

ANNUAL REPORT: JULY 2003 – JUNE 2004

ASIA-PACIFIC CENTRE FOR MILITARY LAW

A collaborative initiative of the Australian
Defence Legal Service and the Melbourne
University Law School



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MESSAGE FROM THE PATRON



The Rt Hon Sir Ninian Stephen KG AK GCMG GCVO KBE

I am delighted to see the work of the Asia-Pacific Centre for Military Law consolidated in the third year of the Centre's operation – the period covered by this annual report. The suite of training courses in Military Operations Law, Civil-Military Co-operation and the Rule of Law on Peace Operations for regional military officers and the ADF are now fully operational. More importantly, senior military officers from South East Asia and the South Pacific are visiting Australia to participate in these courses and the feedback from regional participants as to the practical benefits of the training is overwhelmingly positive. Staff of the Centre have published extensively in the broad field of Military Law and have participated in conferences, workshops and seminars around the world.

Throughout the period covered by this report both the Deputy Director and one of the Associate Directors have been deployed on military operations in Iraq. In addition the Director also spent some months away from Melbourne on study leave in this period. It is a testament to the efforts of the remaining Associate Director Mr Bruce Oswald that so much was achieved by the Centre with so many senior staff absent for substantial periods of time. It is not as if the Centre operated in a holding pattern throughout this third year of its existence. Instead Mr Oswald worked tirelessly to enhance the international standing of the Centre and to establish strategic partnerships with relevant international organizations around the world.

At the time of printing this report the Centre has concluded an external review of its performance. The recommendations of the External Review Panel have important implications for the next phase of the Centre's development and I look forward to their implementation.

A handwritten signature in cursive script that reads "Ninian Stephen".

Sir Ninian Stephen

DIRECTOR'S REPORT



Professor Tim McCormack

It is a pleasure to present this Annual Report on achievements by the Asia-Pacific Centre for Military Law in the year to 30 June 2004 although I do so with a slight sense of unease. For 11 months of the period covered by this Report I was on study leave from the Melbourne Law School and Bruce Oswald CSC acted as Director of the Centre in my absence. It would be wrong for me to create the impression that I have been responsible for management of the Centre through a period of significant achievement. So it is with a clearer conscience that I laud the efforts of Ossie and take this opportunity to thank him for the great work he has done. While I have been on leave the Deputy Director of the Centre, Colonel Mike Kelly was on deployment in the office of General Counsel for the Coalition Provisional Authority in Baghdad – first for a six month deployment from June 2003 and then returning for a second stint for four months to the end of June 2004. In Mike's absence Lieutenant Colonel Paul Muggleton acted as Deputy Director of the Centre and I also take this opportunity to thank Paul for his sterling contributions. We are fortunate to have such outstanding Associate Directors willing and more than able to step into the breach and take on responsibilities above and beyond the call of duty.

The following Report provides extensive details of a broad range of activities and achievements. Particular highlights are the growing relationships between the Centre and increasingly significant international partner organisations – the Irish Centre for Human Rights in Galway, the US Naval War College in Newport, Rhode Island, the US Army War College in Carlisle, Pennsylvania, the office of the UN High Commissioner for Human Rights in Geneva, the office of the UN High Commissioner for Refugees also in Geneva, the United Nations Institute for Training and Research in New York City. Ossie has established and strengthened these relationships for us engaging in exciting new research projects, running joint conferences and seminars and opening our eyes to some wonderful opportunities to make our own contribution. We are challenged to ensure that we concentrate appropriate efforts to build capacity in our own region of the world and

have been engaged in discussions with a number of these partners about the sorts of activities we could undertake collaboratively in the Asia-Pacific Region.

This Annual Report covers the third year of the operation of the Centre. As I write this message the Centre is in the midst of an external review of its operations. We are fortunate to have an outstanding review panel of Hon Alastair Nicholson AO RFD, former Chief Justice of the Family Court of Australia and former ADF Judge Advocate General, Ms Lydia Morton, First Assistant Secretary of the East Asia Division of the Department of Foreign Affairs and Trade and Hon Greg Hunt, Federal Member for the seat of Flinders. The Review Panel is required to make recommendations on the future of the Centre and we eagerly anticipate the conclusion of meetings and the presentation of the Panel's Report.

A handwritten signature in black ink, appearing to read 'Timothy L.H. McCormack', with a stylized flourish at the end.

Timothy L.H. McCormack

Australian Red Cross Professor of International Humanitarian Law
Director APCML
The University of Melbourne

CHARTER AND AIMS

Charter

The Charter of the APCML is to facilitate cooperation amongst military forces of the Asia-Pacific Region in the research, training and implementation of the laws governing military operations.

Aims

The APCML aims to fulfill its charter by:

- Preparing and delivering Operations Law and other appropriate training programs for legal officers and operational commanders from the Asia-Pacific regional militaries;
- Developing and delivering graduate level legal training for appropriate military officers within an established academic regime of verification, validation, assessment and accreditation;
- Organising conferences, workshops, seminars and other activities designed to provide solutions to particular legal problems, to ensure the incorporation of new legal developments within the Region and to develop relationships with regional militaries and with relevant academic, humanitarian relief and other public communities;
- Promoting academic research into key Military Law issues of current concern and relevance in the Asia-Pacific Region;
- Producing legal publications and materials in support of legal officers and regional defence forces generally;
- Participating in, and contribute to, the development and validation of Military Law doctrine as appropriate and relevant;
- Centralising the accumulation and processing of legal lessons learned through regional experience and through deployment and other overseas experience;
- Undertaking and supporting initiatives to promote and improve the flow of information to legal officers in relation to professional matters such as opinions and legal developments;
- Participating in military exercise design and development;

- Developing military, government, academic and other relevant relationships within the Asia-Pacific Region for the promotion of the Rule of Law in military and defence affairs and opportunities for assistance in training in Operations Law within regional military organisations;
- Developing contacts and mutual exchanges with other academic/military centres and with leading subject matter experts internationally to encourage the fullest exchange of information and ideas and to promote interoperability with allied partners;
- Providing support for deployments, particularly for peace operations, including assistance to pre-deployment training, the development and maintenance of manuals and reference resources, and the identification and appropriate retention of information from operational lessons learned.

PARTNERS

Overview

The APCML is a collaborative initiative of the Australian Defence Legal Service (TDLS) and the Melbourne University Law School.

The Defence Legal Service

The TDLS is an integrated organisation that includes 120 permanent and 300 Reserve legal officer positions in the Australian Navy, Army and Air Force as well as 24 Defence civilian legal officers and 68 paralegal and other legal support positions. Almost 60 legal officers and 30 paralegals are based with Service Commands in Australia, serving on military operations overseas, or on overseas exchange postings. The TDLS is responsible for the provision of legal advice and other legal services to the Australian Defence Force, the Australian Department of Defence and the Minister. Its head office is in Canberra.

Melbourne Law School

The Melbourne Law School is one of Australia's oldest law schools, teaching law continuously as a Faculty of the University of Melbourne since 1857. The Law School has maintained its reputation as one of Australia's leading law schools with an innovative approach to teaching and research. Since the establishment of the Australian Red Cross Chair of International Humanitarian Law in 1996, the Law School has developed Australia's strongest graduate program in the Law of Armed Conflict and related subjects. The Law School has also developed Australia's first dedicated graduate coursework program in Military Law covering the core areas of Military Administrative Law, Military Discipline Law, Military Operations Law and Advocacy for Military Lawyers.

CENTRE STRUCTURE AND PEOPLE

Overview

Patron. We are honoured to have The Rt Hon Sir Ninian Stephen KG AK GCMG GCVO KBE, former Justice of the High Court of Australia, Governor-General of Australia and Appeal Judge for the International Criminal Tribunals for the Former Yugoslavia and Rwanda as inaugural Patron of the APCML.

The Director and Deputy Director. The direction, control, supervision, overall management and performance of the Centre and the planning and implementation of centre activities are the responsibility of the Director and Deputy Director. They are assisted by two Associate Directors, one for each node of the Centre. The Director is to be a Melbourne University Law School employee of an academic rank not lower than Associate Professor or his or her delegate. The Deputy Director is to be an ADF Legal Officer of a military rank not lower than Lieutenant Colonel (or equivalent rank) or his or her delegate.

The Steering Committee. The control of policy, practices and overall management and operation of the Centre is vested in the Steering Committee. The Steering Committee consists of: Director General, The Defence Legal Service; General Counsel, The Defence Legal Service; Dean, Melbourne University Law School; and the Dean's nominee.

The Advisory Board. The Director and Deputy Director receive guidance on the Centre's activities and on the annual implementation of the Work Plan from an Advisory Board. The Advisory Board consists of academics, military officers and other suitably qualified people acting in an honorary capacity.

Locations. The APCML has two physical nodes. The University node is located within the Melbourne University Law School. The military node is located on an interim basis at Randwick Barracks, Sydney.

Management and Administrative Staff

Director. Professor Tim McCormack, Foundation Australian Red Cross Professor of International Humanitarian Law, Melbourne University Law School.

Deputy Director. Colonel Michael Kelly AM, Director, Military Law Centre, The Defence Legal Service, Australian Department of Defence.

Associate Director. Lieutenant Colonel Paul Muggleton, The Defence Legal Service, Australian Department of Defence.

Associate Director. Mr Bruce Oswald CSC, Lecturer in Law, Melbourne University Law School.

Executive Officer. Ms Sonja Khouri, Military Law Centre, The Defence Legal Service, Australian Department of Defence.

Centre Administrator - University Node. Ms Dianne Costello, Melbourne University Law School.

Administrative Support - Military Node. Mr Ian Martin, Australian Department of Defence.

Academic Staff

In addition to the Director and Associate Director, the following are the academic staff of the University node of the APCML:

- Ms Alison Duxbury, Senior Lecturer in Law, Melbourne University Law School
- Associate Professor Robert Mathews OAM, Principal Fellow, Melbourne University Law School
- Mr Andrew Mitchell, Senior Fellow, Melbourne University Law School
- Mr John Tobin, Lecturer in Law, Melbourne University Law School
- Ms Tania Voon, Senior Fellow, Melbourne University Law School

Research Higher Degree Students

For details of the Research Higher Degree students affiliated with the APCML and their areas of research see below under the heading of Research Programmes.

Sir Ninian Stephen Visiting Fellow to the Asia-Pacific Centre for Military Law

- 2004** Dr Gerry Simpson
Reader in Law, London School of Economics and Political Science
- 2003** Professor Peter Rowe
Professor of Law, Lancaster University Law School

Advisory Board Membership 2004

- Professor Michael Crommelin, Dean, Melbourne University Law School;
- Ms Treasa Dunworth, Senior Lecturer in International Law, Auckland University Law School;
- Air Commodore Simon Harvey, Director-General, The Defence Legal Service, Australian Department of Defence;
- Hon Justice Peter Heerey, President, Defence Force Discipline Appeals Tribunal, Federal Court of Australia;
- Mr Mark Fitzpatrick, National Practice Manager, Office of the Director General, Australian Defence Legal Service;
- Professor Stuart Kaye, Dean, University of Wollongong Law School;
- Mr Christos Moraitis, First Assistant Secretary, International Organisations and Legal Division, Department of Foreign Affairs and Trade;
- Hon Justice Major General Len Roberts-Smith, Judge Advocate General, Australian Defence Legal Service;
- Professor Cheryl Saunders AO, Associate Dean (Graduate), Melbourne University Law School;
- Professor Ivan Shearer AM, Challis Professor of International Law, Sydney University Law School;
- Rt Hon Sir Ninian Stephen KG AK GCMG GCVO KBE (Patron);
- Colonel Ian Westwood, Chief Judge Advocate, Australian Defence Legal Service;
- Ms Robin Warner, First Assistant Secretary, International Branch of the Criminal Justice Division, Commonwealth Attorney-General's Department.

Note: APCML Military and University academic staff are also members of the Advisory Board.

COURSES

Overview

It is intended that the APCML will develop a suite of four core operations law courses, generally to be conducted annually. The courses are as follows:

- **Command and Staff Operations Law Course.** This two week course was previously designated as the Operations Law Course for Commanders and Planning Staff. It is designed principally for commanders and operations staff officers but with a number of legal officers attending. The concept for this course is that half the participants will be officers in the Australian Defence Force and half officers from regional armed forces.
- **Civil Military Cooperation Course (CIMIC) for Planners and Field Personnel.** This is a five day course that is aimed at military operational planning staff, specialist CIMIC staff, information officers, military police, medical services, logistics planners and engineers. It is also equally aimed at non-government organisation personnel, UN agency personnel, civilian police, emergency services and civil defence personnel, political officers of Foreign Ministries and International Policy personnel within Defence Departments.
- **Operations Law Course for Legal Advisers.** This one week course is aimed at military or civilian legal advisers who provide support to government or defence organisations in relation to legal matters that impact on the conduct of operations.
- **Law of Peace Operations Course.** This five day course examines legal issues relevant to the creation and management of peace operations. The course focuses on legal issues relevant to the planning and conduct of military and civilian police on peace operations. Participants also have the opportunity to explore the role and conduct of international and non-government organisations during peace operations.

The courses conducted by the APCML in the reporting period are described below:

20-31 October 2003

Command and Staff Operations Law Course

The Command and Staff Operations Law Course was conducted at HMAS Penguin from 20-31 October 2003. The object of the course was to raise the awareness of commanders and their staff about key operations law issues that impact on contemporary military operations. The course was divided into three modules - Conventional Operations; Operations Other Than War, including peace operations; and Training - with specific topics within these modules including the Laws of Armed Conflict - Sources and Content; Maritime Zones and Naval Operations; Air Operations; Rules of Engagement; the International Criminal Court; Command Responsibility; Status and Protection of UN Personnel and the Status and Treatment of Detainees and Counter-Terrorist Operations.

The course involved 24 participants, including 11 regional officers, 11 ADF personnel, one defence civilian and one representative from the Department of Foreign Affairs and Trade. Special guest lecturers included APCML Director, Professor McCormack, who presented on the sources of the law of armed conflict and the International Criminal Court, and His Excellency Major General (Retd) Jioji Konousi Konrote, High Commissioner for the Republic of the Fiji Islands.



10-14 November 2003
Operations Law Course for Legal Advisers

The inaugural week-long Operations Law Course for Legal Advisers was held at HMAS Penguin from 10-14 November 2003. The course dealt not only with the Laws of Armed Conflict but also with other convention law, customary law and general principles that have a bearing on the contemporary operating environment. Issues covered during the course included the increasing impact of human rights on peace operations, the need to provide for the collapsed state environment and the common interim requirement to manage law and order, the UN system of Rules of Engagement and the UN Board of Inquiry process for UN commanded operations, the legal regimes generally applicable to the conduct of operations other than war, and some of the challenges and tensions that face a legal adviser when giving operational advice.

The course provided an unprecedented opportunity for the 30 participating legal advisers from regional armed forces to come together to share experiences, views and interpretations, with the hope that this would assist in future collaborations and facilitate coalition operations involving regional forces.

Appearing as the special guest speaker was His Excellency Major General (Retd) Janaka Perera, High Commissioner for the Democratic Socialist Republic of Sri Lanka, who made an invaluable contribution to the course.



19-23 April 2004

Civil Military Cooperation Course for Planners and Field Personnel

The objective of the Civil Military Cooperation Course for Planners and Field Personnel course, held at HMAS Penguin from 19-23 April 2004, was to equip its 23 participants with a knowledge of the planning factors that are critical to the conduct of successful CIMIC operations and to familiarise themselves with each others perspectives, operating procedures, methods, limitations and advantages in this respect.

The course was attended by a diverse range of participants, including regional officers, ADF personnel, non-government organisations representatives and an Italian military judge. Such diversity was further reflected in the selection of special guest speakers, comprising of Major General (Retd) Mike Smith, CEO Austcare, Major General (Retd) Tim Ford, International Peace and Security Consultant and Mr Michael Elmquist, Deputy to the Humanitarian Coordinator and Chief, Office for the Coordination of Humanitarian Affairs (OCHA), Indonesia. Together, speakers and participants were able to discuss the doctrinal and strategic rationale for CIMIC, placing it in the context of the contemporary operating environment and highlighting both the general principles that have emerged as relevant to the conduct of CIMIC, as well as the legal framework within which CIMIC occurs and the international law that impacts on how CIMIC is conducted.



RESEARCH PROGRAMMES

1. Participation in Major Projects

International Humanitarian Law Series – Martinus Nijhoff Publishers

Martinus Nijhoff Publishers, based in Leiden, are the publishers of the International Humanitarian Law Series – a series of authored and edited volumes dedicated to the increasingly significant subject matter of the international legal regulation of armed conflict. The series seeks to explore the substantive issues of International Humanitarian Law including, for example, the protection of victims of armed conflict, the means and methods of warfare, the implementation of International Humanitarian Law and the enforcement of this area of the law. The series also aims to raise issues of interaction between International Humanitarian Law and other related areas of the law such as Human Rights, Refugee Law, Arms Control and Disarmament and International Criminal Law. The series is the world's only dedicated academic series in the English language in this field.

Professor Tim McCormack is editor-in-chief of the series with Professor Christopher Greenwood QC, Professor of Public International Law at the London School of Economics and Political Science.

There are seven volumes in the series to date (with two additional volumes in publication):

Michael J. Kelly, *Restoring and Maintaining Order in Complex Peace Operations*;

Helen Durham and Timothy L.H. McCormack (eds), *The Changing Face of Conflict and the Efficacy of International Humanitarian Law*;

Richard May, David Tolbert, John Hocking, Ken Roberts, Bing Bing Jia, Daryl Mundis and Gabriël Oosthuizen (eds), *Essays on ICTY Procedure and Evidence in Honour of Gabrielle Kirk McDonald*;

Elizabeth Chadwick, *Traditional Neutrality Revisited: Law, Theory and Case Studies*;

Lal Chand Vorah, Fausto Pocar, Yvonne Featherstone, Olivier Fourmy, Christine Graham, John Hocking and Nicholas Robson (eds), *Man's Inhumanity to Man: Essays in Honour of Antonio Cassese*;

Gideon Boas and William A Schabas (eds), *International Criminal Law Developments in the Case Law of the ICTY*;

Karen Hulme, *Protecting the War-Torn Environment*.

Australia's Post World War II War Crimes Trials – Australian War Memorial

It is generally little known that Australian military tribunals tried more than 820 Japanese defendants for alleged war crimes and crimes against humanity in the aftermath of World War II. Professor McCormack successfully applied to the Australian Research Council for research grant funding in collaboration with the Australian War Memorial to enable a PhD student to undertake research on this important part of Australia's military and legal history. The grant involves \$85,000 over three years and Michael Carrell has been awarded the scholarship to complete his doctoral thesis on this project. Michael is based in Canberra working with the historical records of both the Australian War Memorial and the Australian Archives. Dr Peter Londey, one of the Memorial's historians, and Professor McCormack act as Michael's supervisors (see <http://www.awm.gov.au/research/mhs/carral.htm>).

Global Database of Domestic Criminal Codes – Australasian Legal Information Institute

The Asia-Pacific Centre for Military Law is a partner organisation in consortia with the Australasian Legal Information Institute (itself a collaborative initiative between the University of Technology Sydney and the University of New South Wales), Sun Australia, Australian Business OnLine, the Department of Foreign Affairs and Trade and IP Australia for a large research project entitled 'AustLII: Creating National and Regional Infrastructure for all Legal Research'. The consortia was awarded \$185,000 by the Australian Research Council to fund the project under the grant category Research Infrastructure Equipment and Facilities Scheme (RIEF).

The research project has developed an online national legal research facility under the auspices of the existing and highly successful Australasian Legal Information Institute. This particular project is intended to supplement AustLII's current database of Australian national primary legal materials and add new primary and secondary materials – particularly from Asia-Pacific regional States. The

particular aspect of the project of most direct interest to the Centre is the intended collection of criminal codes of regional States. The legal preparation for any ADF deployment overseas likely to involve a public security function always includes an analysis of local criminal law. A single electronic facility with primary legal materials of this kind will be of significant utility to the ADF.

Office of the High Commissioner for Human Rights – Training Modules

In April 2004, Bruce Oswald was appointed as a consultant for the OHCHR to develop training materials on human rights for military personnel deployed to UN peace operations. The aim of the materials is to facilitate and support the provisions of training for civilian police and military personnel on peace operations by Member States and relevant institutions.

The Challenges of Peace Operations Project

The Challenges Project was established in 1997 with an inaugural workshop hosted by the Swedish National Defence College. Since then a further 14 Challenges Seminars have been held throughout the world, hosted by various Partner Organisations. The APCML accepted the role of designated Australian partner organization to the Challenges Project at the request of the International Policy Division of the Department of Defence. It subsequently hosted the 11th Challenges Seminar entitled ‘The Rule of Law on Peace Operations’ at Melbourne University Law School in November 2002.

The Project’s primary objectives are to foster and encourage a culture of cross-professional cooperation and partnership with the aim of exploring and conveying more effective and legitimate ways of dealing with multinational and multidisciplinary peace operations.

The Project’s objectives are met through the hosting of the Challenges Seminars, the publication of individual seminar reports and the production of the Challenges Concluding Reports. The Phase I Concluding Report 2002 was presented by the Foreign Minister of Sweden, the late Anna Lindh, on behalf of all the Partners of the Project, to Secretary-General Kofi Annan at UN Headquarters, New York, on 25 April 2002. Work is currently underway on the Phase II Concluding Report 2005.

The APCML has shown an ongoing commitment to the work of the Challenges Project demonstrated by Bruce Oswald's attendance and contribution at both the 13th and 14th Challenges Seminars as well as the Partners Draft Report Session for the Challenges Project Phase II: Concluding Report 2005.

The 13th International Challenges Seminar, 'The Challenges of Change: the Nature of Peace Operations in the 21st Century and Continuing Need for Reform,' was held in Ankara, Turkey from 18-21 November 2003. Speakers drew on previous experiences including the peace operations in Sierra Leone, Kosovo, Democratic Republic of Congo, Timor Leste, Ethiopia/Eritrea, Bosnia-Herzegovina, Macedonia, Afghanistan and Iraq in order to identify how governments of UN Member States with differing resources and capabilities can best respond and support UN peace operations. During and immediately after the Seminar, Bruce attended a series of meetings where he contributed to the general discussions regarding the current and future activities of the Challenges Project.

In late February 2004, Bruce Oswald participated in a Challenges Project report development and draft session in Sandö, Sweden. Attendees commenced discussions regarding the writing of the 'Challenges Project Phase II Concluding Report 2005,' which is intended to detail a series of practical recommendations for Member States regarding the conduct of current and future peace operations.

In May 2004 Bruce Oswald attended the 14th International Challenges Seminar, 'The Regional Dimension of Peace Operations in the 21st Century: Arrangements, Relationships and the United Nations in its Responsibility for International Peace and Security' in Abuja, Nigeria. Focusing on the regional dimension of peace operations, the Seminar paid particular attention to the development of arrangements for regional capacity and their relationship to the United Nations.

The 15th Challenges Seminar, 'Cooperation and Coordination in and on Peace Operations – Challenges of UN Member States in the New Era' will be hosted by the China Institute for International Strategic Studies in Beijing during the first week of November 2004. For further information about the Challenges Project see www.peacechallenges.net.

2. Higher Degree and Research Topics

Doctor of Philosophy

- Sheree Bailey, 'Toward a Mine-Free World: Civil Society, the Media and the Campaign to Ban Landmines';
- Michael Carrel, 'Australia's Prosecution of Japanese War Crimes: Stimuli and Constraints';
- Enrico Casagrande, 'A Critical Examination of the Law of Weaponry: National Security or Dictates of Conscience';
- Jon Cina, 'Whose Accountability: Internationalising Post-Conflict Justice for Massive Human Rights Violations';
- Ben Clarke, 'Occupation, Resistance and the International Rule of Law: The Nature and Scope of Legitimate Armed Resistance to Belligerent Occupation';
- Andrew Coleman, 'The Role of the International Court of Justice in Determining Claims to Self-Determination';
- Neri Colmenares, 'The Role of the International Criminal Court in Curbing Impunity: The Case of the Philippines';
- Britt Conidi, 'Dysfunctional States, Transition Justice and the Application of International Law: An International Legal Perspective of the Transitional Justice Dilemma';
- Alison Duxbury, 'The Role of Human Rights and Democracy in Determining the Participation of States in International Organisations';
- Ian Henderson, 'Targeting During War and Peace: a Legal Analysis';
- Jessica Howard, 'To Deter and Deny: International Law and Australia's Interdiction of Asylum Seekers';
- Robert Mathews, 'The Negotiation of the Chemical Weapons Convention, and its Implications for Other Arms Control Regimes';
- Hayli Millar, 'Accountability for Gross Violations of Human Rights in the Aftermath of Armed Conflict: Domestic and/or Restorative Justice Responses';
- Bruce Oswald, 'The Application of International Law to United Nations and Regional Peace Operations';
- Nicole Schlesinger, 'An Exploration of a National System Background Influence on the Development of the Law of the International Criminal Tribunals for The Former Yugoslavia and Rwanda';

- John Tobin, 'The Torture, Detention and Punishment of Children: A Rights Based Response.'

Doctor of Juridical Science

- Andrew Macleod, 'New Asylum Laws for Australia - A Post Election Study';
- Paul Muggleton, 'The International Crime of Aggression';
- Jadranka Petrovic, 'Deliberate Destruction of Cultural Property During Armed Conflict: How Does International Law Respond? The Case of the Old Bridge of Mostar.'

3. Published Research

Books (authored and edited)

Howard, J. and Oswald, B. (eds), *The Rule of Law on Peace Operations*, Asia-Pacific Centre for Military Law: Melbourne (2003) pp 281 + xi.

Chapters in Books

Mathews, R.J., 'Reviewing the Chemical Weapons Convention: Gently does it' in Findlay, T. (ed), *Verification Yearbook 2003*, Verification Technology Centre: London (2003) 103-124;

McCormack, T.L.H., 'The Importance of Effective Enforcement of International Humanitarian Law' in Ljinzaad, L., van Sambeek, J. and Tahzib-Lie, B. (eds), *Making the Voice of Humanity Heard: Essays on Humanitarian Assistance and International Humanitarian Law in Honour of HRH Princess Margriet of The Netherlands*, Martinus Nijhoff Publishers: Leiden (2004) 319-338;

McCormack, T.L.H., 'Crimes Against Humanity' in McGoldrick, D., Rowe P. and Donnelly E. (eds), *The Permanent International Criminal Court: Legal and Policy Issues*, Hart Publishing: Oxford (2004) 179-202;

McCormack, T.L.H., 'Reply to Louise Arbour' in Saunders, C. and Le Roy, K. (eds), *The Rule of Law*, The Federation Press: Sydney (2003) 136-142;

Voon, Tania, 'Legitimacy and Lawfulness of Humanitarian Intervention' in Davis, Michael et al (eds), *International Intervention in the Post-Cold-War World: Moral Responsibility and Power Politics*, M E Sharp: New York (2004) 40-59.

Refereed Journal Articles

Coleman, A., 'The International Court of Justice and Highly Political Matters' (2003) 4 *Melbourne Journal of International Law* 29-75;

Howard, J., 'To Deter and Deny: International Law and Australia's Interdiction of Asylum Seekers' (2003) 21 (4) *Refuge* 35-50;

Mathews, R.J., 'The Second Review Conference of the 1980 Convention on Certain Conventional Weapons' (2004) 4 *Yearbook of International Humanitarian Law 2001* 406-418;

Oswald, B., 'The Rule of Law on Peace Operations: A Cornerstone of Effective Peace Operations' (2004) 8 *International Peacekeeping: The Yearbook of International Peace Operations* 291-299;

Oswald, B., 'Model Codes for Criminal Justice and Peace Operations: Some Legal Issues' (2004) 9(2) *Journal of Conflict and Security Law* 253-275.

Other Contributions to Refereed Journals

McCormack, T.L.H. reviewing Cassese A., Gaeta P. and Jones J.R.W.D. (eds), 'The Rome Statute of the International Criminal Court: A Commentary', (2003) 4 *Melbourne Journal of International Law* 341-345;

Oswald, B. reviewing Brav, L. (ed) 'The Practical Guide to Humanitarian Law by Françoise Bouchet Saulnier' (2003) 4 *Melbourne Journal of International Law* 636-640.

Other Articles

Coleman, A., 'The right to Democracy and Freedom from repression' (2003) 28 *Alternative Law Journal* 110-113;

McCormack, T.L.H., 'David Hicks: A Case of Guilt by Association', *The Age*, 12 June 2004, Insight, 9;

McCormack, T.L.H. 'Strengthening Regional Enforcement of International Criminal Law Post-September 11' (2003), *Melbourne Institute of Asian Languages and Societies Asia Policy Paper Series*, No. 2, 1-16.

Reports

McCormack, T.L.H., 'Conspiracy and Criminal Organizations in Post-World War II War Crimes Trials', Expert Opinion for Major Michael Mori, Counsel for David Hicks, 17 June 2004, 1-15;

McCormack, T.L.H., *Prosecutor v. Slobodan Milošević*, 'Amicus Curiae Submissions on Self-Defence as it Arises in the Bosnia-Herzegovina Part of the Case as Stipulated in the Order of the Chamber to the Amicus of 23 July 2003', Case No. IT-02-54-T, 01 March 2004, 1-28;

McCormack, T.L.H., *Prosecutor v. Slobodan Milošević*, 'Amicus Curiae Submissions on Self-Defence as it Arises in the Croatia Part of the Case as Stipulated in the Order of the Chamber to the Amicus of 23 July 2003', Case No. IT-02-54-T, 11 February 2004, 1-33;

McCormack, T.L.H., 'Duress as a Defence to the Perpetration of a War Crime or Crime Against Humanity', Clothier Anderson and Associates, Melbourne, February 2004, 1-15.

CONFERENCES AND OTHER ACTIVITIES

21-23 August 2003

‘Building the Peace in Peace Operations’ Conference, Perth, Australia

Bruce Oswald delivered a paper on ‘Developing Legal Mechanisms in Support of Peace Operations: Model Criminal Codes’ at the ‘Building the Peace in Peace Operations’ Australian Red Cross International Humanitarian Law Conference held in Perth on 21-23 August 2003.

1-5 October 2003

Australian Army Legal Corps Conference, Canungra, Queensland, Australia

Bruce Oswald delivered a paper on ‘The Application of the *Criminal Code Act 1995* (Cth) to the Planning and Conduct of Military Operations’ at the Australian Army Legal Corps Conference in Canungra, Queensland in October 2003.

4 December 2003

‘Human Rights in 2003: the Year in Review,’ Castan Centre for Human Rights Conference, Melbourne, Australia

Professor McCormack delivered a paper titled ‘Some Bright Moments in a Frustrating Year: Developments in International Criminal Law’ at the ‘Human Rights in 2003: the Year in Review,’ Castan Centre for Human Rights Conference, held in Melbourne on 4 December 2003.

11-12 December 2003

International Committee of the Red Cross: Expert Meeting on Multinational Peace Operations, Geneva, Switzerland

In December 2003 Bruce Oswald was invited to Geneva by the ICRC to attend the Expert Meeting on Multinational Peace Operations. At the meeting he presented a paper titled, ‘The Application of the Law of Occupation to UN Mandated Military Operations: Some Practical Considerations.’ The meeting, which addressed the application of international humanitarian law and international human rights law to

UN mandated forces, resulted in the formation of a number of concrete proposals.

19-21 February 2004

Model Codes for Post Conflict Justice: Expert Meeting, Galway, Ireland

Bruce Oswald was invited to join a small and select expert group at an Expert Meeting in February 2004, organized by the United States Institute of Peace and the Irish Centre for Human Rights, in cooperation with the UN Office of the High Commissioner for Human Rights (OHCHR). The aim of the meeting was to bring the work on the model Transitional Criminal Code and Transitional Criminal Procedure Code to a close. These codes form part of a package of codes that provide an interim criminal law framework that can be adapted for post-conflict situations where there are substantial obstacles to identifying an appropriate or acceptable applicable law.

The expert group comprised of prominent academics, judges, lawyers, police and military experts. All were chosen because of their extensive practical experience in peacekeeping missions and academic expertise in the area of international law.

23-25 February 2004

Model Codes for Post Conflict Justice: Police Expert Meeting, Galway, Ireland

In February 2004, Bruce Oswald attended the Police Expert Meeting on the Model Codes for Post Conflict Justice held in Galway, Ireland. The purpose of the meeting was to gather the world's leading experts in the field of policing in a post conflict situation to discuss the development of a series of practical tools that would assist in peacekeeping missions. This meeting led to the drafting of the Transitional Law Enforcement Powers Act, and an agreement to work to draft a law enforcement procedure field manual.

2 April 2004

Round Table Meeting of Australian Experts, Melbourne, Australia

On 2 April 2004, the APCML and Institute for Comparative and International Law hosted a round table meeting of Australian experts to

further examine and develop the application of the Model Codes for Post Conflict Justice, in particular from an Asia-Pacific regional perspective. The discussion resulted in a number of valuable recommendations being made, in particular raising issues of cultural relativity as an area requiring further exploration when discussing the application of the Transitional Codes.

3-7 May 2004

Training for African Military Personnel in Conflict Prevention, Human Rights and Peacekeeping, Turin, Italy

In May 2004, Bruce Oswald, in his capacity as an OHCHR Consultant, lectured on the application of human rights to the planning and conduct of peace operations as part of the three-week course in 'Training for African Military Personnel in Conflict Prevention, Human Rights and Peacekeeping,' held in Turin, Italy. The course is run by the United Nations System Staff College, in cooperation with the OHCHR, and is entirely funded by the Italian Ministry of Foreign Affairs

7-8 June 2004

Transitional Codes for Post Conflict Justice, Nigeria

In June 2004, as part of an ongoing association with the United States Institute for Peace and the Irish Centre for Human Rights, Bruce Oswald attended the African round-table discussions on the Transitional Codes for Post Conflict Justice.

9-11 June 2004

UNHCR Expert Roundtable Meeting on Maintaining the Civilian and Humanitarian Character of Asylum, Geneva, Switzerland

Bruce Oswald was invited to attend a UNHCR expert roundtable meeting on 'Maintaining the Civilian and Humanitarian Character of Asylum' in Geneva, Switzerland, 9-11 June 2004. The principle objective of the meeting was to contribute to the operationalisation of Excom Conclusion 94 (2002) by examining the legal framework and possible measures for the disarmament of armed elements and the identification, separation and internment of combatants, including the clarification of relevant procedures and standards.

18-20 June 2004**‘International Law and Security in the Post-Iraq Era: Where to for International Law?’ Australian and New Zealand Society of International Law Annual Conference, Canberra, Australia**

Professor McCormack presented a paper titled ‘International Law Aspects of the Trial of Slobodan Milošević’ at the Australian and New Zealand Society of International Law (ANZSIL) annual conference held at the Australian National University, Canberra, Australia, from 18-20 June 2004.

Other Lecture and Presentation Support

Throughout the reporting period individual members and visitors to the APCML have contributed to courses and seminars on a wide variety of subject areas:

Bruce Oswald regularly lectures on the Civilian Police Peace Operations Pre-deployment Training Program (CPOPTP) teaching Australian police about the application of Australian municipal law to Australian Federal Police who are serving on peace operations; the application of international law to peace operations; and the best legal practice standards which need to be applied to civilian policing during peace operations.

Professor McCormack has given numerous public presentations and guest lectures throughout the year. He has spoken on a range of issues covering the effective enforcement of international humanitarian law, the Australian Red Cross, poverty and armed conflict, the Slobodan Milošević trial, international criminal law and the David Hicks trial at various Australian Red Cross events as well as events for the Poverty Coalition, Tasmania, the Australian Institute of International Affairs, Tasmania and the International Centre for Criminal Law Reform and Criminal Justice Policy at the University of British Columbia, Vancouver.

MILITARY DEPLOYMENTS: APCML STAFF IN IRAQ

Two members of the APCML management staff were deployed to Iraq during the reporting period as part of the Coalition Provisional Authority (CPA).

Colonel Kelly was deployed to Iraq and worked within the Office of General Counsel of the CPA from May to November 2003. Colonel Kelly returned to Iraq in March to June 2004. Lieutenant Colonel Paul Muggleton, an APCML Associate Director, was deployed to Iraq from November 2003 to February 2004 and also worked within the CPA Office of General Counsel.

Initiatives drafted, suggested or contributed to by the Australian legal officers within the CPA included the following:

- The amendment of the Iraqi Criminal Code to eliminate provisions offensive to human rights.
- The creation of the Central Criminal Court of Iraq to enable the efficient handling of major cases in the disrupted circumstances that applied in 2003. Laws were also developed for the vetting of all Iraqi judicial and prosecutorial personnel including the terms of reference for the Judicial Review Committee that the law established.
- The liberalization of the law governing the media resulting in the large proliferation of a free press in Iraq for the first time in its history, subject only to reasonable restrictions to prevent the incitement of violence, racial and ethnic hatred.
- The creation of a law guaranteeing the freedom of assembly for the first time in the history of Iraq removing draconian provisions of the Penal Code and introducing limited safety management.
- The proposal and creation of an Iraqi Prisons Ombudsman to provide an independent Iraqi complaint mechanism that would be capable of receiving complaints against both Iraqi prison authorities and multinational force detention authorities.
- The creation of a Joint Detainee Committee (JDC) to provide a mechanism for the involvement of the Iraqi Government in detention operations policy and framework decision making, including the Minister for Human Rights.
- The Statute for the Iraqi Special Tribunal and its procedures for the trial of former regime figures in accordance with internationally acceptable standards.

- The development of the Electoral and Political Parties law, critical to ensuring free and fair elections and promoting a democratic future for Iraq.
- The law decentralising government in Iraq to help insulate Iraq from the abuses that occurred under the Saddam regime for the future.

The Australian legal officers also had a central role in the Coalition's maritime anti-oil smuggling operations and in providing support to the ongoing activities of the Central Criminal Court of Iraq.

VISITORS TO THE CENTRE

SIR NINIAN STEPHEN VISITING SCHOLAR

In 2003 the Asia-Pacific Centre for Military Law inaugurated a program for visiting scholars in honour of the Foundation Patron of the Centre, Rt Hon Sir Ninian Stephen KG AK GCMG GCVO KBE. The purpose of the program is to bring a leading scholar in the field of Military Law to the Centre every year. It is expected that the Sir Ninian Stephen Visiting Scholar will be involved in a number of Centre activities including the delivery of a public lecture in Military Law, the delivery of guest presentations at Centre training courses, teach in the graduate coursework program at the Melbourne University Law School and be available for interaction with the Centre's staff and research higher degree students.

The Sir Ninian Stephen Visiting Scholar for 2004 was Dr Gerry Simpson, Reader in Law at the London School of Economics and Political Science. Dr Simpson has an impressive breadth of expertise in International Law including in the fields of international legal theory, the right to self-determination and, more particularly for the purposes of the Asia-Pacific Centre, in International Law and the Use of Force, International Humanitarian Law and International Criminal Law. Dr Simpson teaches in a range of subjects in the graduate program in international law at the London School of Economics and has published widely across his fields of expertise.



Dr Simpson spent six months on study leave at the Melbourne University Law School and taught both International Criminal Law and Principles of International Law in the graduate program. Dr Simpson also delivered the 19th Solferino Lecture – a free public lecture jointly organised by the Victorian Division of Australian Red Cross and the Asia-Pacific Centre for Military Law – at the Melbourne University Law School and attended by more than 250 people. In a powerful address Dr Simpson argued that international law played an unprecedented role in the debate concerning the war and that the illegality of the war will continue to create political problems for governments in Australia, the UK and the US in the months ahead. The recent controversy surrounding the systematic abuse of Iraqi prisoners by coalition forces constituting glaring violations of International

Humanitarian Law is symptomatic of the challenges facing coalition partners.

Dr Simpson was one of the drafters and signatories of a letter sent to Prime Minister Tony Blair in March 2003 characterising the planned intervention in Iraq as illegal. This letter, and its appearance on the front page of The Guardian, precipitated a media storm around the question of legality culminating in the resignation from the Government of the former Foreign Secretary, Robin Cook. The debate continues to rage in the UK with recent revelations that Admiral Boyce, the Chief of the UK Military, insisted that the Attorney-General supply him with a legal justification for the war three days before ground troops entered Iraq. The Gun Case (the attempted prosecution of a GCHQ Whistleblower) and the Hutton Inquiry have both raised these issues again.

Dr Simpson met with several of the research higher degree students at the Centre and with staff of the Centre at the University node. His visit was a great success and we look forward to ongoing collaboration with him in the future.

MS VIVIENNE O'CONNOR

From 7 March to 7 April 2004, Ms Vivienne O'Connor was a visiting academic to the APCML. Ms O'Connor is a research fellow of the United States Institute of Peace and the Irish Centre for Human Rights, based at the Irish Centre for Human Rights, National University of Ireland Galway, where she coordinates the 'Model Codes for Post Conflict Justice Project' in conjunction the United States Institute of Peace. She is also in the process of completing a PhD on the subject of the rule of law in a post conflict situation, with a specific focus on the potential use of model codes in such a context, and is an adjunct lecturer for the Medical Faculty and Nursing Faculty of the National University of Ireland Galway, where she lectures on international human rights law. Whilst at the APMCL, Ms O'Connor lead a Roundtable Seminar on the Model Codes for Post Conflict Justice Project, which received a very positive response from attendees, including the Centre's Patron Rt Hon Sir Ninian Stephen, members of the faculty teaching staff, Research Higher Degree students and representatives of government and non-government organisations.

GUEST SPEAKERS

18 February 2004

Dr Kerry M. Kartchner

Dr Kerry M. Kartchner is the Senior Advisor for Missile Defence Policy in the Bureau of Arms Control, US Department of State. He gave a presentation titled 'Missile Defence and the Bush Administration's Approach to WMD.' Dr Kartchner also serves as a senior advisor to Bureau and Department leadership on deterrence, weapons of mass destruction, and strategic arms control more broadly and in the past has developed and taught courses on nuclear strategy and targeting, arms control, international relations, US-Soviet relations, and NATO security. Dr Kartchner is a frequent speaker on topics related to arms control, US foreign policy and ballistic missile defence.

27 August 2003

Mr Mark Minenko

Mr Mark Minenko is currently a Master of Laws candidate at the University of Alberta and a member of the Canadian Forces Medical Services (Reserves). He presented a lunchtime seminar titled 'Commercial Contractors on the Battlefield: Legal Aspects.' Mr Minenko's thesis topic is on the setting aside of state sovereignty for the purposes of humanitarian intervention undertaken by the United Nations relying upon private military companies to provide peacemaking and security functions. Mr Minenko is a former member and Deputy Speaker of the Legislative Assembly in Manitoba, Canada and has been a Special Assistant to the Minister of Justice and the Attorney General in Canada. He writes and lectures on matters relating to international humanitarian law, military ethics and peace operations.

