). It ended with soldiers preparing for counter insurgency operations in Afghanistan, and engaged in humanitarian and peace-keeping operations in Palestine, Sierra Leone, Ethiopia and Eritrea, Bougainville, the Solomon Islands and East Timor. One would struggle to make sense of Australia’s journey in human rights law in the years between without proper reference to the military conflicts in the following decades – the Great War, Second World War, Korea, Vietnam, the First Gulf War. To these, one must add a range of peace-keeping operations in which explicit ambitions for human rights were coupled to the foreign deployment of Australian service personnel: from the UN’s first deployment of UN observers in Indonesia in 1947, to brigade-size Australian operations in East Timor at century’s end – where, I might add, we again served alongside New Zealanders in that country’s largest military deployment since the Korean War.

Can I begin by saying the obvious: that Australia changed profoundly over the Twentieth Century, and that it makes no sense to explore the beliefs and rhetoric around human rights at one end of the century entirely by the standards and assumptions in place at the other. In 1901, our assertion of human rights was made through confident assertion of British empirical values, with some Australian nuances. The century ended with us removed from cultural dependence on Britain, and responding increasingly in regards to our place in Asia and the Pacific. As Australia has changed, Australians have changed in their understanding of human rights, even as many of the fundamental values have remained constant.

My other acknowledgement is that in talking of Anzac we are, of course, talking not just of Australia, but also of New Zealand. Our approaches to human rights, just as our military history, share some deep and common currents. They connect – but they are different and distinctive. I won’t be speaking about New Zealand today, but I do wish particularly to acknowledge Mr David Rutherford, Chief Human Rights Commissioner for Aotearoa/New Zealand, and to acknowledge the fundamental importance of New Zealand in Anzac commemoration.

At the time of Federation, what we might think of as the ‘human rights’ component in the mental furniture of an Australian citizen were imagined through certain legal and political rights inherited from British constitutional history – in which the balance between arbitrary power and personal freedoms had already been tested over many centuries. This included the abolition of slavery across the British Empire in 1833, arguably the greatest human rights achievement in history to that time. It is worth noting that, for most Australians, this political inheritance felt distinctive. It was also one to which they felt they had added through local experience. Most positively, these rights included voting and representational rights extended to men and women, freedom of religion, freedom of association,

freedom of the press, and labour rights including such Australian innovations as the secret ballot and the eight-hour working day. In 1916 Prime Minister William Hughes had no hesitation in telling a British audience that “I have come here as the chosen representative of the most democratic Government in the world.”<sup>6</sup>

Seen as distinctive, this political inheritance was also exclusive, defining non-whites as outside the tent. While a paternalistic view imagined a desire for assimilation by our indigenous peoples, the White Australia policy was central to Australian identity, underlining cultural and psychological affinity to Europe (and in particular Britain), and with some anxiety about geographical separation and isolation. From the outset, Australians were receptive to some level of influence within the Pacific region within the colonial architecture of Empire.

Australia federated just after what might be seen as the birth of international human rights law – the 1899 Hague Peace Convention, which furnished the platform for all subsequent international human rights law. As well as establishing the Permanent Court of Arbitration, it proposed binding multi-lateral treaties on the treatment of prisoners of war (incorporating the 1864 Geneva Convention), the treatment of civilians, and limitations on the type of weaponry used in warfare (banning, for example, poisonous gases and ‘dum-dum’ bullets). These were added to in a second conference in 1907, with a new convention on the peaceful settlement of international disputes. There is grim irony in the fact that a third conference, planned to be held in 1914 to build upon the work of 1899 and 1907, was abandoned due to the outbreak of a conflict involving all of the major European powers.

Confident in our British inheritance, Australian military preparedness and military assistance to Britain was assumed as a safeguard to political liberty. Federal Treasurer Sir John Forrest noted at the outbreak of the Great War that:

*“In the past Australians were proud to think of the glories of England. We shared her victories and triumphs. Justice and reason demand now that Australia must be prepared to share her difficulties and, if need be, her disasters. If Britain went to her Armageddon, we, as Britishers, would go with her.”<sup>7</sup>*

Here one might ask to what extent human rights were at stake in the minds of Australians as the nation went to war for the Empire? Our other speakers will doubtless say more and better on this, but to my way of thinking there is no way to disentangle the protection of human rights and values from the oftentimes naive thoughts of Australians as we went to war. Prime Minister Hughes was unequivocal in his contrast of German militarism and Australian democracy:

*“We fight not for material wealth, not for aggrandisement of Empire, but for the right of every nation, small as well as large, to live its own life in its own way. We fight for those free institutions upon which democratic government rests.”<sup>8</sup>*

Beyond the rhetoric and realities of patriotism, an educational, religious and social milieu infused with concepts like valour, honour, sacrifice and courage were part of a kitbag of values in which concepts like mateship, decency, and social equality also found favour. They would come together as Charles Bean and others began to identify a peculiarly Australian type of soldier. For the Anzacs, readiness for military sacrifice was, unproblematically and unapologetically, regarded a test of national values. Lieutenant Alan Henderson wrote to his parents on the eve of the Gallipoli landings “It is going to be Australia’s chance and she makes a tradition out of this that she must always look back on. God grant it will be a great one.”<sup>9</sup> Henderson was killed at Gallipoli along with his brother Rupert in the first weeks of the campaign.

As pre-war aspirations around human rights collided over four years with the machinery of modern industrial warfare, most were found wanting. Following the Armistice, the sheer catastrophe of the Great War in terms of human slaughter, political unrest and social collapse, drove global efforts to secure a basic framework of human rights that would militate against renewed military aggression. Living within a generation of dead and maimed soldiers, of families scarred by loss and drawn to silent remembrance, Australia understandably defined itself in terms of blood sacrifice. The sheer scale of loss demanded an explanation. And the diplomatic efforts of Australians within the British Empire delegation at the 1919 Versailles Peace Conference were argued squarely upon the military efforts of the First Australian Imperial Force. So great was the Australian sacrifice, Prime Minister Hughes argued, that by “our deeds on the field of battle we had earned the right to a voice in framing the terms of peace... This is the price,” he reflected, “Australia paid for freedom and safety. Our heritage, our free institutions of government—all that we hold dear—are handed back into our keeping stained with the blood of sacrifice.”<sup>10</sup>

Hughes' twin pillars: 'freedom' on the one hand and 'safety' on the other, betray a tension in our response to human rights law from which we have never escaped. As the Prime Minister spoke forcefully for Australian representation, he signaled the desire actively to participate in the formation of international legal covenants and conventions, and also the desire to vigorously defend perceived national interests through an ongoing colonial mandate in the Pacific that continued from 1919 into the 1970s. This colonial project was part of our British inheritance that the United States, from the time of Woodrow Wilson onwards, found largely incompatible with its own perception of human rights law and obligation.

Deeply flawed as it was, it is easy to forget the hope that the League of Nations engendered in a war weary world as the democracies sought peace at all costs — even as emerging new ideologies promoted re-militarisation. The Covenant of the League sought:

*“The firm establishment of the understandings of international law as the actual rule of conduct among Governments.”*

It asked its members *“to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend.”* It asked the victorious Colonial Powers *“to secure just treatment of the native inhabitants of territories under their control.”*<sup>11</sup>

It entrusted the League with the supervision of arms trade *“in the common interest”*, and it bound members *“to encourage and promote the establishment and co-operation of duly authorised voluntary national Red Cross organisations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world.”*<sup>12</sup>

While we know that, like the Hague Peace Conventions before it, the League had limited success over the term of its life, its ambitions are no less significant in their aspirations. Australia's response to the League flowed from its strategic assumptions. Believing that our interests, in terms of international law, would essentially mirror those of Britain, Australia identified Japan, and the White Australia Policy, as likely causes for future conflict. Speaking as members of the First Australian Imperial Force (AIF) disembarked in Sydney in 1919, Governor-General Sir Ronald Munro-Fergusson welcomed the Arbitration Court of the League of Nations.

*“We have reason to hope that for generations to come... men will be restrained by the knowledge of the terrors of modern warfare. But as that lesson has been taught before, it has been forgotten before, therefore no guarantee, no League, no covenant, gives us complete security and it is well – even in the hour of Victory and Peace – to remember that the obligation of national defence still rests upon us.”*<sup>13</sup>

“The men of Anzac have shown”, rather, he said, how Australia — “that land of promise” — “can be defended... by their almost super-human endurance and heroism.”<sup>14</sup> The AIF had laid the foundations of the Australian military tradition, quickly embedded in the national psyche through a pattern of remembrance focused on Anzac Day and Armistice Day. And returned servicemen and women were to exercise a powerful influence in Australian society between the wars and after; indeed well into the 1960s.

If the Anzacs were prominent in the thinking of Australians in a way that civilian efforts were not, this is partly a reflection of the fact that our diplomatic efforts were subsumed within the overall banner of Empire diplomacy well into the 1930s. Australians such as Rex and Allen Leeper, both of whom would make their mark in international diplomacy before and after the Great War, would do so in England, not Canberra, through service to the British Foreign Office. Others, such as former Prime Minister Stanley Bruce, provided leadership as the Australian delegate to the League of Nations General Assembly, with long service culminating as President of the League Council in 1936. Yet he also served as Australian High Commissioner to Britain and ultimately in the British War Cabinet. Other Australians played a role through delegation to the League of Nations — including Miss Freda Bage, who was Principal of Women's College in the University of Queensland, and had worked for the Red Cross and also in recruiting women for wartime service. As the League of Nations struggled, and ultimately failed to confront renewed German aggression in the 1930s, Australia was in lockstep with Britain, our perspective nested within the British desire for a diplomatic solution at almost any cost. Yet as early as 1923, Allen Leeper was writing back from London to his sister Valentine that, unless the authority of the League was vindicated, “the whole peace settlement comes crashing down. Where will poor Europe — or the poor world — be then? I shudder to think?”<sup>15</sup> The answer was a second global war, leading into cold war, which took Australia away from Empire values and increasingly towards multi-national engagement through the work of the United Nations.

For Australia, the Great War was a war in which Germany attempted, unsuccessfully, to overtake the British Empire and dominate Europe. For Australia, the Second World War — in which the next generation of Australians suffered over 100,000 military casualties among a global catastrophe of more than 60 million military and civilian dead — became one of national survival with the entry of Japan. Recalling, for but two examples, the horrors of the Treblinka Extermination Camp in German-occupied Poland, or of the Sandakan death marches of Allied prisoners held by the Japanese in Borneo, it may also be said to be a ‘just’ war — in that Australia and its allies fought against ideologies of national and racial superiority backed by an unparalleled concentration of violence and aggression.

Our response to international human rights law, in light of this second global catastrophe, shows a move away from Empire values to a new sense of multi-lateral engagement. If Billy Hughes made the argument for Australian representation on questions of international human rights, Bert Evatt made the case for international economic and legal standards, and for the active representation of middling and less powerful nations within the United Nations. It is a highlight in the story of Australia’s contribution to human rights, and one that I know Elizabeth Evatt will talk of in more detail. So with this in mind, I’ll just offer a few points.

Like Hughes, Evatt was a politician, but he was also a gifted academic and jurist. Before the war, Evatt had considered the role of international treaties from the vantage point of the Australian High Court. During the war, he had practical experience in international affairs as Minister for External Affairs. Through his representations to Washington and London, he saw that the great powers did not view Australia as on an equal footing (although he found Britain more sympathetic to Australian interests than America). Vigorous engagement with the UN provided Evatt, and Australia, a unique opportunity for multi-lateral engagement and influence through the promotion of human rights. And Evatt took it. His team was among the best prepared and organised at the 1945 conference that established the parameters and ambitions of the United Nations. It provided leadership and intellectual capital that influenced the future structure and ambition of the United Nations, and the 1948 *Universal Declaration of Human Rights*.

Chaired by Eleanor Roosevelt, Australia had one representative, Colonel William Hodgson, among the nine who drafted this Declaration. Hodgson is one among many for whom the experience of war, in driving an ambition for peace, deserves better consideration. Serving as a forward artillery observer with the initial landing party at Gallipoli, he was shot two days later by a Turkish sniper. Hodgson survived to read his own obituary and served with distinction on the Western Front before being invalided back to Australia in 1917. Rising to head of military intelligence in 1926, he studied law at Melbourne University and in 1935 he was made Secretary of the newly established Department of External Affairs. As Australian delegate to the first United Nations General Assembly, and Australian representative on the Security Council and Human Rights Commission, Hodgson was perhaps an unlikely counterpart to Bert Evatt at first glance. But on closer inspection, Evatt and Hodgson had much in common. Evatt was 20 when the Great War broke out and would have been conspicuous, given his age, not to serve. In fact he tried to enlist three times, but was rejected each time owing to defective eyesight. And like virtually every other Australian in his generation, Evatt was deeply and directly touched by the war. The eldest son and ‘man of the house’ following the early death of his father, two of Evatt’s three younger brothers — Ray and Frank — were killed on the Western Front, their deaths bringing their mother to the verge of a breakdown. It is worth remembering that just as the war defined the lives lived thereafter by those such as Hodgson who survived and returned, equally it defined Evatt and those who faced their grief and loss in families across the nation.

At the UN, Evatt and Hodgson shared in a pragmatic assessment of where Australia stood in the global pecking order, and how we might exert influence on the world stage. Through Hodgson, Evatt pushed for an International Court of Human Rights, but his argument did not gain traction. Neither did his advocacy for a Bill of Human Rights, also attempting to move the Commission from a declaration to a more operative document. Nonetheless, Alan Renouf has rightly argued that “for sheer brilliance in an international forum, there is nothing in Australia’s diplomatic annals to surpass” Evatt’s work, bringing the middle and lesser ranking powers to the table in a way not always to the liking of the great powers.<sup>16</sup> It reflects the highpoint in Australia’s influence on international human rights law in the Twentieth Century, and it was appropriate that Evatt was elected President of the United Nations General Assembly in 1948, thus presiding over the adoption and proclamation of the *Universal Declaration of Human Rights*. “It was the first occasion on which the organised community of nations had made a declaration of human rights and fundamental freedoms” said Evatt: “millions of people, men, women, and children all over the world, would turn to it for help, guidance and inspiration.”<sup>17</sup>

In the *Universal Declaration of Human Rights* “the peoples of the United Nations have in the charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women.” It might be easy to be critical of such a document as flying in the face of social and political reality (and indeed an ideologically divided Permanent Security Council) as the victors quickly moved from ‘just war’ into ‘cold war’. Yet it is worth reminding ourselves that the UN established the role of international human rights law as a reference point for international relations, most likely permanently. International human rights law now influences what nations do, for good or for evil, in a way that would have been inconceivable in 1935, or indeed in 1965. Such law has informed discussion and debate on good governance and the limits of personal freedoms and political power. And, arguably, such law has increasingly replaced natural law as a source of higher moral and ultimately *legal* authority, within some areas of national law. Human rights law is a work in progress, and bound to be contested, and ignored – but it is not going away. As Hughes had made the Australian argument with Empire, Evatt made an argument for an economic dimension to human rights law that was accepted by the UN, and an argument for a jurisprudential authority that was not immediately taken forward. Notwithstanding his continued advocacy for Australian hegemony over Papua New Guinea, he argued for the place of smaller nations to have the same rights to peaceful development and equality as the great powers.

Throughout the Cold War era, as Australia’s strategic interests became increasingly aligned with those of the United States, and the military adopted a strategy of ‘forward defence,’ Australia’s engagement with the UN led to our adoption of a range of international treaties. From the 1950s to the 1970s, these included those foundational human rights treaties that reflected the immediate human rights agenda of the post war world – treaties against *Genocide* (ratified in 1951), *Relating to the Status of Refugees*, and *Equal Remuneration* (both adopted in 1954), while reaffirming our adherence to the *Geneva Convention* (ratified in 1951) and the *Abolition of Slavery* (ratified in 1955). Treaties on *Forced Labour* (ratified in 1961) and the *Rights of Women* (also ratified in 1961) would be followed up through agreement to subsequent conventions focused on gender and race discrimination in education (ratified in 1967) and employment (ratified in 1969 and 1974).

From the mid-1970s and into the 1980s, as both the White Australia policy and colonial interests were rescinded, Australia responded to a broader international discourse and changing social mores on racial, economic, social and cultural rights. We ratified the *Convention on the Elimination of all forms of Racial Discrimination* (1975), the *Covenant on Economic, Social and Cultural Rights* (1976), and then the *Covenant on Civil and Political Rights* (1980). In 1979, Australia adopted the *Convention on the Elimination of All Forms of Discrimination against Women* and the *Convention on the Political Rights of Women* in 1983.

By the end of the Twentieth Century, Australian ratification of Conventions against *Torture* (in 1989), and on the *Rights of the Child* (in 1990), extended the suite of international treaties under which Australia defined its engagement with international human rights law. The ratification of two significant optional protocols deserves particular mention. In 1991 we signed *Optional Protocols to the Covenant on Civil and Political Rights* that formally abolished the death penalty in Australia, and another Optional Protocol that enabled individuals to complain about their treatment in Australia directly to the UN Human Rights Committee.

Notwithstanding the gradual demise of Empire values after the Second World War, Australia still sought influence within the Commonwealth. From its foundation in 1949, the Commonwealth had resisted discussion of human rights, fearing the impossibility of reaching consensus among Commonwealth nations. From the 1980s, it was primarily through human rights advocacy in the Commonwealth, rather than the UN, that Australia helped to bring political pressure to bear on the structures of South Africa’s apartheid regime. In this context, the bi-partisan advocacy of Malcolm Fraser and Bob Hawke, and the role of Pera Wells in establishing the Human Rights Unit within the Commonwealth Secretariat in 1985 to promote human rights throughout the Commonwealth, were both significant to the outcome. During the Cold War, in which the potential for nuclear Armageddon led the major powers to resile from direct military conflict, diplomatic rather than military efforts were paramount, but military capacity still had relevance. As Prime Minister Fraser suggested in 1979, Australia’s acceptance of a peace-keeping mission in Namibia allowed it to make a contribution at a time “when our sense of responsibility in international affairs and our commitment to the settlement of disputes by peaceful means needs to be firmly underlined.” The Government having “especially taken into account present conflicts in South East Asia”, Mr. Fraser argued, “now is a time for Australia fully to assume its international responsibilities.”<sup>18</sup>



Australia's engagement with human rights around those South East Asian conflicts to which he referred holds a candle to our changing sense of engagement with Asia. I want to use the time I have left to explore briefly this changing paradigm, which takes us the full journey from Empire values to Australian ones at the end of the Twentieth Century. I'll focus on two players who may be said to personify Australia's diplomatic resolve: Senator Gareth Evans and General John Sanderson. Born in 1944, Evans was touched indirectly by a war which, more than any before or since, divided opinion on Australia's strategic and human rights objectives in the Asian region – Vietnam. In an address to the Sydney Institute in March 1990, Senator Evans reflected:

*"I have a strong belief that those countries, including Australia, which helped to bring all-out war to Indo-China do have a particular responsibility now to help create a durable peace there. I am not suggesting that the Australian Governments of the time, let alone Australians who fought in the Vietnam War, were directly responsible for what has happened in Cambodia. Of course they were not. But just as this country and my generation of Australians helped, by our involvement in the Vietnam War, to create the conditions for the Cambodian tragedy – albeit indirectly and unwittingly – we now have a responsibility to help create the conditions for a lasting Cambodian peace."*<sup>19</sup>

As with Evatt and Hodgson in 1945, there was a military man with a very different experience of war – John Sanderson – who stood alongside Evans in promoting human rights. Like Hodgson, John Sanderson was an artillery officer with a keen interest in international diplomacy. He had served in Vietnam, but it was his experience in earlier conflicts in Malaya and Indonesia during 'confrontation' that grounded his sense of Australia's role in Asia, and his keen interest in the linkages between military operations and human rights objectives. Sanderson notes that, in the late 1980s, he was engaged with a new developing relationship with Southeast Asia. In particular, a new sense of cooperation between the Department of Foreign Affairs and the Department of Defence in developing strategic policy, as the Paris Peace Accords sought a viable peace process in Cambodia. As Evans led Australia's diplomatic efforts, Sanderson assumed the role of Military Advisor on Cambodia to the United Nations Secretary General – from which he was appointed Commander of the UN peace-keeping component. As with General Cosgrove's International Force for East Timor (INTERFET) mission to East Timor, United Nations Transitional Authority on Cambodia was not just a military deployment – it was a multi-national effort in the name of human rights, in which cultural, diplomatic and military values, and practices, needed very careful shepherding from an Australian commanding officer.

As General Sanderson has reflected:

*"The idea of taking over a whole country, creating an electorate, creating political parties, creating an atmosphere in a remote countryside which has been torn by war, on this scale, was without precedent, and I think the lessons that came from it are very vital to the future, not simply of the United Nations but of global stability."*<sup>20</sup>

Concluding that "the Cambodian experience was a paradigm for the United Nations", he noted a tension in the UN Charter made manifest in peacekeeping operations – its assumption about the sovereignty of coherent nation states against a reality in which "most of the global problems can't be handled on a simple, nationally defined boundary condition."<sup>21</sup> As Australia moved to the end of the Twentieth Century, this was indeed the challenge of the so-called 'war on terror', or of state sponsored militias, loosely or tightly controlled from the centre, operating without any adherence to the rule of law.

Our engagements in humanitarian and peace-keeping operations over the Twentieth Century were complex and extensive, but time precludes detailed consideration here. And alongside those Australians who have worn the blue beret, one might also remember that Australian-led humanitarian relief has oftentimes included ex-military personnel, such as those Australians among the first to enter Laos in the 1990s, to clear land mines left behind as a deadly by-product of the Vietnam War. At the end of the Twentieth Century, we prepared to engage in military operations in Afghanistan. Our varied commitments reflect the changed circumstances and changed optics through which Australia now saw its obligations to the wider world.

Having galloped through the history, how might we sum up the relationship for Australians between war, peace and human rights in the Twentieth Century?

I think we have to start with Anzac. As Australia changed through the Twentieth Century, the Anzac legend became our binding national narrative, forged through massive national and personal military service, sacrifice, and loss. At Anzac Cove, Australians claimed *in their own minds* the right to participate as a nation on the world stage. From the time of the Armistice, Australians began to reflect formally upon the cost of this participation. For the generation of Australians that had to pick up the pieces left by the unparalleled carnage of the Western Front, making sense of the loss became an abiding, compelling force in their lives. Their tragedy was the subset of a much wider tragedy in which tens of millions perished, as simple patriotic ideologies were tested, and in some cases failed to sustain national resolve. The consequences of that tragedy drove national and international aspirations through a second world war, the destruction of imperial Germany and Russia, the rise and fall of Nazism and of Communism, the end of colonial empires, and most recently in the challenge of new ideologies locked in conflict with perceived Western imperialism. By the start of the Cold War, most Australians had seen the price of war in terms of their direct experience of its destructive capacity. The cenotaph in virtually every town across Australia reminds us that this was a tremendous price to pay, although it is also worth reminding ourselves that, through our geography, and by virtue of history, we suffered less than many other nations who were invaded and torn apart.

Initially wanting to test ourselves as a nation worthy of the Empire, our White Australia policy reinforced a sense of cultural superiority that prevailed throughout much of the century. And in the slow march for recognition of Indigenous Australians as equal Australians, their military service has provided an important part of the story. As Commander-in-Chief of our Defence Force, our former Governor-General Quentin Bryce was keen to stress the place of thousands of Indigenous service personnel in the Anzac story: “men and women”, she reminds us, “who served in every campaign of our nation’s forces from the Boer War through to today.” She notes that “while fighting to defend democracy”, many Indigenous servicemen and women “sought legal entitlement to the equality that some had experienced in war.”<sup>22</sup> While nothing to be proud of, it is significant that ex-service personnel were granted the right to vote fully twenty years before other Indigenous citizens, largely in recognition of wartime service. And while most Australians probably associate military involvement with Indigenous communities around ‘the intervention’, they might also reflect upon the Royal Australian Engineers’ long-standing efforts to improve logistical and physical infrastructure in remote communities with an eye to better health and education. They might reflect upon the Indigenous contribution to the ‘Norforce’ or Pilbara Regiments that help defend our far north. Here, as in Timor, shared effort against the Japanese threat in World War Two has contributed to a shared story that has helped to move us away from the preconceptions of the early Twentieth Century.

As our sense of identity was shaped by war, war shaped the world around us. Of course no one can say with any real certainty what human rights law would look like if the fascism, militarism and indeed the communism of those nations against whom we struggled had indeed prevailed. But whatever misgivings one might have about human rights failings within a broadly democratic inheritance, one only need consider Treblinka, Sandakan, or the Gulags as a reminder that the wars that have driven the development of international human rights could have had much darker outcomes for all involved. In the Twentieth Century, it was the victorious nations’ experience of war, more than anything, which drove the push for international standards around the treatment of the vulnerable, both combatants and non-combatants. Here it is worth reminding ourselves that it was not a given, after such great sacrifice, that Australia would wish to engage vigorously in international affairs in 1919, or 1945, or in 1999. Rather than retreating from a world in which international resolve had been tested to breaking point, Australians sought a role in the promotion of international human rights as a counterbalance to the application of violent force and political coercion. In this, our desire to be heard speaks to our confidence in our political inheritance. It is a confidence that has given us dexterity, typically much clarity, and moments of inspiration in terms of our legal contribution to human rights.

I hope that I have shown that it is misleading to think of Australia's military and diplomatic efforts around human rights as entirely separate. The warp and weft between the two remind us that both have affected each other, and together they inform much about our sense of what it means to be Australian – what we value, what we will argue for, and what we will fight for. As we have heard, neither Hughes, nor Evatt, nor Evans was a military man – but each had been affected by Australia's experience of war. Hughes was 51 when Australians landed at Gallipoli. Like all Australians, he must have been shocked by the rising toll of death and injury among the soldiers of the First AIF. Having lost two brothers in the Great War, Bert Evatt was himself 51 at the end of the Second World War as the world came to a fuller realisation of the horrors of Germany, and for Evatt and Australia, Japanese human rights abuses. As we have seen, it is impossible to imagine his concern for international relations without reference to the global wars during his lifetime. Born in the last year of the Second World War, Gareth Evans grew up in an Australia dominated by ex-service personnel, nearly a million of whom had served during the war among a population of less than seven and a half million. A student during the era of National Service, he was studying in England as the Vietnam moratorium gained increasing momentum, but returned to an Australia in which deepening ambivalence about military engagement in Vietnam would have been obvious to a junior academic at Melbourne University. And John Sanderson, like all of the senior Australian military men and women I have met, has a profound sense, sometimes lacking in politicians, of the importance of pursuing a human rights agenda in order to solve what can be solved *without recourse to warfare and violence*. As General Sanderson reminds us, in the modern world, Australian political and military effort *must align*, and assist in multi-lateral engagement, to have any hope of success.

In speaking briefly of politicians, diplomats and military men, these must be taken as representative of Australia's engagement. Of course there have been many others. These include such luminaries as Richard Casey – like Hodgson, a Gallipoli veteran – who advocated strongly for economic and human rights in Asia, as Australia served on the UN Security Council from 1956-7. They include Jim Dunn, who served at the UN's behest on a 1974 fact-finding mission to East Timor, later advising the UN in 2001 on crimes against humanity in that country. They include Philip Alston, who chaired the UN committee on Economic, Social and Cultural Rights from 1991 to 1998, and in 1993 chaired a world conference engaging the European Court of Human Rights, the Inter-American Human Rights Court, the African Commission on Human and People's Rights and the UN Human Rights Committee. They include Michael Kirby and Tim McCormack, who have taken up Bert Evatt's stentorian call for the UN to be a vehicle for legal justice, furnishing legal advice to the United Nations in specific reference to international humanitarian law. They include our speaker for today, Elizabeth Evatt, who chaired the United Nations Committee on the Elimination of Discrimination against Women from 1989 to 1991, thereafter serving as a member of the UN Human Rights Committee. They include Penny Wensley, who led Australian delegations to the 1992 United Nations Conference on Environment and Development, and served as Vice-President of the 1993 World Conference on Human Rights. Alongside many others, this collective effort has allowed Australia to make a genuine contribution to the agenda of human rights law on the international stage.

Of course we might be justly accused, at times, of overstating our influence on international affairs, both in the field of battle and in the creation of a growing framework on international human rights law. I suspect that we are probably no different from any other nation in this regard. I also believe that it is precisely this ambition to play a part in the great global currents of military alliances and international diplomacy which has led Australians, through our perception of who we are and what we value, to make a genuine contribution. Having determined our right to engage, we must aim to strike the balance between our obligations to the international community, and our national interests. Putting it crudely, while the Anzac legend gave Australians national confidence to take our place on the international stage, our engagement with human rights has influenced our standing within the international community ever since. Both tie together; both reflect the price Australia has paid, and the contribution we have made, in our search for international relevance, leadership, and national identity.

## 4 Australia, the UN Charter and human rights

**The Hon Elizabeth Evatt AC**

**Commissioner, International Commission of Jurists. Former member of UN Committee on the Elimination of Discrimination against Women and the UN Human Rights Committee**

Like so many Australian families, the Evatt family was deeply scarred by two world wars. This helps to explain the passion which my Uncle Bert, Dr HV Evatt, brought to the task of forming the United Nations in 1945.

He was 20 when the Great War began, and was one of many Australians who believed (rightly or wrongly) that the Allies were fighting to defend their democratic freedoms against the German aggressor. He tried to enlist several times, but was rejected on eyesight grounds.

His younger brother Ray joined up early in 1915, served in Gallipoli and France, won the Military Cross and was killed in September 1917 in the battle of Menin Road. Another young brother Frank, joined up in 1916, after completing one year of medicine, was wounded at Ypres and killed at the end of September 1918, in the Somme region, just as victory and the end of the war were in sight.

Bert was devastated by the death of his brothers. They had both opposed conscription. Bert had originally supported conscription but his view changed as he moved to the left of politics.

The end of the Great War, and all its sacrifices, did not bring a lasting peace or growing prosperity. Instead, there came the great depression, which blighted many lives with lost hope, there came further conflict, further acts of barbarity and another world war in which the Evatt family lost two more young men.

By then, Bert Evatt had left the High Court to enter politics. He became a member of Curtin's war cabinet. In planning their post-war policies, Curtin and Evatt held strongly to the view that a lasting peace required a world based on freedom and prosperity, with full employment and social security for all.

### The Atlantic Charter and the Four Freedoms

They found support for those aims in President Roosevelt's Four Freedoms, put forward in 1941 as the basis of a new world order of justice under law.<sup>23</sup> The Four Freedoms: freedom of speech and expression, freedom of worship, freedom from want and freedom from fear, were indelibly printed on my mind as a child, when my uncle returned from the United States with four large posters of the Norman Rockwell paintings illustrating the Four Freedoms. To me, at ten, they represented what the war was being fought for.

These were not new ideas, but for millions at the time they were a dream beyond reach.

To implement the ideals of the Four Freedoms in Australia, the Government held a referendum in 1944 to give the Commonwealth temporary powers in respect of economic and social issues and human rights.<sup>24</sup> It did not succeed, but the commitment continued into the post-war period.<sup>25</sup>

### Drafting the United Nations Charter

#### Planning the post-war world: San Francisco

We move now to San Francisco where the allied nations gathered in April 1945 to plan post-war institutions. Australia sent a strong delegation of 25 including many highly able diplomats and officers from External Affairs. They were led jointly by Frank Forde, Deputy Prime Minister, and Bert Evatt, Minister for External Affairs and Attorney-General. Jessie Street was also a member of the delegation.

Evatt was the driving force of the Australian delegation. He welcomed the challenge of drafting a constitution for the world body and he approached the task with enormous energy.

The great powers had met earlier at Dumbarton Oaks, and had designed an organisation to suit their own interests. Evatt had other ideas. He refused to defer to the great powers, insisting that every nation should have an equal voice in the discussions. He wanted the new organisation to have not only a peace and security role, but also a strong role in securing economic and social rights, and ensuring justice under the rule of law. Led by Prime Minister Fraser, New Zealand supported Australia in these aims, and the two nations worked together.

## The Charter and issues of governance and powers

The two main organs of the new body were to be the General Assembly, consisting of all member nations, and the Security Council, with limited membership.

### *a) Security Council and the veto power*

The Security Council would have primary responsibility for maintaining international peace and security. It could impose economic sanctions and decide on military intervention. However, the five great powers (United States, United Kingdom, France, Union of Soviet Socialist Republics (USSR) and China), who would become permanent members of the Council, would not accept the use of these wide powers against their own interests. They insisted that any decision of the Security Council required the concurring vote of all five. Thus, any one of them could veto a decision.

Australia and New Zealand were prominent in the fight against the use of the veto to block measures for the peaceful settlement of disputes.<sup>26</sup>

Evatt argued that the 'big five', should not be able to prevent disputes from being dealt with according to the principles of justice. But the great powers, and especially the USSR, were obdurate. Without the veto they were not willing to participate in the new organisation. Evatt was forced to concede that the powers who had led the war effort were entitled to claim a special role.

He fought several rear-guard actions to stop the veto being used to block future amendments to the Charter and to provide that the rule of law should guide the actions of the Security Council. These efforts failed.

All that was salvaged was that the veto would not apply to procedural issues, so that matters could at least be put on the Council's agenda.

Evatt came away with misgivings. As he foresaw, the use of the veto power has been a major obstacle to the security and peace keeping operations of the UN. The organisation's longevity may have been preserved but at the price of impotence. We have watched Srebrenica, Rwanda, and now Syria; horror stricken, and frustrated by the inability of the Security Council to act.

### *b) General Assembly: Wider powers*

Under the Dumbarton Oaks draft, the General Assembly would have had limited powers of discussion. Evatt believed strongly that it should be able to discuss freely and fully any matter of real international concern and thus balance the power of the Security Council, which might in any event be hamstrung by use of the veto.

Despite resistance from the Soviets, he succeeded with an amendment empowering the General Assembly to discuss any matter within the scope of the Charter. The only limitation is in regard to disputes currently before the Security Council.

Evatt counted this as one of the main achievements of Australia.<sup>27</sup>

### *c) The Charter and human rights*

The Dumbarton Oaks draft envisaged a role for the new organisation in the promotion of human rights. Australia and New Zealand, with a few others, were enthusiastic about including specific human rights provisions in the Charter. But there was no wide support for this. Instead, the Charter speaks in general terms of co-operation to promote respect for human rights and fundamental freedoms.<sup>28</sup> Specific rights would be framed later.

Evatt sought to enhance the human rights aspects of the Charter and its social and economic aims. He had several successes in this area:

- The powers of the Economic and Social Council were expanded, and it was made a principal organ of the UN.
- The economic and social chapter was amended to include the promotion of higher standards of living, full employment and conditions of economic and social progress and development.
- There was inserted a definite pledge by member States to take action to promote the economic and social purposes of the organisation, including full employment.
- Another amendment committed States not merely to respect rights, but also to promote the “observance” of human rights.<sup>29</sup>

Jessie Street, the only woman member of the Australian delegation, worked actively with women from other delegations to ensure that the Preamble to the Charter affirmed faith in “the equal rights of men and women” and that respect for human rights was stated to be without distinction as to race, sex, language, or religion.

## Other issues pursued by Evatt & Australia

### Domestic jurisdiction

Evatt strongly supported the provision that the UN should not intervene in matters essentially within the domestic jurisdiction of States (*he supported the change from ‘solely’ in the draft*). While originally the Security Council would not have been bound by this provision, amendments which Evatt supported made the Council subject to the domestic jurisdiction provision, except in regard to enforcement measures under Chapter VII.

The example Evatt gave to justify the bar on intervention in matters of domestic jurisdiction provision was migration, on the basis that it is for each nation to determine the composition of its own population.<sup>30</sup> We have moved on from the White Australia policy, but the interpretation of ‘domestic jurisdiction’ remains a highly significant area of international contest.<sup>31</sup>

Evatt envisaged that there would be changes over time in the application of the domestic jurisdiction provision, and that “matters once regarded as purely local may gradually come within the area of international relations by the making of international agreements.”<sup>32</sup> He understood this very well, having taken a broad view of the external affairs power in the Australian Constitution when he was on the High Court.<sup>33</sup> Over time, human rights have become an important example of matters no longer considered purely domestic, but part of international concern.

It is fitting that one of the first human rights issues to be the subject of a United Nations Convention, and to be ratified by Australia was racial discrimination. Evatt was, of course, an enthusiastic supporter of making human rights enforceable by an international court of human rights, a step which would lift them out of the domestic jurisdiction limitation. But that was for the future.

Australia successfully proposed provisions to protect the territorial integrity and independence of member states, and together with New Zealand, made a major contribution to the trusteeship provisions.<sup>34</sup> Evatt did not succeed with a provision requiring member nations to accept the compulsory jurisdiction of the International Court of Justice in legal disputes. It is therefore left to states to decide for themselves.<sup>35</sup>

### Adoption of the Charter and recognition of Australia

The UN Charter came into force in October 1945 with 51 states becoming members. In recognition of its contribution, Australia was elected to the Executive Committee of the UN Preparatory Commission, to the first Security Council, to the Economic and Social Council and to the first Commission on Human Rights.

As the culmination of his efforts, Evatt, representing Australia, was elected as President of the General Assembly in 1948.

This brings us to the *Universal Declaration of Human Rights*.

## The Universal Declaration of Human Rights 1948

The Economic and Social Council acted quickly to set up the Commission on Human Rights, with 18 member States including all permanent members of the Security Council. Eleanor Roosevelt was elected as Chair. Australia was represented by Colonel William Roy Hodgson, a Gallipoli veteran and later head of the Department of External Affairs.<sup>36</sup>

### Australia's proposal for an international court

From the very beginning of the Commission's work, Colonel Hodgson pressed it strongly to give priority to a legally binding human rights instrument, with recourse to an International Court of Human Rights.<sup>37</sup> Evatt was much in favour of this idea.<sup>38</sup>

Yet the Commission was not ready for such a radical development. It decided to draft a statement of general principles in the form of a Declaration of Human Rights. Later there would be one or more binding Conventions defining specific rights.

### Australia's contributions on economic and social rights

Among the many issues debated hotly was whether and, if so, how to include economic, social and cultural rights. These were new and unfamiliar to many. Australia strongly supported their inclusion, which sometimes put us on the same side as the Soviet bloc. Fortunately, Eleanor Roosevelt, bearing in mind the Four Freedoms, gave her support to economic and social rights.<sup>39</sup>

Australia's representatives focused on economic, social and cultural rights, and managed to secure important additions and amendments to the provisions dealing with these rights. Among these were a specific reference to social security, detailed provisions on the right to work, the right to rest and leisure, holidays with pay, and the right to an adequate standard of living.

### Women, equality and the Declaration

An early draft of the Declaration had opened with the stirring words "All men are brothers,"<sup>40</sup> and the language throughout included male references and prepositions.

Jessie Street was, by then, a member of the UN Commission on the Status of Women (CSW). Through that body she proposed that the word 'men' should be replaced by 'human beings.'<sup>41</sup> The Commission responded up to a point, and some of the language was changed to more general or inclusive terms. Eleanor Roosevelt, however, persisted in the view that 'men' equals all human beings.

Jessie Street and the CSW also argued that the right to equal pay in the Declaration should explicitly state that it was regardless of sex. Their proposal failed, on the basis that it might imply that women were not entitled to equal rights elsewhere in the draft, unless expressly mentioned.

Jessie Street also put forward proposals for equality in and at the end of marriage, and for widows' pension entitlements. These principles were included in the final text.<sup>42</sup>

Regrettably, the Australian representatives on the Commission on Human Rights gave little support to the efforts to improve the language of the Declaration or the expression of rights for women.<sup>43</sup>

### Negative aspects of our policies

On the debit side, Australia joined other States (the United Kingdom, the United States, China, Egypt, India and others) in successfully opposing the inclusion in the Declaration of rights of persons belonging to minorities.<sup>44</sup> Hood, for Australia, said that our policy of assimilation was in the best interests of all. Aboriginal people were not considered as a minority at that time.

Australia also took a narrow view on asylum, joining those who opposed a right to be granted asylum, preferring no more than a right to enjoy asylum.<sup>45</sup> Australia's position was driven by its then immigration policies. However if asylum rights were being drafted today, it is easy to conclude from current practice that Australia might oppose the concept that persons should be entitled to "enjoy" asylum.

### Adoption of the Universal Declaration of Human Rights 1948

The Commission finalised the draft Declaration by June 1948. There were further debates in the UN Third Committee before it went to the General Assembly.

Evatt, as President of the General Assembly, presided over the adoption of the Universal Declaration of Human Rights on December 10, 1948. The vote was 48 to zero. There were eight abstentions, mainly the suspicious Soviet bloc, together with South Africa and Saudi Arabia. The absence of any negative votes, an important factor in the growing influence of the Declaration, is thought to be largely Evatt's work.

On the adoption Evatt made a very inclusive statement, observing that it was the first occasion on which the organised community of nations had made a declaration of human rights and fundamental freedoms, and that the document was backed by the authority of the body of opinion of the United Nations as a whole and millions of people – men, women and children all over the world – would turn to it for help, guidance and inspiration.

### Reflections

The UN Charter opens by referring to the scourge of war, which had brought untold sorrow to mankind. The Preamble to the Universal Declaration echoes these sentiments, referring to barbarous acts, which outraged the conscience of mankind.

Memories of the horrors of war and a strong desire to make a better world provided the necessary impetus for nations to co-operate in creating the United Nations. There followed a narrow window of opportunity, during which the Commission on Human Rights was able to prepare the monumental Universal Declaration of Human Rights.

Soon after the Commission completed this task, the Soviet Union closed the Berlin borders and the Cold War was on in earnest.

After this, it took six more years for the Commission on Human Rights to draft the two Covenants. It was not until 1966 that the Covenants were adopted by the General Assembly.

Australia's proposal for an international court of human rights was revived, but did not gain support. It is an idea which must find its time, if the member states of the United Nations take human rights seriously.

### Conclusions

Many nations and many individuals contributed to the foundation of the United Nations. Australia played a significant part in this, a role that we should be proud of. Australia had burst onto the world stage with an agenda which it pursued vigorously, demonstrating how effective diplomacy combined with clear policies could enhance the influence of a relatively small nation. Australia's External Affairs Department (later Foreign Affairs) established a strong commitment to the United Nations, and for many years Australia was one of its great supporters.

There is, regrettably, a tendency to experience disenchantment with the United Nations, when its achievements in preventing conflict are measured against its great aims. It has not been able to prevent all the conflicts and atrocities that have arisen and are still happening as we speak.

Nevertheless, the idealistic aims of the United Nations remain before us, and will help to guide us to a time when nations and people can trust each other and put their trust in an international body to resolve conflict fairly and with justice, without any resort to armed hostilities. At the end of the war, Australia's leaders believed that peace between nations must be built on justice within nations. Every step towards bringing all human rights within the grasp of all people throughout the world is a step towards that mutual trust and towards world peace.

As Evatt said at San Francisco: "Freedom from fear can never be separated from freedom from want... political security must be built on social justice."<sup>46</sup>



## 5 Understanding Anzac day: What were we fighting for?

**Lieutenant General David Morrison AO**  
**Chief of Army, Australian Army**

I am delighted to have been invited to address this conference and to share this platform with so many eminent Australians whose work in the field of law, human rights or scholarship is exceptional. I note that the theme of the conference is the Anzac Spirit and Human Rights in War and Peace. This has the potential to be a fraught, contested topic at any time.

However, the approach of the Centenary of the Great War and 100th anniversary of the Gallipoli landings next year has thrust Anzac, and what it ought to mean to us, into the foreground of our public debate. That may be a very good thing. Anzac looms large in the Australian psyche. For better or worse, and in this room I suspect there may be some who incline to 'worse', the Anzac story has become one of our dominant national foundation myths.

I choose the term 'myth' deliberately. Myths perform vital roles in communities from tribes through to nations. The best of them contain enough truth to confer longevity, if not immortality, on them. Likewise, the best of them are a summons to live out noble universal human values. Anzac has this potential.

But I sense that in the coming year there will be too little reflection on the deepest significance of Anzac and in its place there will be an unedifying arm wrestle to claim ownership of it to the exclusion of one's ideological opponents. That would be a shame.

If Anzac is to fulfill its mythical role effectively we must seek to interpret it in an expansive way so that all Australians can draw inspiration from it. I hope it becomes a beacon to inspire, rather than a club with which to beat dissenters into conformity.

For good reason, Chiefs of the Australian Army scrupulously avoid partisan political disputes. Indeed, one reason that human rights are so secure in this country is that our military does not actively engage in politics. Political generals and absolutism go hand in hand. So while sincerely hoping that the national conversation about Anzac is civil and informative, I must avoid taking a partisan position in this debate.

I have the honour of leading one of our oldest, most revered and well-funded public institutions. In the interests of accountability and transparency, the public deserve to hear from me occasionally, albeit sparingly, on how their funds are being spent and what steps I am taking to ensure that their sons and daughters are being equipped to survive in dire peril.

On occasions I have spoken in public about what the changing character of war and the shifting global balance imply for the structure of our Defence Forces. However, opportunities such as today's seminar are most welcome.

Again, some of you may think that the Chief of the Army may know something about Anzac, but precious little about human rights. Hopefully, I may have gone some way to disabusing you of that notion over the past couple of years. With the support and advice of people of influence such as Elizabeth Broderick, I believe that we are making enormous improvements to the environment in which our people serve.

Military life, by its very nature, demands some curtailment of one's human rights. Preparation for war is a demanding and harsh business. But training is never a guise for abuse, especially sexual assault. And in so far as any one seeks to invoke some legendary digger myth, allegedly derived from Anzac, to justify degrading their colleagues, they have no place in the Army. I trust that I have made that abundantly clear.

While I have sought to stamp out abuse and bullying disguised as training, I have not done this in pursuit of any human rights accolade. I am merely doing my job, though most assuredly with genuine conviction.

Moreover, every decision I have made to enhance the role of women in the Army, or to eliminate unacceptable discrimination against women, has been taken with a professional eye to improved capability. I am not a crusader, though if I have done some good in seeking to improve the operational effectiveness of the Australian Army, then I am delighted.

With that caveat firmly in place, I believe that I can debate on human rights with what equity lawyers would term 'clean hands.' As a professional soldier, I tend towards pessimism about the innate human proclivity for violence. I am also a foreign policy realist. The Wilsonian moment, which beckoned after the fall of the Berlin Wall and the removal of Milosevic, proved to be all too fleeting.

As recent events in the Ukraine and Syria amply demonstrate, those who wish for peace still need to prepare for war. Or as George Orwell so eloquently put it, "We sleep safe in our beds at night because rough men stand vigil in the darkness to visit violence on those who would do us harm."

What does this have to do with Anzac? Well quite a lot actually. Over the next year a host of people will ask why we fought at Gallipoli. If the press commentary of the past few days is any guide, some observations will contain a degree of rancour, while others will tend to invoke a level of nationalistic sentimentality, regardless of the ideological view of those espousing them. I trust you will not accuse me of ducking the issue when I say that I have little patience with either extreme in this debate.

Some regard any criticism of the Anzac as a form of treason. This is actually immature and unhelpful. The Anzacs justifiably will continue to be revered. But those who use their service to bludgeon conformity to a narrow ideal of what an Australian, especially an Australian soldier, should be, deliver harm and not homage to Anzac. If Anzac is our most potent national myth, and I believe that it is, then it must be inclusive and expansive. It must offer intangible and universal values to all Australians. Fortunately I believe it is capacious enough to achieve this.

The most pervasive distortion about what really happened in Turkey in 1915 is that the Aussie bloke is a natural soldier. That notion is incredibly unhelpful to those who are responsible for raising, training and sustaining credible military forces. War is a brutal, nasty business, Hobbesian in every regard except any propensity to being short.

Creating and developing small teams that are capable of surviving the shock of battle and which in turn can continue to fight effectively is a demanding, unglamorous business. The myth of the gifted amateur is the most dangerous which the romantics propagate.

In simple terms it would be the equivalent of every cricket coach telling their kids that it was Doug Walter's smoking and drinking that made him a great batsman. The reality is that all our elite sportsmen and women live ascetic lives. Yet there is a tendency to focus on the 'blokey larrikin' to the exclusion of all others, in all forms of endeavour.

Lest I be misinterpreted, be assured that I, like every single Australian soldier, am fiercely proud of Anzac. We are all acutely aware that we wear the same distinctive slouch hat and Rising Sun badge immortalised by those men. It is a great honour and subtly defines our values of courage, teamwork, initiative and respect for one another.

Moreover, every nation and every Army needs a foundation myth from which to draw resilience and a sense of identity. Ours is a noble one. It venerates courage, self-sacrifice, and daring tempered by stoicism. These are innate human virtues. But I can assure you that in today's Army they are not the exclusive province of lantern-jawed country boys. Every Australian soldier aspires to them, men and women alike, as well as those whose forebears were in the Australian Imperial Force (AIF) and those whose parents were not born here.

Again, some of the more bellicose enforcers of conformity to the myth of the hard-drinking larrikin berate serious military historians for questioning our combat performance. But those comforted by fairy tales in lieu of history miss the vital point that the AIF was an adaptive, learning organisation which became increasingly lethal over the duration of the war. Our mastery of combined arms warfare reached its apotheosis under Monash in the battles of 1918.

The Anzac landing was not our finest hour. And that is not a slur on the bravery and élan of those who stormed ashore on that awful morning. It is merely a hard headed acknowledgement that we sent that force away woefully prepared and they paid the price for our national neglect of defence. Among those who went ashore on 25 April, and right through that campaign, were some very fine soldiers. But just as in any army, in any war, some failed. They lost their nerve. They shunned combat or they made professional errors. It is an inevitable aspect of war, which serious armies rigorously analyse and seek to improve on.

Conversely, others of a different ideological persuasion lament our involvement in every war other than the immediate defence of Australia in the Pacific War. Even then there is a small clique that thinks we forced Japan into that war as well – an idea so daft only the poorest student of history could believe it.

They invoke a version of what I saw recently referred to as the alienated ‘poetic view’ of war espoused in the poems of Sassoon and Owen and other anti-war poets. War is not only brutal it is futile. To these critics the band continues to Play Waltzing Matilda down by the quay and our soldiers cannot make any ethical case for their sacrifice.

Rather, our soldiers are invariably dupes of the global capitalist and imperial systems. They sleep walk off to ‘other peoples’ wars’ and die for obscure reasons. This portrays them as victims without the volition to volunteer for a cause. As a foreign policy realist, I have even less sympathy for this calumny than the ‘natural soldier’ nonsense.

If one strand provides a coherence to every one of our foreign military commitments it is this; we have deployed naval, military and air forces to support a benign global order, which best reflects our values and aspirations as a liberal democracy, whenever that order is imperiled.

At this risk of sounding like Jack Nicholson’s Colonel Nathan Jessop in the film ‘A Few Good Men’, conferences like this one are held exclusively in societies which have developed human rights frameworks under the blanket of security provided by the great liberal democratic maritime powers of the past three centuries; Great Britain and the United States. We convene today because men, and in increasing numbers, women stand on the frontiers of a world in which human rights are enforceable and must be defended.

The ideals of the Enlightenment have flourished under the maritime supremacy of those two great liberal powers. Indeed, since the Seven Years War concluded in 1763, some combination of those powers has been willing to fight to prevent Europe falling under the sway of any rising continental militarist power. Both global conflagrations of the 20th Century conformed to this schema, with land-locked Germany seeking to achieve hegemony over Europe.

I am unequivocal in asserting that we were on the right side both times in those wars, both for idealistic and pragmatic reasons. As a prosperous medium-sized power, inextricably linked into the global trading system, and reliant for our very survival on the freedom of the global commons, we have always sided with the dominant liberal democratic power of the day.

Australia could never secure its own sea lanes, even if we distorted our economy by adopting a permanent war footing on defence expenditure. We have flourished amid a global order, which we never could have provided for ourselves.

The deployment of our forces to the Dardanelles and to the Western Front in World War One therefore represented a clear-headed recognition that the defeat of Great Britain and France by Imperial Germany would carry grave consequences for Australia.

I should hope that I need not labour the point of the worthiness of our war aims against Nazi Germany and Imperial Japan. Rather than providing cannon fodder for Etonian fops to squander, or guileless lambs to the slaughter then, the Anzacs, like every Australian expeditionary military contingent since, served our national interest by fighting for the preservation of a rules-based international order.

On a day devoted to the advancement of human rights, I also believe it is essential to treat the Anzacs as human beings. Only by standing in their shoes and looking at the world through their eyes can we truly comprehend their motives.

I believe that my analysis of our strategic history is correct. But every one of those soldiers who embarked for exotic lands in 1915 arrived at a deeply personal decision. It is ahistorical, and demeaning to them as human beings, to project our own values and motives on to them.

Firstly they were Empire men. A significant number had either been born in Britain or had kin folk there. They inhabited a world in which duty to the Crown and the Empire was an honourable, and instinctive, impulse.

Moreover, they were citizens of a new country. Fears about invasion and security loomed large in their minds. Indeed, the quest for a common defence was one of the primary motives of those who formed the Commonwealth.

On Anzac Day this year, I stood on the battlements of a fort built in 1890 on Thursday Island, in the Torres Straits, by the Government of Queensland to deter Russian incursions. And our first casualties of the Great War did not occur at Gallipoli but rather much closer to home when a joint amphibious task force seized the German radio station at Rabaul on our doorstep.

To me those inescapable realities highlight the intellectual poverty of the emotive arguments of both the left and right about Anzac, the Great War, and indeed about Australia at war in general. War is a ghastly business – make no mistake. As Douglas MacArthur observed in his final oration, soldiers know this only too well as they suffer the deepest privations of war. But war has been the engine of human history. As Clausewitz noted, policy often advances behind an armed phalanx.

Acknowledging the truth of this gives me no joy. But the most basic human right is a right to physical security and safety. And sadly, even in the sophisticated world of the 21st Century, soldiers more often provide this right than do jurists.

## 6 Humanity in war – 100 years of Red Cross in Australia and developments in international humanitarian law

**Robert Tickner**  
**CEO, Australian Red Cross**

Many significant stories came out of World War One, including Simpson and his Donkey and the Anzacs – and we have heard much about this legendary Anzac spirit today. But another great Australian story was borne from the Great War, one that also continues to serve Australia and one that has evolved with the changing face of humanitarianism. That great Australian story is the story of Australian Red Cross. Indeed, Australian Red Cross entered into existence only nine days after the outbreak of World War One – reflecting the significant connection this institution has with bringing humanity to the horrors of war.

Right at the outset I will share a little personal story with you to demonstrate just how many people have been touched by the formation of Red Cross in Australia, and how quickly the organisation grew and developed. I have in my bag a copy of a letter written in 1916 from Red Cross in Sydney to my great grandfather in Orange, NSW, advising him that his son (my grandfather's brother) was believed to have died on the first day of the landing at Gallipoli.

Australian Red Cross is part of a global Movement, the International Red Cross Red Crescent Movement which, like the Australian Red Cross itself, was created on the battlefield. This is where our global mandate to alleviate suffering during times of war stems from. Today the International Red Cross Red Crescent Movement (or the 'Movement' as it is known) has a presence in almost every country in the world. The global mandate of the Movement includes working with governments and authorities to promote an understanding of, and support for, international humanitarian law (also known as just IHL or 'the laws of war').

IHL has always advocated that 'even wars have laws.' That people outside of the fighting should be protected and that there are means and methods of warfare (such as the use of certain weapons) that are too inhumane to be used in any situation. In particular, the Movement has a long and proud history in shaping developments in IHL in weapons law – this is no surprise given our non-partisan focus on the public health and humanitarian consequences of various weapons – and I will speak more about this approach later.

People are often surprised to hear that part of the core mandate of the Movement is to influence the development of IHL and to respond during times of conflict – however this part of our work (and how we perform it) is embedded in both international and domestic law – something that separates us from all other humanitarian organisations.

The International Committee of the Red Cross (ICRC) has its mandate articulated in the Geneva Conventions and their Additional Protocols of 1977. The broader mandate of the Movement to disseminate IHL and influence decision makers is set out in the Statutes of the Movement. These are signed off not only by the Movement, but by all parties to the Geneva Conventions – the only set of international laws that have universal ratification.

On top of this, all National Societies, like Australian Red Cross, need to be constituted by an Act of Parliament with 10 set conditions of recognition, most of which refer to our Fundamental Principles of impartiality, neutrality and independence, along with our commitment to and expertise in promoting IHL. In Australia you will find that this is all set out in a Royal Charter.

Our work in advocating for a more humane world is governed by our principles of impartiality and neutrality. In particular, neutrality means that we do not engage at any time in controversies of a political, racial, religious or ideological nature. When it comes to issues of IHL, this often means careful consideration as to how we articulate our concerns in purely humanitarian rather than political ways. It is not the role of the Movement to engage in political debates; this is left to other humanitarian and civil society actors who also work tirelessly in this space. The mandate of the Movement is to raise awareness of the humanitarian consequences of weapons, which are against the principles of IHL and cause catastrophic human suffering to a broad-cross-section of society, and to remind decision makers of the incalculable human suffering these weapons cause. This is a process which a famous ICRC lawyer, Jean Pictet, described as swimming through the sea of politics without swallowing any of the water.<sup>47</sup>

Our classic method of persuading decision makers globally is through robust and confidential dialogue. However this needs to be complemented by articulate and engaging public advocacy – something that the Movement is only recently starting to increasingly embrace and that we, at Australian Red Cross, are deeply engaged in within the global Movement. We can do this without violating our principle of neutrality and, indeed, it is one of our obligations.

Over our 100 years, Australian Red Cross has constantly advocated for a more humane battlefield, and this has evolved as IHL itself as developed. Over the last 100 years the battlefield has changed remarkably and we have had to adapt with it.

Cavalry has been replaced by high-tech transportation on land, sea and air; rifles have been replaced by drones and other automated weaponry, and to a large extent, battlefields are no longer fields at all – more and more conflicts are taking place in urban areas and cities with civilians feeling the brunt of conflicts. However as we examine how warfare has, and continues to change, the basic laws of war as set out in the Geneva Conventions of 1949 remain.

It is quite remarkable to reflect on the one hand on the extraordinary changes to modern warfare that have taken place in just the last two decades and, at the same time, to marvel at how the laws regulating warfare have continued to reduce human suffering in some of the most appalling situations on the planet for the last two centuries.

IHL continues to balance military necessity with humanity and a huge number of treaties have been created to add further strength to the IHL framework, particularly in the area of weapons law.

Furthermore, the Movement continues its work in war zones using the same fundamental tenants established in the 19th Century. Whilst the environments in which we now work, and the issues we now grapple with, would be unfathomable to our founders, their ambition to relieve human suffering in a neutral, independent and impartial manner is still evident in the work of the Movement around the world.

At this point I think it would be useful to talk you through a case study about how all our work in this area comes together on key IHL issues – and I'd like to take the issue of nuclear weapons as our example. As far as humanitarian concerns in relation to weapons law issues go, nuclear weapons are perhaps one of our most serious and grave concerns to date. The Movement (and indeed Australian Red Cross) has a strong history on this issue.

The first non-military medical personnel in Hiroshima was a delegate of the ICRC, who wrote about the unbelievable suffering and mysterious impact of nuclear weaponry. Prior to the negotiations for the Geneva Conventions in 1949, Australian Red Cross raised the need for these legal documents to abolish nuclear weapons with the Australian Government.

However neither the Geneva Conventions nor their 1977 Additional Protocols specifically mention weapons of any kind – rather they provide principles to guide these debates. These principles include the need for weapons to distinguish between civilians and combatants, to be proportional to the military aim, and to not cause unnecessary suffering or superfluous injury.

Since their first use, the Movement has been calling for States to eliminate nuclear weapons and ensure that they are never used again. In recent years, the ways in which we have progressed with this issue, both globally and locally, have been an interesting insight into how the Movement has evolved in this area of its work.

After growing discussion within the Movement about a need to more rigorously engage on this issue, a strong and clear Movement-wide policy was created, which has pushed this issue back onto the Movement and international agenda. This document, adopted in 2011 at statutory meetings of the Movement, took the form of a ‘Council of Delegates’ resolution – the Council of Delegates being the highest decision making body of the Movement.

The resolution is carefully crafted; it builds upon many of the promising legal and political developments that have occurred in recent years from a variety of fora including Non-Proliferation Treaty (NPT) processes, the 1996 International Court of Justice Advisory Opinion on the legality of the threat or use of nuclear weapons, and from resolutions from international conferences of the Red Cross Red Crescent Movement which are adopted by the Movement and all signatories to the Geneva Conventions (which of course, is virtually every country in the world).

This sets out a clear legal position for the Movement, our advocacy basis for future work, and key strategic direction for our work on this issue moving forwards. This was then developed further at the following Council of Delegates held in November 2013 in Sydney, which set out the next stage of this work for the Movement.

Both resolutions were historic in that they were the most direct and prescriptive resolutions ever adopted by the Movement in this forum. You’re probably wondering what exactly the resolutions put forward. In short, they establish the following:

1. That nuclear weapons cause incalculable suffering and that the humanitarian community, including the Movement, would simply be unable to provide adequate humanitarian response capacity in the event of such weapons being used;
2. That the Movement finds it difficult to envisage how any use of nuclear weapons could be compatible with the rules of IHL, in particular the rules of distinction, precaution and proportionality;
3. That the Movement appeals to states ensure nuclear weapons are never used again, and that negotiations to prohibit the use of and completely eliminate nuclear weapons are pursued in good faith and concluded with urgency and determination. This should be achieved through a legally binding international agreement, based on existing commitments and international obligations;
3. The resolutions also require all of the Movement to engage in humanitarian diplomacy to raise awareness among the public, scientists, health professional and decision makers of the catastrophic nature of these weapons, the IHL issues that arise from their use, and the need to eliminate these weapons.

So what do we do with these nice pieces of paper? The answer is – an awful lot.

First and foremost, these documents guide our work, which ensures we approach this critical issue in a consistent and credible way – no mean feat when dealing with a Movement made up of 189 different National Societies, an International Federation and the ICRC.

With this consistent messaging, clear boundaries and legal analysis, the resolutions also allowed National Societies the platform to engage with their respective Governments and other key stakeholders on this issue – such as health and medical professions – with a degree of confidence. Knowing you have the backing of the world’s largest humanitarian Movement and are firmly within the Fundamental Principles is a good feeling when you start approaching very sensitive international legal issues on the most catastrophic weapons ever known to humanity!

And when you have that backing, let me tell you, people start to listen.

Civil society actors jumped on the resolution and, remember, this resolution focuses only on the humanitarian consequences and imperatives of these weapons, so this was an exciting step forwards. From Ireland to New Zealand, the resolution has been recognised and read out in Parliaments around the world.

The resolution was also referenced in multi-lateral settings – statements focused purely on the humanitarian consequences of nuclear weapons and referencing the 2011 Movement resolution were being made at various diplomatic fora, including the First Committee of the United Nations General Assembly and NPT preparatory communications. Signatories to these joint statements have grown from 16 states in May 2012, to 125 by October 2013.

Our work on this issue has helped to shift the debate from military doctrine and strategy concerns to one of humanitarian imperatives. In March 2013 the Norwegian Government hosted the first ever conference dedicated solely to the humanitarian impacts of nuclear weapons – over 120 states attended. A follow up conference in February 2014 in Mexico saw 146 States attend and the Chair announce that the time had come for a diplomatic process to begin to eliminate these weapons, calling the Mexico Conference ‘the point of no return’.<sup>ii</sup>

These conferences have drawn on scientific research, humanitarian experience and the law – including Common Article 1 of the Geneva Conventions and customary principles articulated in Additional Protocol I of the Geneva Conventions – to highlight the political, legal, and humanitarian argument for eliminating these weapons. The Movement has been present at all these meetings and indeed I have been honoured to deliver statements on behalf of the Movement at both of these historic conferences outlining our deep concern and legal position on this issue.

However, our work is not solely limited to engaging with decision makers – and this is perhaps where Australian Red Cross continues to evolve very dramatically both within and beyond its first 100 years. The ability to engage with all Australians – members of the public, health experts, scientists, legal experts and young humanitarians, whilst maintaining our absolute neutrality, is crucial. It is in this area where, I think, Australian Red Cross is really leading the way.

From flash mobs across Australia, public events and seminars, an interactive website to ‘vote’ on whether nuclear weapons should be banned, and an initiative inviting people to share online photos and videos of important people and places that they wouldn’t want to lose, designed to highlight exactly what is at stake with the continued existence of nuclear weapons, we have started to become more creative in how we reach out to people. All of these initiatives have proven to be extremely successful ways of building a growing body of well-informed Australians who want to ensure that these weapons are eliminated. It is quite remarkable to see how a resolution – crafted by top international lawyers from across a global Movement – can then translate into effective dissemination and advocacy campaigns for everyone from high school students, to preeminent medical professionals.

Our work towards eliminating these weapons is an excellent example of the international Movement at its best and how we have developed together over the past century. We work together to focus on issues of key humanitarian concern in the area of IHL; use persuasion and humanitarian diplomacy to shift the debate from military doctrine to humanitarian imperatives to change international legal norms, and continue over a 70 year period to work towards a more humane world by eliminating the greatest threat posed to humanity.

The principles of the International Red Cross and Red Crescent Movement do not permit moral indifference in the face of the terrifying effects of a weapon that defies our common humanity, calls into question the most fundamental principles of IHL and threatens the continued existence of the human species.

Australian Red Cross is acutely aware that at this time, as we reflect on our Centenary in Australia and our formation in a time of terrible conflict, that we still have a long way to go in ensuring humanity during periods of unimaginable darkness. Indeed today we stand at a crossroads.

The road to a nuclear-free world will no doubt be a difficult one. But just as the Red Cross hospital in Hiroshima continues to provide treatment for nuclear-related diseases to this day, so too will the Movement continue to advocate mobilising decision-makers around the world to remove this unique threat to humanity. We must all harness our passions, our art and our medical, scientific, political and legal knowledge to deal with this threat because, as the Movement has stated before, “the currency of this debate must ultimately be about human beings, about the fundamental rules of IHL and about the collective future of humanity.”<sup>48</sup>

It is my deep hope and commitment that our continuing work in this area with other people who share our values can play a crucial role in ensuring that the right choice is made on this issue by our political leaders in Australia and internationally – as the very future of our world as we know it may depend upon it.

May I conclude by just making passing reference to the impact of my own visit to Hiroshima; one of only two cities in the world that have been obliterated by a nuclear weapon. Notable, these were very small weapons by today’s standards, where nuclear States have a capacity 20,000 times greater than that which was used on Hiroshima.

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<sup>ii</sup> Since this speech was delivered, an important third follow up conference in Austria was convened in December in 2014 which had 158 States in attendance. At the end of the conference, the Austrian Government delivered a pledge in which it committed to work to ‘fill the legal gap for the prohibition and elimination of nuclear weapons’ and ‘to cooperate with all stakeholders to achieve this goal.’ As of March 2015, over 45 countries have voluntarily signed up to join this pledge.



For much of my life I have been concerned with these issues. However, it was my private visit to Hiroshima in 2010 which brought home to me, even more deeply, the realities of what a nuclear war would do to our world, and the fundamental humanitarian values that must drive us to ensure that nuclear weapons are now unequivocally rendered an illegal weapon of war.

To stand near the epicentre of the bomb beside that iconic dome was a truly life changing experience. Nothing could prepare me for it.

What moved me was not just the horror, deep sadness and human suffering so powerfully displayed in the nearby Hiroshima Museum, and visited by millions of people from around the world. Surprisingly, what really moved me most of all was the spirit of the Japanese people (some of whom had survived the bomb despite what was often a life time of suffering) and, perhaps equally, the way in which Hiroshima has become such an acknowledged “peace city” of the world, where many tens of thousands of young Japanese students come each year, to understand the horrors of nuclear weapons.

In some way it was their energy, warmth and vitality that I found so contrasting and deeply moving. It was as if they were a living testimony of the resilience of human spirit. They seemed to embody the aspiration for a better world and a world order based more on humanitarian values and a peaceful future for all.

If my grandfather’s brother, Private WRC Beasley could speak from the soil of Lone Pine today, I reckon that this is what he would think too.

Thank you.

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