

*Andru E Wall\**

It is a tremendous honour to share a few words of tribute to Ivan Shearer, my mentor and friend of 19 years. Unsurprisingly for anyone who knew Ivan, he inspired my loves for international law and cooking, and my most cherished remembrances of Ivan involve both.

Ivan and I both arrived in Newport, Rhode Island in the summer of 2000. He was reporting for a one-year appointment as the prestigious Charles H Stockton Professor of International Law at the US Naval War College, while I was reporting as a quite junior military professor of international law. Ivan was a retired naval officer, a former Captain in the Royal Australian Navy, and renowned international law expert; and I a young naval officer whose assignment was more serendipitous than earned. The Naval War College had attempted to lure Ivan for years and the timing finally worked out. The conversations we shared over the ensuing year proved formative for me and inspire my views on international law to this day.

Ivan's foundational beliefs in natural law and the innate decency of humankind inspired his enlightened conviction that international law *can* and *should* be a force for good in the world. In the introduction to a paper he wrote during his year in Newport, addressing 'Rules of Conduct During Humanitarian Intervention', Ivan alluded to his belief that international law is derived from more than the treaties and actions of states. After noting his 'fantasy' that the author of what we know as the 'Martens Clause', Baron Feodor de Martens, should be considered for sainthood, Ivan quoted the Martens Clause verbatim, as found in the Preamble to the Second Hague Convention of 1899:

Until a more complete code of the laws of war is issued, the high contracting parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience.<sup>1</sup>

The Martens Clause, Ivan declared, 'is a powerful reminder that in situations of armed conflict, of whatever kind, there is never a total gap in the law, never a situation in which there cannot be an appeal to law in order to mitigate the horror

---

\* Commander, United States Navy; Deputy Legal Advisor, Resolute Support Mission/ Deputy Staff Judge Advocate, US Forces Afghanistan.

<sup>1</sup> Ivan Shearer, 'Rules of Conduct During Humanitarian Intervention' (2003) 78 *International Law Studies* 71, 71; quoting *Convention (II) with Respect to the Laws and Customs of War on Land and its Annex: Regulations Concerning the Law and Customs of War on Land*, opened for signature 29 July 1899, 187 CTS 429 (entered into force 4 September 1900) preamble.

and the suffering'.<sup>2</sup> Ivan wrote these words while introducing his analysis of the laws applicable to humanitarian intervention, which was then an emerging concept under international law, and his words proved prescient to the conflict that emerged in 2001. Notwithstanding the efforts of 'unscrupulous commanders and their cunning legal advisors' who 'might seek to exploit loopholes or ambiguities in the written law', any perceived lacuna in the international laws related to warfare is always filled by the Martens Clause.<sup>3</sup>

Ivan wrote this paper and delivered versions of it in talks at Duke University in April of 2001, and again during a conference on the Kosovo conflict at the US Naval War College in August of 2001, just a month before the horrific attacks of 9/11. The ensuing conflict, even more than the Kosovo conflict, proved once again the importance of Ivan's reminder that our interpretations of the laws of war must always be guided by 'standards of civilized behavior deriving from custom, humanity and the public conscience'.<sup>4</sup>

Over the intervening years, it has been my honour to advise many warfighters in multiple conflicts, and each time we were faced with a situation seemingly without applicable law, I reflected back on my conversations with Ivan, and conceptions of 'humanity and the public conscience' provided the answers we needed. Ivan is sorely missed, yet his spirit lives on in the lives and legal philosophy of those of us he touched with his brilliant mind, giving spirit, and beautiful humanity.

---

<sup>2</sup> Shearer (n 1) 72.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.