

ANNUAL REPORT: JULY 2005 – JUNE 2006

ASIA PACIFIC CENTRE FOR MILITARY LAW

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



This report was prepared by Cathy Hutton and Sarah Finnin

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MESSAGE FROM THE PATRON

THE RT HON SIR NINIAN STEPHEN KG AK GCMG GCVO KBE



Photo David Blumenthal

I am delighted to report that the Asia Pacific Centre for Military Law has continued to grow from strength to strength in its fifth year of operation. The range and diversity of activities by the Centre and its members outlined in this Report is outstanding. I commend the role that Centre Director Professor Tim McCormack has played in developing an increasingly significant public profile for the Centre.

I will mention here just one of Tim's achievements in the last year. Since 2003 he has been assisting Major Michael Mori, the US military lawyer assigned to defend Australian Guantánamo Bay detainee David Hicks, with advice on the international humanitarian law and international criminal law aspects of the charges against David Hicks. This work was recognised by the Law Institute of Victoria as an outstanding contribution made within the legal profession and beyond with the award to Tim of the 2005 Law Institute of Victoria President's Pro Bono Award.

Two highlights of the past year for me were the visit of Professor Hilary Charlesworth to the Centre as the 2005 Sir Ninian Stephen Visiting Scholar and the conference held in November 2005 to commemorate the 60th Anniversary of the Nuremberg War Crimes Trial.

My connection with Hilary goes back over twenty years – in 1980-81 she was my Associate during my time as Justice of the High Court of Australia. In her introductory remarks to the Lecture she gave during her visit at the Law School in September 2005 (details on page 8) she generously acknowledged the part I played in starting her off on what has been a most remarkable career. Hilary's reputation as one of the world's leading experts in international law and human rights law is matched only by her graciousness and loyalty to her colleagues, among whom I am proud to include myself.

I was delighted to be invited to open the Centre's conference entitled 'Nuremberg and Transitional Justice: Civilising Influence or Institutionalised Vengeance?' on 19 November 2005 (details on page 23). I am not sure how much the fact that I must be one of the few remaining venerables who can actually remember those momentous days influenced Tim's decision to invite me to participate, but it was for me a most rewarding experience. I was particularly impressed to see so many young students attending the conference, an indication that the work of people like Tim McCormack and Hilary Charlesworth will be carried on well into the future.

This latest Annual Report bears testimony to the extensive and wide-reaching activities being undertaken by Tim's talented and committed team of staff and students at the Melbourne Law School and at the Randwick Barracks in Sydney. I commend them also for their essential contribution to the Centre's success over the past year.

A handwritten signature in black ink that reads "Ninian Stephen". The signature is written in a cursive, slightly slanted style.

Sir Ninian Stephen

DIRECTOR'S REPORT

PROFESSOR TIM MCCORMACK



Photo David Blumenthal

The Asia Pacific Centre for Military Law has now been in operation for five years and it is with a deep sense of satisfaction that I mark the milestone with some reflections on the highlights of our fifth year.

While we are still waiting to receive the formal response from the Department of Defence to the recommendations of the External Review Panel presented to the Minister, the Secretary and the Chief of the Defence Force in Canberra on 1 December 2004, this delay in the finalising of the Defence position on the future of the APCML has not prevented us from extensively developing our program of activities.

The outstanding highlight of our fifth year of operation was the demonstration of our capacity to carry out our work in multiple physical locations simultaneously. The week commencing 6 March 2006 is indicative of what I mean. In that week Dr Bob Mathews, LTCOL Geoff Cameron, Ms Treasa Dunworth (Advisory Board) and Ms Sarah Finnin (Research Fellow) were all in Bali working with Indonesian Foreign Ministry officials to run the highly successful second regional workshop on national implementation of the Biological Weapons Convention (following on from the first regional workshop held at the Melbourne Law School in February 2005). During the same week I travelled with Ms Paramdeep Mtharu (Research Assistant) to the UN in Geneva to present our Report entitled 'International Humanitarian Law and Explosive Remnants of War' to the discussions of the Group of Governmental Experts on Explosive Remnants of War to the 1980 Certain Conventional Weapons Convention. Also in that same week Mr Bruce 'Ossie' Oswald was visiting the Indian Army Peacekeeping Institute in New Delhi to discuss the proposed joint Law of Peace Operations Course between the Institute and the APCML, scheduled for February 2007 in India. These concurrent activities represent both our increased capacity as well as our increased international profile. Five years ago I would have struggled to imagine we could be operating in such a way. Five years from now I hope it will seem quaint to have identified this capacity as exceptional.

Once again I must pay tribute to the dedication and commitment of my colleagues, without whom the Centre would not have achieved this success. Firstly I wish to record my sincere thanks to the Deputy Director, LTCOL Geoff Cameron with whom it has been my pleasure to work over the past year. I also wish to record my thanks to Associate Directors Bruce 'Ossie' Oswald CSC and LTCOL Paul Muggleton, both of whom have worked tirelessly to advance our work. 'Ossie', among many other projects, coordinated a program of lunchtime seminars which will continue throughout the coming year and Paul coordinated the two APCML courses held during the period covered by this report (details on page 12). Ms Cathy Hutton, the Centre's Administrator, continued to play a crucial role in coordinating all the many activities undertaken by the Centre in the past year.

In this fifth year of operation we have welcomed several new academic staff to the Centre. Dr David Blumenthal, a lecturer in the Melbourne Law School since 2004, joined the staff of the Centre in July 2005. In addition to his academic contributions, he has also taken on the role of APCML photographer at our events and most of the photographs in this Report are his work. In February 2006, former APCML Senior Research Fellows Dr Andrew Mitchell and Dr Tania Voon joined the Faculty as Senior Lecturers in Law. We are pleased to welcome them on to the academic staff of the APCML. Dr Helen Durham joined the Centre in February 2006 as a Senior Research Fellow. She brings a wealth of experience in

international humanitarian law to the Centre, having previously worked for many years for the Australian Red Cross and, more recently, for the International Committee of the Red Cross. Helen will be helping us to manage major research projects and our strategic relationships with other organisations.

These additional outstanding people have joined an existing group of bright, enthusiastic and productive colleagues continuing to do great work all over the world. For example, Alison Duxbury returned to the Lauterpacht Centre for International Law at Cambridge University for another five-month stint as Visiting Fellow. Andrew Mitchell and Tania Voon were both named by the University of Western Ontario's Student Legal Society as Adjunct Professors of the Year. Britt Conidi, one of our PhD students, participated in a research exchange at the Human Rights Center, University of California — Berkeley for four months early in 2006. Sarah Finnin, Research Fellow and PhD student, enjoyed a second three-month internship in Washington DC continuing her work with Major Michael Mori on the proposed trial of David Hicks by US Military Commission. Carrie McDougall, another of our PhD students, travelled to Princeton University with the Australian Government Delegation for ongoing discussions on a definition for the international crime of aggression to be included in the Rome Statute for the International Criminal Court.

These are all exciting developments that help affirm our original decision to establish the Centre and justify the efforts we have expended to develop our program of activities. I sincerely hope that in this next year of our existence we will be able to consolidate the collaboration between the Department of Defence and the Melbourne Law School by formalising the arrangements for the future operation of the Centre. I certainly look forward to reporting on such developments twelve months from now.



Timothy L.H. McCormack

Australian Red Cross Professor of International Humanitarian Law
Director, Asia Pacific Centre for Military Law
The University of Melbourne



Photo David Blumenthal

L to R: COL Mike Kelly, Alison Duxbury, Cathy Hutton, Jessica Howard (back), Lady Stephen, Sir Ninian Stephen, Britt Conidi, Carrie McDougall, Professor Tim McCormack, Sarah Finnin

CHARTER

The Charter of the APCML was drawn up in 2001 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 Centre aims to promote greater understanding of and increased respect for the Rule of Law in all aspects of military affairs both within the Australian Defence Force and amongst militaries in the Asia Pacific Region. To this end we:

- Prepare and deliver training programs
- Organise conferences, workshops, seminars and other activities
- Promote academic research into key issues, including international humanitarian law, the law of peace operations, international criminal law, and arms control and disarmament
- Produce legal publications and materials
- Centralise the accumulation and processing of legal lessons learned
- Undertake and support initiatives to promote and improve the flow of information to legal officers
- Participate in military exercise design and development
- Develop relevant relationships within the Asia Pacific Region
- Develop contacts and mutual exchanges with other academic/military centres and with leading subject matter experts, and
- Provide support for deployments, particularly for peace operations.



Photo Ian Martin

**Participants at the Command and Staff Operations
Law Course, 10-21 October 2005**

PARTNERS

The APCML is a collaborative initiative of Defence Legal in the Department of Defence, and the Melbourne University Law School.

Defence Legal

Defence Legal is an integrated organisation that includes 120 permanent and 320 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. Defence Legal 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 University of Melbourne

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.

LOCATIONS & FUNCTIONS

The APCML operates from a military and a university node, in the cities of Sydney and Melbourne respectively. The military node is currently located at Randwick Barracks in Sydney. The military node comprises military and civilian staff of the Australian Defence Force's (ADF) Legal Services comprising the Deputy Director Lieutenant Colonel Geoff Cameron CSC and civilian administrative staff. The military node is co-located with and shares staff with the ADF Military Law Centre which has the primary responsibility for the provision of legal training to ADF legal officers, and increasingly to the wider ADF organisation. The military node of the APCML provides the crucial linkage between the military forces of the Asia Pacific region and the academic and humanitarian communities. It has the responsibility for the coordination, formulation and delivery of the APCML's core suite of courses, as well as involvement in the creation of legal lessons learnt doctrine produced by post military operation conferences and seminars. Additionally, the APCML's military staff regularly provide lecturing and doctrine development support to Military and Non-Government Organisations and international organisations that may be involved in contemporary military operations.

The university node is located within the Melbourne University Law School, an international standard modern building with state of the art technology, outstanding research facilities and purpose-built teaching spaces. The Law School is Australia's oldest Law School with law first taught at the University of Melbourne in 1857. The APCML supports the interests of academic staff, visiting fellows and Research Higher Degree students by organising activities such as conferences, workshops, lectures and seminars relating to international, humanitarian and military law. In addition to their teaching in undergraduate and postgraduate programs, staff of the Centre are publicly engaged with the wider community by speaking at public forums, taking part in radio and television debates and writing opinion pieces for newspapers and journals.

STRUCTURE, MANAGEMENT & MEMBERS

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 the Foundation Patron of the Centre.

MANAGEMENT STAFF

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.

Director

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

Deputy Director

Lieutenant Colonel Geoff Cameron CSC, Director, Military Law Centre, Defence Legal, Department of Defence

Associate Directors

Lieutenant Colonel Paul Muggleton, Defence Legal, Department of Defence

Mr Bruce Oswald CSC, Lecturer in Law, Melbourne Law School

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, Australian Defence Force Legal Service; Head, Defence Legal; Dean, Melbourne University Law School; and the Dean's nominee.

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.

Advisory Board Members

Management Staff and Academic Staff of the Centre

Professor Michael Crommelin, Dean, Melbourne Law School

Mr Mark Cunliffe, Head, Defence Legal, Department of Defence

Ms Treasa Dunworth, Senior Lecturer in International Law, Faculty of Law, The University of Auckland

Air Commodore Simon Harvey RAAF, Director-General, Australian Defence Force Legal Service, Department of Defence

Hon Justice Peter Heerey, President, Defence Force Discipline Appeals Tribunal, Federal Court of Australia

Professor Stuart Kaye, Dean, Faculty of Law, University of Wollongong

Colonel Mike Kelly AM, Director, United Nations & Peace Operations, International Policy Division, Department of Defence

Mr Christos Moraitis, First Assistant Secretary, International Organisations and Legal Division, Department of Foreign Affairs and Trade

Hon Justice MAJGEN Len Roberts-Smith, Judge Advocate General, Australian Defence Force

Professor Cheryl Saunders AO, Associate Dean (Graduate), Melbourne Law School

Professor Ivan Shearer AM, Sydney University Law School

Rt Hon Sir Ninian Stephen KG AK GCMG GCVO KBE (Patron)

Ms Robin Warner, Assistant Secretary, International Branch of the Criminal Justice Division, Commonwealth Attorney-General's Department

Brigadier Ian Westwood, Chief Judge Advocate, Australian Defence Force

PROFESSORIAL FELLOWS

The Rt Hon Malcolm Fraser AC CH, former Prime Minister of Australia

Brigadier Ian Westwood, Chief Judge Advocate, Australian Defence Force

ACADEMIC STAFF

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

Dr David Blumenthal, Lecturer in Law

Dr Helen Durham, Senior Research Fellow (from February 2006)

Ms Alison Duxbury, Senior Lecturer in Law

Ms Jessica Howard, Lecturer in Law

Associate Professor Bob Mathews OAM, Principal Research Fellow

Dr Andrew Mitchell, Senior Lecturer in Law (from January 2006)

Mr John Tobin, Senior Lecturer in Law (from September 2005)

Dr Tania Voon, Senior Lecturer in Law (from January 2006)

ADMINISTRATIVE STAFF

University Node

Ms Cathy Hutton (Centre Administrator)

Military Node

Mr Ian Martin (Executive Officer)

Ms Michelle Garreffa (Administrative Support)

Mr Ian McGowan (Web Consultant)

SIR NINIAN STEPHEN VISITING SCHOLAR 2005

PROFESSOR HILARY CHARLESWORTH

11-15 July and 27-30 September.

Australian Research Council Federation Fellow; Director of the Centre for International Governance & Justice, RegNet, Research School of Social Sciences, The Australian National University; and Professor of International Law & Human Rights in the Faculty of Law, The Australian National University.



Photo David Blumenthal



Photo David Blumenthal

The Centre was honoured to have Professor Hilary Charlesworth as its Sir Ninian Stephen Visiting Scholar in 2005 for two visits. Professor Charlesworth is one of the world's leading experts in international law and human rights law.

Her areas of interest include the structure of the international human rights system, the protection of human rights in Australia, the impact of international law on Australian law and the role of women in international dispute resolution.

Picking up the Pieces: Building Democracy in Post-Conflict Societies

28 September 2005

Professor Charlesworth presented a public lecture during her second visit to the Centre.

Her lecture considered the promise and pitfalls of international frameworks in building democracy, paying special attention to the situation in Iraq.

The text of the lecture is available on the Centre's website at:

http://www.apcml.org/documents/picking_up_the_pieces.pdf



Photo David Blumenthal

L to R: Professor Tim McCormack, Professor Hilary Charlesworth, Sir Ninian Stephen, Professor Jenny Morgan

VISITORS

Professor Ove Bring, Professor of International Law, Swedish National Defence College

Dr Marie Jacobsson, Principal Legal Adviser, Swedish Foreign Ministry

6 - 23 December 2005

Dr Ola Engdahl, post-doctoral research fellow, Swedish National Defence College

8-15 December 2005

During their visit, Professor Bring and Dr Engdahl met with Australian government officials for discussions on the Law of Peace Operations and, in particular, on legal lessons learned from military operations in the Asia Pacific region.

Dr Jacobsson, the Nordic candidate for election to the International Law Commission in 2006, met with international law colleagues – academics and government practitioners – for discussions on regional approaches to international law issues.



L to R: Professor Tim McCormack, Dr Marie Jacobsson, Professor Ove Bring

Justice Tony North, Judge of the Federal Court of Australia

11 July 2005

Justice North met with APCML staff to discuss a proposal for an international appellate tribunal to review national decisions on refugee status applications.

MAJGEN T. J. Romig, Judge Advocate General, US Army

3 August 2005

APCML Deputy Director LTCOL Geoff Cameron hosted the visit by the US Army's Judge Advocate General, Major General T. J. Romig to the APCML and Military Law Centre at Randwick Barracks on 3 August. MAJGEN Romig was visiting Australia to conduct meetings with senior Defence personnel with a view to promoting the continuation of the Centre for Lessons and Military Operations (CLAMO) officer exchange program between the US and Australia.



Photo Ian Martin

L to R:
MAJ Grant Davies (UK)
COL Gary Hevey (Dir Military Prosecutions)
COL John Ley Jr (US Judge Advocate)
MAJGEN Romig (TJAG)
AIRCDRE Simon Harvey (Dir Gen ADF Legal Services)
LTCOL Geoff Cameron (Dep Dir APCML & Dir Military Law Centre)
MAJ Steve King (Dep Dir Military Law Centre)

LTCOL Siva Methyl, Centre for UN Peacekeeping, New Delhi

9 December 2005

LTCOL Methyl met with APCML Director Professor Tim McCormack and Deputy Director LTCOL Geoff Cameron to discuss proposed joint Law of Peace Operations courses.

Major Michael Mori, US military lawyer representing David Hicks

4-7 April 2006

Major Mori visited the Centre for further discussions with Professor Tim McCormack and Sarah Finnin before delivering the 2006 Alumni Lecture: ‘Why David Hicks will not receive a fair trial come his day in court’, on 6 April.



Photo David Blumenthal



Above:
Law@melbourne
Issue 13, July 2006

Left: Major Mori
accepting a thank you
gift from Professor
Tim McCormack

Senator Robert Hill

10 April 2006

Australia’s newly appointed Ambassador to the UN, Robert Hill met with Professor Tim McCormack for discussions on providing research support.

Ralph Zacklin, former Assistant Secretary-General for Legal Affairs at the UN 1998-2005

25 April – 2 May 2006

Mr Zacklin met with APCML staff to discuss his work in recent years at the UN, including in the Office of the High Commissioner for Human Rights in Geneva.

TEACHING IN THE MELBOURNE LAW SCHOOL

The following Melbourne University Law School courses were taught by APCML members in the period covered by this Report.

UNDERGRADUATE COURSES

Administrative Law

Dr Andrew Mitchell

Children's Rights and the Law

John Tobin

Criminal Law and Procedure

Dr David Blumenthal

Bruce Oswald

Corporate Criminal Law and Regulation

Dr David Blumenthal

Dispute Resolution

Dr Tania Voon

International Dispute Settlement

Bruce Oswald

International Humanitarian Law

Alison Duxbury

International Law

John Tobin

Legal Method and Reasoning

Carrie McDougall

Obligations

Dr Andrew Mitchell

Principles of Public Law

Jessica Howard

Dr Tania Voon

Public Interest Lawyering

John Tobin

Torts

Carrie McDougall

GRADUATE COURSES

Arms Control and Disarmament

Dr Bob Mathews

Professor Tim McCormack

International Institutions

Alison Duxbury

International Criminal Law

Dr Helen Durham

Professor Tim McCormack

Principles of International Law

Dr Helen Durham

Professor Tim McCormack

International Humanitarian Law

Professor Tim McCormack

Bruce Oswald

International Trade Remedies in the World Trade Organisation

Dr Andrew Mitchell

Dr Tania Voon

International Legal Internship

Bruce Oswald

John Tobin

International Peace and Security Law

Bruce Oswald

Ralph Zacklin

International Law and Children's Rights

John Tobin

Human Rights Litigation and Advocacy

John Tobin

International Human Rights Law

John Tobin

COURSES

OVERVIEW

The APCML has developed 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 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 equally aimed at non-government organisation personnel, UN agency personnel, civilian police, emergency services, 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:

COMMAND AND STAFF OPERATIONS LAW COURSE, 10-21 OCTOBER 2005

The course was officially opened by BRIG Brian Dawson, AM CSC, Chief of Staff, Land Headquarters on Monday 10 October and continued over two weeks finishing on Friday 21 October. The course panel consisted of eight ADF officers and thirteen officers from regional military forces including Iraq, Vietnam, Cambodia, China, Malaysia, Indonesia, Philippines, Singapore, Fiji, Tonga and New Zealand.

The objective of the two-week course was to raise the awareness of commanders and their planning staff about key operations law issues that impact on contemporary military operations. A secondary aim was to provide a forum in which military officers would have the opportunity to engage with their counterparts and coalition partners from the region.

The diversity and experience of both presenters and students was a key feature of the course. Presenters on the course included: MAJGEN (retd) Jioji Konrote (Fiji High Commissioner); Prof Tim McCormack (Dir APCML Melb Uni); Alison Duxbury (APCML Melb Uni); BRIG Kevin Riordan (NZDF Director of Legal Services); COL Quentin Flowers, AM (COL OPS, LHQ); COL Peter Jeffrey (CIMIC, DJFHQ); Dr Helen Durham (ICRC Legal Adviser); LTCOL Aziz Mohammed (Fiji, Director Army Legal Services); LTCOL Shane Amor (DSTO); and MAJ John Rawcliffe (PROF, US JAG School).

Many senior ADF Defence Legal officers also presented, including: COL Ian Andrew Dunn CSC; WGCdr Chris Hanna CSC; GPCAPT Alan Hemmingway; LCDR Cameron Moore; LEUT Tish Van Stralen (HQ JOC); FLTLT Jo Brick.



Photo Ian Martin

Iraqi Staff COL Ismael Al-Sodani presenting LTCOL Geoff Cameron and LTCOL Paul Muggleton with a unit plaque, at the Command and Staff Operations Law Course, October 2005

Exercise Directing Staff was provided by LTCOL Geoff Cameron CSC (Dep Dir APCML); MAJ George Karsai (LHQ); and SQNLDR George Kalimnios. The course manager was LTCOL Paul Muggleton whose tireless efforts in the planning and conduct of the course significantly contributed to the course's overall success.

The course proved a resounding success in achieving its objectives and the staff of the APCML sincerely appreciates the support of all ADF officers, University of Melbourne personnel, invited guests and students who contributed to this course.

CIVIL MILITARY CO-OPERATION COURSE, 3-7 APRIL 2006

The APCML conducted its fourth Civil Military Co-operation (CIMIC) course at HMAS Penguin in the period 3-7 April 2006. The course, which was formally opened by MAJGEN Ian Flawith, COMD 2 Div, brought together Australian and international participants from armed forces, Defence ministries and International and Non-Government Organisations. Australia, Fiji, Indonesia, Iraq, Malaysia, the Philippines and Thailand were represented. The attendance of two representatives from Iraq was particularly welcomed as was the attendance of the Iraqi Defence Attaché at the course closing ceremony.



Photo Ian Martin

Participants at the CIMIC Course

A significant aspect of the course, as with past courses, was the diversity and quality of the presenters, a number of whom were based overseas. These included: Mr Dennis McNamara – UN Office for the Coordination of Humanitarian Affairs; Mr Tony Craig – UN Department of Peacekeeping Operations; Mr Roland Bigler – International Committee of the Red Cross; CAPT Mirjam Grandia – NATO CIMIC School of Excellence; WGCDR Carl Nixon – NZDF; and Mr Doug Brand – Head of the EU Police Support Mission in Darfur.

The APCML CIMIC course has developed continually in the four years of its operation and has now become an internationally-recognised effective training forum.

The objective of the Course was to equip participants with knowledge of the planning factors that are critical to the conduct of successful CIMIC operations and to familiarise them with each others' perspectives, operating procedures, methods, limitations and advantages. Consequently the course program included presentations on the doctrine, policy and practice of key military and civilian organisations and agencies such as the ADF, NATO, DPKO, OCHA, UNHCR, and the ICRC. Case studies were an important part of the course program with Iraq (presented by LTCOL Roger Noble), Solomon Islands (by MAJ James Watson) and Afghanistan (by WGCDR Carl Nixon and CAPT Mirjam Grandia) being featured.

RESEARCH PROGRAMMES

CENTRE PARTICIPATION IN MAJOR IHL PROJECTS

International Humanitarian Law Series — Martinus Nijhoff Publishers

Martinus Nijhoff Publishers, based in Leiden, are the publishers of the International Humanitarian Law Series — the world's first series of authored and edited volumes in the English language dedicated to 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.

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 now fourteen volumes in the series:

- Vol 14** Laura Perna, *The Formation of the Treaty Law of Non-International Armed Conflicts* (2006)
- Vol 13** Ustinia Dolgopol and Judith Gardam (eds), *The Challenge of Conflict: International Law Responds* (2006)
- Vol 12** Pablo Antonio Fernandez-Sanchez (ed), *The New Challenge of Humanitarian Law in Armed Conflicts: In Honour of Professor Juan Antonio Carillo Salcedo* (2005)
- Vol 11** Frits Kalshoven, *Belligerent Reprisals* (2005)
- Vol 10** Hiram Abtahi and Gideon Boas (eds), *The Dynamics of International Criminal Justice: Essays in Honour of Sir Richard May* (2006)
- Vol 9** Marten Zwanenburg, *Accountability of Peace Support Operations* (2005)
- Vol 8** Helen Durham and Tracey Gurd (eds), *Listening to the Silences: Women and War* (2005)
- Vol 7** Karen Hulme, *War-Torn Environment: Interpreting the Legal Threshold* (2004)
- Vol 6** Gideon Boas and William A Schabas (eds), *International Criminal Law Developments in the Case Law of the ICTY* (2003)
- Vol 5** Lal Chand Vohrah, Fausto Pocar, Yvonne Featherstone, Olivier Fourmy, Christine Graham, John Hocking and Nicholas Robson (eds), *Man's Inhumanity to Man: Essays on International Law in Honour of Antonio Cassese* (2003)
- Vol 4** Elizabeth Chadwick, *Traditional Neutrality Revisited: Law, Theory and Case Studies* (2002)
- Vol 3** 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* (2001)
- Vol 2** Helen Durham and Timothy L H McCormack (eds), *The Changing Face of Conflict and the Efficacy of International Humanitarian Law* (1999)
- Vol 1** Michael J Kelly, *Restoring and Maintaining Order in Complex Peace Operations: the Search for a Legal Framework* (1999)

International Humanitarian Law and Explosive Remnants of War — Report to the United Nations

APCML was asked by the Coordinator of the Working Group on Explosive Remnants of War (ERW) to prepare a Report to be presented to the UN, analysing the responses to a questionnaire and recommending future action.

The questionnaire, distributed to all 90 States Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (CCW), aimed to identify the relevant International Humanitarian Law principles applicable to ERW and to establish the status of implementation of the relevant principles by the various States Parties.

The Report was written by Professor Tim McCormack, with APCML research students Sarah Finnin and Paramdeep Mtharu, and presented to the Group of Governmental Experts of the States Parties on 9 March 2006 at the United Nations in Geneva.



Support for Major Michael ‘Dan’ Mori, US military lawyer representing Australian citizen David Hicks before the US military commission at Guantánamo Bay, Cuba

Professor Tim McCormack was approached by Major Mori in 2003 for advice on the international humanitarian law and international criminal law aspects of the charges against David Hicks and has continued to work with him over the past three years. APCML research student Sarah Finnin has spent two three-month periods working with Major Mori in the US Office of Military Commissions in Washington DC.

The APCML has organised two presentations on the Hicks case at the Law Institute of Victoria, on 21 July and 12 August 2005, with Professor Tim McCormack, Lex Lasry QC and David McLeod, Australian Counsel for David Hicks, and facilitated the invitation to Major Mori to give the 2006 Alumni Lecture on 6 April 2006, which event attracted a capacity audience and generated a number of media reports.

Professor Tim McCormack was awarded the 2005 Law Institute of Victoria President’s Pro Bono Award for his work in assisting Major Mori with the Hicks case. The LIV President’s awards recognize outstanding contributions made within the legal profession and beyond.

Civilian Bombing Project

Professor Tim McCormack and Dr Helen Durham have been invited to participate in a research project entitled ‘Bombing and the Civilian: A Twentieth Century History’ organised by Professor Toshiyuki Tanaka of the Hiroshima Peace Institute. The project is a multi-disciplinary one involving historians, moral philosophers, ethicists, military strategists, sociologists and political scientists. Tim and Helen have been asked to provide a legal perspective for the project.

Helen will travel to San Francisco in December 2006 to deliver a paper on the international law relating to the bombing of civilians and civilian property and Tim and Helen will provide a joint chapter to an edited volume of essays to be published in 2007.

CENTRE PARTICIPATION IN MAJOR INTERNATIONAL PEACEKEEPING PROJECT

The Challenges of Peace Operations Project

The Challenges Project was established in 1997 with an inaugural workshop hosted by the Swedish National Defence College. 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 multi-national and multi-disciplinary peace operations. Some 230 organisations and 50 countries are participating in the project.

The Project's objectives are met through the hosting of Challenges Seminars by various Partner Organisations. The APCML accepted the role of designated Australian partner organisation 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 APCML's ongoing commitment to the work of the Challenges Project is demonstrated by Associate Director Bruce Oswald's attendance and contribution at the 13th, 14th and 15th Challenges Seminars. Bruce Oswald also attended the presentation of the multi-national report Meeting the Challenges of Peace Operations: Cooperation and Coordination to United Nations Secretary-General Kofi Annan at UN HQ New York on 19th January 2006.

The Challenges process has had a strong influence on UN reform and peace operations practice, as well as being an excellent vehicle for the interchange of information amongst subject matter experts and policy makers. Participation in the Project is one of Defence's International Engagement Policy objectives, reflecting the importance attached to it by the Australian government.

CENTRE PARTICIPATION IN MAJOR NATIONAL SECURITY PROJECT

National Implementation of the Biological Weapons Convention (BWC)

The Centre has been involved in a major initiative to promote more effective national implementation of the Biological Weapons Convention (BWC) in the SE Asian region. The possibility of terrorist acquisition of biological weapons (and other weapons of mass destruction) is recognised by the Australian government as a real and alarming threat to regional security.

APCML Principal Research Fellow Dr Bob Mathews has been conducting extensive research in identifying issues for national implementation of the BWC of 1976. Dr Mathews was the Head of the Australian Delegation for the two Expert Workshops on the BWC which have been organised by APCML jointly with the Department of Defence and the Government of Indonesia, in February 2005 at the University of Melbourne and in March 2006 in Bali. The objectives of the two workshops were to promote regional awareness of and engagement in the BWC; to discuss the importance of bio-security; to examine national mechanisms for maintenance of the security and oversight of pathogenic micro-organisms and toxins; to facilitate the establishment of a forum for networking with a view to developing partnerships in enhancing bio-security and bio-safety; and to provide a forum for sharing of information. Further details of the Second Workshop appear on page 24 of this Report.

An MOU between the APCML and the Defence Science and Technology Organisation (DSTO) is currently being drafted in recognition of the ongoing value of the collaboration between the two organisations, in particular the close collaboration between Professor McCormack and Dr Mathews who is Principal Research Scientist in the Chemical, Biological, Radiological and Nuclear Centre of the DSTO. The MOU will allow Dr Mathews to work with APCML as part of his official DSTO duties.

RESEARCH HIGHER DEGREE STUDENT GRADUATIONS

Two APCML students graduated at the University of Melbourne in April 2006.

Michael Carrel, PhD

Australia's prosecution of Japanese war criminals: Stimuli and constraints

Michael's thesis examined the Australian war crimes trials programme that took place between 1945 and 1951. Part 1 considers the 'stimuli' that first impelled Australia to commence a war crimes trials programme and Part 2 considers the various 'constraints' that limited the effectiveness of that programme and eventually brought it to its end. The programme was never adequately resourced and was ultimately forced to close by the changed international order of the Cold War. His research showed that, whilst the majority of the 300 trials conducted by the Australian Army appear to have achieved just outcomes, by today's standards a different interpretation could be made.

Paul Muggleton, SJD

The International Crime of Aggression: The Supreme International Crime?

Paul's thesis proposed that in the context of the Rome Statute for the International Criminal Court (ICC) it is possible to formulate a definition for the crime of aggression that accords with customary international law and the UN Charter. After reviewing the history and content of the prohibition on the threat and use of force, the criminalization of aggression and particular issues including the ambit of self-defence, the nature of the Security Council authorization exception to the use of force prohibition and the doctrine of humanitarian intervention, a particular formulation for the crime of aggression is advocated. His study will contribute to current deliberations regarding possible modifications to the Statute of the ICC.

Two APCML Research Fellows were awarded PhDs at the University of Cambridge in 2006.

Andrew Mitchell, PhD

The Role of Principles in WTO Dispute Settlement

Andrew's thesis examined the current and future role of legal principles in disputes in the World Trade Organization (WTO). Principles have crucial functions in WTO law - they can improve decision-making and enhance coherence, and can also assist in evaluating and legitimising dispute settlement decisions. Andrew identified three types of principles that are capable of reasonably clear definition, have a recognised basis in international law, and are suitable for examination in the specific context of the WTO, namely: principles of WTO law; principles of customary international law; and general principles of law. In many cases, these types of principles can and should be used by WTO Tribunals to interpret WTO provisions.

Tania Voon, PhD

Cultural Products in the World Trade Organization

Tania undertook her thesis at Gonville & Caius College as a WM Tapp Scholar and an Honorary Cambridge Commonwealth Trust Scholar. Her thesis considered the application of WTO rules to cultural products (eg films, radio, books), which remains one of the most divisive issues among the organisation's 149 members and their citizens. She proposed reforms to improve the balance between WTO members' trade liberalisation and cultural policy objectives. Tania's preferred solution is to harmonise the WTO disciplines on trade in goods and services as applied to cultural products, recognising that some members may have genuine cultural reasons for imposing discriminatory measures in relation to such products, and minimising the trade-restrictiveness of such measures.

RESEARCH HIGHER DEGREE STUDENTS CURRENTLY ENROLLED**Doctor of Juridical Science (SJD)**

Andrew Macleod

‘The rights and obligations of arms bearers in non-security council endorsed peace operations, concentrating on the role of privatized military corporations’

Supervisor: Tim McCormack (expected completion date: May 2007)

Jadranka Petrovic

‘Deliberate Destruction of Cultural Property During Armed Conflict: How Does International Law Respond: The Case of the Old Bridge of Mostar’

Supervisor: Tim McCormack (expected completion date: June 2007)

Doctor of Philosophy (PhD)

Sheree Bailey

‘Banning Landmines: The Media, Civil Society and the Ottawa Process’

Supervisors: Tim McCormack (expected completion date: September 2006)

Gideon Boas

‘Trying Former Heads of State and Senior Officials for War Crimes: Lessons in Complex Litigation from the Milošević Trial’

Supervisors: Tim McCormack and Carolyn Evans (expected completion date: February 2008)

Ben Clarke

‘Occupation, Resistance and *Jus ad Bellum*: When is it Lawful to Forcibly Resist Foreign Occupation of a Sovereign State?’

Supervisors: Tim McCormack, Mike Kelly and Michael Gillooly (expected completion date: September 2007)

Andrew Coleman

‘The Role of the International Court of Justice and Self-Determination’

Supervisor: Tim McCormack (expected completion date: December 2006)

Neri Colmenares

‘International Jurisdiction and Amnesty’

Supervisors: Tim McCormack and Tim Lindsey (expected completion date: June 2006)

Britt Conidi

‘Imposing international criminal law and the individual victims of mass violence: help or hindrance?’

Supervisors: Tim McCormack and Jennifer Balint (expected completion date: Dec 2006)

Alison Duxbury

‘The Role of Human Rights and Democracy in Determining the Participation of States in International Organisations’

Supervisor: Tim McCormack (expected completion date: May 2007)

Sarah Finnin

‘How Prosecutors Shape International Criminal Law and Justice’

Supervisors: Tim McCormack and Helen Durham (expected completion date: May 2009)

Ian Henderson

‘Targeting During Armed Conflict: A Legal Analysis’

Supervisor: Tim McCormack (expected completion date: June 2007)

Jessica Howard

“‘To Deter and Deny’”: International Law and Australia’s Interdiction of Asylum Seekers’
Supervisor: Tim McCormack (expected completion date: July 2006)

Michelle Lesh

‘Israel’s policy of targeted killing and international humanitarian law’
Supervisors: Tim McCormack and Helen Durham (expected completion date: April 2009)

Robert Mathews

‘The Negotiation of the Chemical Weapons Convention, and its Implications for Other Arms Control Regimes’
Supervisor: Tim McCormack (expected completion date: July 2006)

Carrie McDougall

‘Prosecuting the Accumulated Evil of the Whole: Defining an “Act of Aggression” for the Purposes of the Rome Statute of the International Criminal Court’
Supervisor: Tim McCormack (expected completion date: February 2008)

Hayli Ann Millar

‘Accountability for Gross Violations of Human Rights in the Aftermath of Armed Conflict: Domestic and/or Restorative Justice Responses’
Supervisors: Tim McCormack and Helen Durham (expected completion date: March 2007)

Vasko Nastevski

‘The Enactment of War Crimes Legislation in Australia without Offending the Prohibition on Retrospective Legislation’
Supervisors: Tim McCormack and Michelle Foster (expected completion date: April 2011)

Bruce Oswald

‘The Application of International Law to United Nations and Regional Peace Operations’
Supervisors: Tim McCormack and Daniel Bethlehem (expected completion date: Oct 2007)

Nicole Schlesinger

‘An Exploration of Extra-legal Factors Influencing the Development of the Law of the International Criminal Tribunals for the Former Yugoslavia and Rwanda’
Supervisor: Tim McCormack & Timothy Marjoribanks (expected completion date: July 2006)

John Tobin

‘Dancing with Folk Devils: Adopting a Rights Based Approach to the Administration of Juvenile Justice’
Supervisors: Anne Orford and Philip Alston (expected completion date: December 2007)

Phoebe Wynn-Pope

‘What are the criteria for determining when a threat to or violation of human security should justify an external intervention’
Supervisors: Tim McCormack and Tim Lindsey (expected completion date: December 2009)

LLB (Legal Internship)

Nadia Harrison

‘Extradition of the “Bali Nine”’: Can and should the risk of capital punishment facing Australians be relevant to extradition decisions?’ An inquiry into the law governing extradition to Australia with a focus on the possibility of extraditing Australians facing the death penalty overseas.

Supervisor: Bruce Oswald, Completed: February 2006

Published: The International Journal of Punishment and Sentencing (2006) vol 1, no 4

PUBLICATIONS

CENTRE PUBLICATIONS

Robert Mathews (ed), *Proceedings of the Biological Weapons Convention Regional Workshop* (2005) (available at <http://www.law.unimelb.edu.au/events/bwc/Proceedings1.cfm>)

See Research section (page 16) for further details

Timothy L H McCormack, Paramdeep Mtharu and Sarah Finnin, *Report on States Parties' Responses to the Questionnaire: International Humanitarian Law and Explosive Remnants of War* (Report to the Group of Governmental Experts of the States Parties to the Convention on Prohibitions or Restrictions on the use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, Geneva, March 2006)

See Research section (page 15) for further details

PUBLICATIONS BY APCML MEMBERS & ASSOCIATES

Books (authored and edited)

Abtahi, H. and G. Boas (eds), *The Dynamics of International Criminal Justice: Essays in Honour of Sir Richard May*, Leiden: Martinus Nijhoff Publishers (2006)

Durham, H. and Gurd, T. (eds) 'Listening to the Silences: Women and War', Martinus Nijhoff Publishers, Leiden: Martinus Nijhoff Publishers (2006)

Chapters in Books

Boas, G., 'The Right to Self-Representation in International and Domestic Criminal Law – Limitations and Qualifications on that Right' in H. Abtahi and G. Boas (eds), *The Dynamics of International Criminal Justice: Essays in Honour of Sir Richard May*, Leiden: Martinus Nijhoff Publishers (2006), 39-94

Mathews, R.J., 'The First Review Conference of the Chemical Weapons Convention: A drafter's perspective' in Thakur, R. and Haru, E. (eds), *The Chemical Weapons Convention: Implementation, Challenges and Opportunities*, Tokyo: UN University Press (2006)

McCormack, T.L.H., 'Self-Defence in International Criminal Law' in Hiram Abtahi and Gideon Boas (eds), *The Dynamics of International Criminal Justice: Essays in Honour of Judge Sir Richard May*, Leiden: Martinus Nijhoff Publishers (2006) 231-255

McDougall, C. 'The Sexual Violence Jurisprudence of The International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda: The Silence Has Been Broken but There's Still a Lot to Shout About' in Ustina Dolgopol and Judith Gardam (eds), *The Challenge of Conflict: International Law Responds* (Leiden: Martinus Nijhoff Publishers (2006) 331-346

Mitchell, A.D., 'Due process in WTO disputes' in R Yerxa and B Wilson (eds), *Key issues in WTO dispute settlement*, Cambridge: Cambridge University Press (2005) 144-160

Muggleton, P., 'The Doctrine of Humanitarian Intervention and the NATO Airstrikes Against the Federal Republic of Yugoslavia' in Tony Coady and Michael O'Keefe (eds), *Righteous Violence: The Ethics and Politics of Military Intervention*, Melbourne University Press (2005)

Walker, K.L. and Mitchell, A.D., 'A stronger role for customary international law in domestic law' in H Charlesworth, M Chiam, D Hovell and G Williams (eds), *The fluid state: International law and national legal systems*. Sydney: Federation Press (2005) 110-35

Refereed Journal Articles

Dunworth, T., Mathews, R.J. and McCormack, T.L.H. 'National Implementation of the Biological Weapons Convention' (2006) 11 *Journal of Conflict and Security Law* 93-118

Finnin, S. 'The Proposed Trials by the US Military Commissions', in *The Yearbook of International Humanitarian Law*, Volume 6, (2003) 409-423

McCormack, T.L.H., 'Sixty Years From Nuremberg: What Progress for International Criminal Law?', (2005) 1 *Jurnal Hukum Humaniter (Humanitarian Law Journal – in Bahasa)* 1-20; the same article is also published (with the mutual agreement of both journals) in (2005) 5 *New Zealand Armed Forces Law Review* 1-18

Mitchell, A.D. and Voon, T. 'Justice at the sharp end: Improving Australia's military justice system' (2005) 28(2) *University of New South Wales Law Journal* 396-425

Oswald, B. and Finnin, S., 'Combating the Trafficking of Persons on Peace Operations', in *International Peacekeeping: The Yearbook of International Peace Operations*, Volume 10, (2006) 1-32

Tobin, J.W., 'A right to be no longer dismissed or ignored: Children's voices in pedagogy & policy making' (2005) 3(2) *International Journal of Equity and Innovation in Early Childhood* 4-18

Tobin, J.W., 'Finding rights in the "wrongs" of our law: Bringing international law home' (2005) 30(4) *Alternative Law Journal* 164-169

Tobin, J.W., 'Increasingly seen and heard: The constitutional recognition of children's rights' (2005) 21(1) *South African Journal on Human Rights* 86-126

Tobin, J.W., 'Parents and children's rights under the convention on the rights of the child: Finding reconciliation in a misunderstood relationship' (2005) 7(2) *Australian Journal of Professional and Applied Ethics* 31-46

Tobin, J.W., 'What's wrong with the charter of rights?' (2005) 79(9) *Law Institute Journal* 40-3

Voon, T. and Yanovich, A., 'The Facts Aside: The Limitation of WTO Appeals to Issues of Law' (2006) 40(2) *Journal of World Trade* 239

Other Contributions to Refereed Journals

Lockhart, J. and Voon, T., 'Reviewing Appellate Review in the WTO Dispute Settlement System' (2005) 6 *Melbourne Journal of International Law* 474-84

Other Articles

McCormack, T.L.H., 'Sixty Years From Nuremberg: What Progress for International Criminal Law?', (2006) 4 *Victorian Institute of Forensic Medicine Review* 8-15, (this article is the same as that published in the refereed journals (2005) 1 *Jurnal Hukum Humaniter (Humanitarian Law Journal – in Bahasa)* 1-20 and in (2005) 5 *New Zealand Armed Forces Law Review* 1-18 and was published in the *VIFM Review* with the mutual consent of the editors of both refereed journals)

McCormack, T.L.H., 'Nuremberg's Lessons for Guantánamo', *The Age*, 22 Nov 2005, 15

Mitchell, A., 'A Legal Principle of Special & Differential Treatment for WTO Disputes?', (2006) 5(3) *World Trade Review* 445

Mitchell, A. and Voon, T., 'ADF personnel have a right to fair justice' (2005)

Muggleton, P., 'Certain Legal And Ethical Aspects of Contemporary ADF Operations' *Command Papers*, Centre for Defence Leadership Studies, Australian Defence College

Voon, T., 'The Honourable John Stanley Lockhart' (May 2006) 1 *Ad Hoc: Official Newsletter of the Melbourne Journal of International Law* 4

Voon, T., 'Leaked WTO report on European ban of GMOs highlights important issues' (31 March 2006) 25(44) *The Lawyers Weekly (Canada)* 16

Reports

Alston, P., Tobin, J.W. and Darrow, M., *Laying the foundations for children's rights: An independent study of some key legal and institutional aspects of the impact of the convention on the rights of the child* (2005) for The UNICEF Innocenti Research Centre. Florence, Italy: UNICEF.

Bailey, S. (ed), 'Survivor Assistance' in International Campaign to Ban Landmines, *Landmine Monitor Report 2005: Toward a Mine-Free World*

Bailey, S., *Landmine Victim Assistance in 2004: Overview of the Situation in 24 States Parties* (2005)

Bailey, S., *101 Great Ideas for the Socio-Economic Integration of Mine Survivors* (2005)

Oswald, B., 'Addressing the Institutional Law and Order Vacuum: Key Issues and Dilemmas for Peacekeeping Operations', think piece for the UN Peacekeeping Best Practices website (September 2005)

Membership of Editorial Boards

Yearbook of International Humanitarian Law
(TMC Asser Instituut Press, The Hague, The Netherlands)
General Editor: Tim McCormack

Jurnal Hukum Humaniter
(Centre for Humanitarian Law & Human Rights, Faculty of Law, Trisakti University, Jakarta)
Member of Honorary Advisory Board: Tim McCormack

International Humanitarian Law Series
(Brill Publishers, Leiden, The Netherlands)
Co-Editor in Chief: Tim McCormack

International Criminal Law Review
(Brill Publishers, Leiden, The Netherlands)
Member of the Editorial Board: Tim McCormack

Journal of Conflict and Security Law
(Oxford University Press, UK)
Member of the Editorial Board: Tim McCormack

Melbourne Journal of International Law
(The University of Melbourne, Australia)
Faculty Adviser: Bruce Oswald
Members of the Advisory Board: Tim McCormack, Alison Duxbury, Bruce Oswald, John Tobin

Global Change, Peace & Security
(Institute for Peace Research, La Trobe University)
Member of the Editorial Committee: Tim McCormack

CONFERENCES, WORKSHOPS & SEMINARS

CONFERENCE

Nuremberg and Transitional Justice: Civilising Influence or Institutionalised Vengeance?

19 November 2005

The APCML, together with Australian Red Cross (ACT), and the Centre for International and Public Law (The Australian National University), presented a highly successful one day conference commemorating the 60th Anniversary of the commencement of the Nuremberg War Crimes Trial and assessing the subsequent development of international criminal law, on Saturday 19 November at the ANU Law School, Canberra.

Speakers in the first plenary session, **The Impact of the Nuremberg Tribunal**, included the Rt Hon Sir Ninian Stephen on the Legacies of the Nuremberg Tribunal, Professor Tim McCormack and COL Mike Kelly on the Subsequent Development of International Criminal Law, and Professor Susanne Karstedt on German Society and Post-conflict Reconstruction.

In the second plenary session, **Alternative Approaches to Justice**, Graham Blewitt, former Deputy Prosecutor ICTY, spoke on the Importance of a Retributive Approach, Lia Kent spoke on Reconciliation in East Timor, and Professor John Braithwaite spoke on Restorative Approaches to Justice.

A number of workshops were presented in the afternoon, including the Crime of aggression (Carrie McDougall), Investigating war crimes (John Ralston), Appropriate tribunal models (Madelaine Chiam), War crimes and the AAT (Alison Duxbury), the Future of the ICC (Tim McCormack & Geoff Skillen), Justice betrayed post 1945 (Mark Aarons), Peacebuilding and transitional justice (COL Mike Kelly), and the Social and psychological impact of transitional justice (Jennifer Balint).

The speaker at the Conference dinner, held at the National Museum of Australia, was Professor William Maley, Director of the Asia-Pacific College of Diplomacy at the ANU.

Papers from the Conference (including workshop papers) will be published in 2007 by Martinus Nijhoff Publishers in Leiden (The Netherlands) in their International Humanitarian Law Series.



Photo David Blumenthal

H E Mr Martin Lutz, Ambassador to the Federal Republic of Germany and Sir Ninian Stephen at the Conference Dinner



Photo David Blumenthal

Professor Tim McCormack and APCML supporter H E MAJGEN Konrote, High Commissioner for the Republic of Fiji

WORKSHOP

Second Biological Weapons Convention (BWC) Regional Workshop

6-7 March 2006

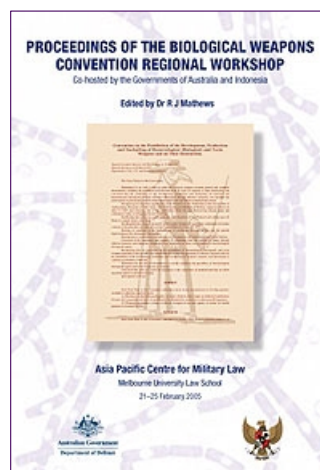
The Second Biological Weapons Convention (BWC) Regional Workshop, co-hosted by the Australian Department of Defence and the Indonesian Department of Foreign Affairs under the auspices of the Asia Pacific Centre for Military Law (APCML), was held in Bali, Indonesia on 6-7 March 2006. This was a follow up to the First BWC Regional Workshop held at the University of Melbourne Law School in February 2005. The Workshops provide a regional forum for discussion of effective national implementation of the 1975 Biological Weapons Convention.

Thirty-seven participants attended the Second Workshop, with representatives from Indonesia, Australia, Cambodia, the Lao People's Democratic Republic, Malaysia, New Zealand, Papua New Guinea, the Philippines, Thailand, and Viet Nam. The Australian delegation included representatives from the APCML (Dr Bob Mathews, LTCOL Geoff Cameron CSC, Treasa Dunworth and Sarah Finnin), the Department of Defence, Defence Science and Technology Organisation (DSTO), and the Department of Foreign Affairs and Trade (DFAT).

The Workshop was officially opened by H.E. Mr. M. Slamet Hidayat, Director-General for Multilateral Affairs of the Department of Foreign Affairs of the Republic of Indonesia, and Dr Bob Mathews, Head of NBC Arms Control, Defence Science and Technology Organisation (DSTO), Australia. Both speakers stressed the importance of the Workshop in providing participants with the opportunity to share knowledge and experience. Participants were briefed on a 'BWC implementation toolbox', which is a regional work-in-progress covering legislative drafting elements, model laws and institutional or workplace codes of conduct to assist States Parties in fulfilling their obligations with respect to national implementation of the Convention.

Other discussions covered measures for enhancing security of pathogenic micro-organisms and toxins; the roles played by various domestic agencies and the broader scientific community in supporting measures for bio-security; and efforts to promote awareness among the scientific community of the risks of inadvertent support for the hostile use of biological weapons. Participants underlined the necessity of establishing a national authority to coordinate various domestic agencies, and to act as a focal point for effective implementation of the BWC at the national level and as a liaison with other States Parties.

The first (2005) volume of the proceedings was distributed at this Second Workshop, and the APCML is currently preparing the second (2006) volume of the proceedings of the BWC Regional Workshops.



Website: <http://www.law.unimelb.edu.au/events/bwc>

The APCML has also designed a Biological Weapons Convention Regional Workshop Website, as a further effort to encourage participation in follow-up activities to the two Workshops. The Website provides detailed information about the two Workshops, and provides access to electronic versions of the Proceedings. In addition, the Website provides information on various regional initiatives with regard to the BWC, such as Codes of Conduct.

SEMINARS

JOINT SEMINARS WITH IILAH

APCML Associate Director Bruce Oswald coordinated two one-hour seminars of interest to other members in the Faculty, the legal community and the public. The seminars were held jointly with the Faculty's Institute for International Law and the Humanities (IILAH).

Human Trafficking: Approaches to Justice for Human Trafficking Victims in Australia
Georgina Costello, Melbourne barrister (27 April 2006)

In this seminar, Ms Costello drew on her experience as a researcher and writer on human trafficking to discuss some of the key issues facing states and international institutions.

Fragmentation and the Sleeping Beauty of Systemic Integration

Professor Campbell McLachlan, Victoria University of Wellington Law School (15 May 2006)

Professor McLachlan discussed aspects of his work with the International Law Commission Study Group on the Fragmentation of International Law, whose report – an historical, theoretical and doctrinal mapping of international law as a system – had just been released.

VISITING SCHOLAR SEMINARS

Feminist Perspectives on the Law of Armed Conflict

Professor Hilary Charlesworth, Sir Ninian Stephen Visiting Scholar (12 July 2005)

In this seminar, Professor Charlesworth challenged our thinking as she exposed multiple examples of the exclusion of women's voices in the legal regulation of war.

The Future of International Law and International Institutions

Ralph Zacklin, UN Assistant Secretary-General for Legal Affairs 1998-2005 (1 May 2006)

In this seminar, Mr Zacklin spoke of his work in recent years at the UN, including in the Office of the High Commissioner for Human Rights in Geneva.

RHD WORK IN PROGRESS SEMINARS

Occupation, Resistance and the International Rule of Law

Ben Clarke, PhD student (19 July 2005)

In this seminar, Ben discussed whether the law of armed conflict should recognise clandestine resistance movements as lawful belligerent forces, and whether conflict between resistance movements and the occupying army should be regarded as an international armed conflict.

International legal analysis of Israel's policy of targeted killings

Michelle Lesh, LLM student (7 September 2005)

Michelle discussed Israel's legal justifications for targeted killing, and selected criticisms of those justifications by the international community within the framework of international humanitarian law. The argument between Israel and her critics brings into question the adequacy of international law to interpret the intricacies of the Israeli/Palestinian conflict.

The Responsibility to Protect against Crimes against Humanity: Applying the Principle

Phoebe Wynn-Pope, PhD student (20 February 2006)

The use of force for human protection purposes should have the sanction of the Security Council but in some cases authorization for intervention is not forthcoming. In this seminar, Phoebe considered the question of how the Security Council might be compelled to act responsibly and fulfill its duty under the Charter to protect communities from grave human rights crimes, and what can be done if it cannot be so compelled.

CONFERENCE, PROFESSIONAL & OTHER PRESENTATIONS BY APCML MEMBERS & ASSOCIATES**Michael Carrel**

‘Australia’s Prosecution of Japanese War Criminals’, paper for the Australian Army Legal Corp’s Annual Conference, Australian Army Land Warfare Centre, Canungra, Queensland, 6 December 2005

‘The Australian War Crimes Trials of Japanese Defendants, 1945-51’, public talk, Australian War Memorial, Canberra, 3 June 2006

Treasa Dunworth

‘Implementing Toolbox and Drafting Elements for the Biological Weapons Convention’, paper for the Second Biological Weapons Convention (BWC) Regional Workshop, co-hosted by the Australian Department of Defence and the Indonesian Department of Foreign Affairs, Bali, Indonesia, 6-7 March 2006 (with Bob Mathews)

Helen Durham

‘Protection: the foundation of public international law’, presentation for the Oxfam Australia Protection in Action: Humanitarian Response in Armed Conflict conference, Melbourne Law School, 22 February 2006

Presentations on the distinct elements of the Red Cross/Red Crescent and the practical importance of International Humanitarian Law to those working in areas of armed conflict and natural disasters, for the Australian Red Cross Basic Training Course, Fiskville, Victoria, 24-26 June 2006

Alison Duxbury

‘Status and Treatment of Detainees’, presentation for the APCML Command and Staff Operations Law Course, HMAS Penguin, Sydney, 13 October 2005

‘War Crimes and the AAT’, workshop presentation for the APCML’s Nuremberg and Transitional Justice: Civilising Influence or Institutionalised Vengeance? one-day seminar, ANU, Canberra, 19 November 2005

Attended, in her capacity as member, a meeting of the International Advisory Commission of the Commonwealth Human Rights Initiative (prior to the 2005 Commonwealth Heads of Government Meeting), Valletta, Malta, 23 November 2005

Jessica Howard

‘The Future of the ICC’, workshop presentation for the APCML’s Nuremberg and Transitional Justice: Civilising Influence or Institutionalised Vengeance? one-day seminar, ANU, Canberra, 19 November 2005 (with Tim McCormack and Geoff Skillen)

‘Natural Disasters and Internal Displacement: What Guidance from International Human Rights Law?’, paper for the Human Rights: Expanding the Agenda in Sri Lanka conference, University of Colombo, Sri Lanka, 10-11 December 2005 (with Alexandra Owens)

‘Torture by another name? Coercive interrogation techniques’, keynote paper for the Australian Red Cross International Humanitarian Law Conference, Darwin, 11 November 2005

COL Mike Kelly

‘The Impact of the Nuremberg Tribunal on the Subsequent Development of International Criminal Law’, presentation for the APCML’s Nuremberg and Transitional Justice: Civilising Influence or Institutionalised Vengeance? one-day seminar, ANU, Canberra, 19 November 2005 (with Tim McCormack)

‘Peacebuilding and Transitional Justice’, workshop presentation for the APCML’s Nuremberg and Transitional Justice: Civilising Influence or Institutionalised Vengeance? one-day seminar, ANU, Canberra, 19 November 2005

Bob Mathews

‘Codes of Conduct for Scientists’, paper for the International Pure and Applied Chemistry Education Outreach Workshop, Oxford University, England, 10-12 July 2005 (with John Webb)

‘Implementing practical measures to reduce the risk of hostile use of the life sciences: The perspective of defence science’, paper for the ICRC Roundtable on Preventing Hostile Use of Life Sciences, Kuala Lumpur, 19-21 September 2005

‘Salts of Scheduled Chemicals’, paper for the Scientific Advisory Board of the Organisation for the Prohibition of Chemical Weapons 8th Annual General Meeting, The Hague, The Netherlands, 8-10 February 2006

Opening Remarks, as Head of Australian Delegation, of the Second Biological Weapons Convention (BWC) Regional Workshop, co-hosted by the Australian Department of Defence and the Indonesian Department of Foreign Affairs, Bali, Indonesia, 6-7 March 2006

‘Codes of Conduct for Scientists & the Biological Weapons Convention’, paper for the Second Biological Weapons Convention (BWC) Regional Workshop, co-hosted by the Australian Department of Defence and the Indonesian Department of Foreign Affairs, Bali, Indonesia, 6-7 March 2006

‘Implementing Toolbox and Drafting Elements for the Biological Weapons Convention’, paper for the Second Biological Weapons Convention (BWC) Regional Workshop, co-hosted by the Australian Department of Defence and the Indonesian Department of Foreign Affairs, Bali, Indonesia, 6-7 March 2006 (with Treasa Dunworth)

‘Preventing CBRN Terrorism: The Role of Scientific Support’, paper for the Australian Institute of Police Management Regional Conference, Sydney, May 2006

Tim McCormack

‘Recent Developments in the Milošević Trial and in the Proposed Trial of David Hicks’, presentation for the Australian Red Cross – Western Australia Public Seminar, Malleeson Stephen Jacques, Perth, 5 July 2005

Grand Final Moot Competition Judge, Australian Red Cross/Australian Law Students Association International Humanitarian Law Moot Court Competition, Federal Court of Australia, Perth, 6 July 2005

‘The International Criminal Court and Peace Operations’, lecture for the ADF Annual International Peace Operations Seminar, Australian Defence Force Academy, Canberra, 14 July 2005

‘The International Criminal Court and Peace Operations’, guest lecture for the Advanced Military Discipline Course, Randwick Army Barracks, Sydney, 18 July 2005

‘International Law and the Use of Military Force’, guest lecture for the Current Issues in International Law Course at London School of Economics and Political Science, London, 29 July 2005

‘International Legal Aspects of the Trial of Slobodan Milošević’, guest lecture for the Current Issues in International Law Course at London School of Economics and Political Science, London, 1 August 2005

‘International Humanitarian Law and Explosive Remnants of War’, guest presentation to the Group of Governmental Experts on the Certain Conventional Weapons Convention, United Nations, Geneva, Switzerland, 2 August 2005

‘International Legal Aspects of the Decision of the Full Court of the US District Court in *US v. Hamdan*’, lunchtime seminar on the David Hicks Case, Law Institute of Victoria, Melbourne, 12 August 2005

‘What Chance a Fair Trial for David Hicks?’, guest lecture for the Tasmanian Amnesty International Lawyers’ Group, Law Society of Tasmania, Hobart, 18 August 2005

‘Does International Law Work?’, keynote address to LawFest (500 year 11 and 12 Legal Studies Students), University of Tasmania, Hobart, 19 August 2005

‘Law of Armed Conflict – Sources and Content’, presentation for the APCML Command and Staff Operations Law Course, Sydney, 10 October 2005

‘Current Developments at the International Criminal Court’, presentation for Amnesty International Australia, Melbourne, 15 November 2005

‘The Impact of the Nuremberg Tribunal on the Subsequent Development of International Criminal Law’, presentation for the APCML’s Nuremberg and Transitional Justice: Civilising Influence or Institutionalised Vengeance? one-day seminar, ANU, Canberra, 19 November 2005 (with COL Mike Kelly)

‘The Future of the ICC’, workshop presentation for the APCML’s Nuremberg and Transitional Justice: Civilising Influence or Institutionalised Vengeance? one-day seminar, ANU, Canberra, 19 November 2005 (with Jessica Howard and Geoff Skillen)

‘Enforcement: Giving “teeth” to IHL’, presentation for the Australian Red Cross ADF IHL Instructors’ Course, Melbourne, 6 April 2006

Carrie McDougall

‘What’s in a Name? The Transformation of Crimes against Peace to the Crime of Aggression: Do we mean what we say or must we wind back the clock?’, workshop presentation for the APCML’s Nuremberg and Transitional Justice: Civilising Influence or Institutionalised Vengeance? one-day seminar, ANU, Canberra, 19 November 2005

Research Assistant to the *amicus curiae* in relation to *Prosecutor v Slobodan Milošević*, Case No. IT-02-54-T, International Criminal Tribunal for the Former Yugoslavia, The Hague, December 2005

Advisor to the Australian Delegation to the Inter-Sessional Meeting of the Special Working Group on the Crime of Aggression, Princeton University, New Jersey, USA, 8-11 June 2006

Andrew Mitchell

‘The Principle of Special and Differential Treatment in WTO Disputes’, paper for the University of Hong Kong’s conference on The Legal Dimensions of the Doha Round, Hong Kong, 17 December 2005

‘Law of the World Trade Organization’, Juris Doctor course for the University of Western Ontario Faculty of Law, London, Ontario, Canada, 2-26 January 2006 (with Tania Voon)

Judge for the European Law Students’ Association World Trade Organization Moot Court Competition, February-March 2006 (written and oral rounds for Asia-Pacific)

‘Trade and Terrorism’, presentation for the International Trade Law Symposium organised by the Attorney-General’s Department and the Law Council of Australia, Canberra, 3-4 March 2006 (with Tania Voon)

‘World Trade Organization Law’, graduate course for the Monash University Law School, Melbourne, 7 March-30 May 2006 (with Tania Voon)

‘Legal Principles in WTO Dispute Settlement’, paper for the Institute for International Economics, Business and Law’s Academic Conference on WTO Law, Adelaide, 17 March 2006

‘Lawyering in International Institutions’, presentation for the University of Melbourne’s LLB Guest Speakers’ Forum, Melbourne, 21 March 2006 (with Tania Voon)

Judge for the Australasian Law Students’ Association International Humanitarian Law Moot, 3 and 10 May 2006

‘Managing the Challenges of WTO Accession’, paper for the International Trade and Development Project at the Gilbert + Tobin Centre of Public Law’s Symposium on WTO Issues and Law, Sydney, 23 June 2006

‘Trade Remedies: Dispute Settlement Procedures, Business Law and Enforcement’, paper for the China-Australia FTA Conference, Shenzhen, China, 27-29 June 2006

‘Tonga and the WTO: The Rhetoric of Special and Differential Treatment, the Reality of Accession’, paper for the Australian and New Zealand Society of International Law (ANZSIL) Annual Conference, Wellington, New Zealand, 29 June-1 July 2006

LTCOL Paul Muggleton

Presentations on the Law of Occupation and Occupation Case Study – Iraq for the ADF Warfare Centre Operations Law Course, RAAF Base, Williamstown, 25-29 July 2005

‘Applying IHL in the Theatre of War’, presentation for the ICRC Seminar ‘Safety and Dignity in Times of War: The Importance of IHL’, Justice and Police Museum, Sydney, 7 December 2005

‘Application of IHL to UN Operations’, presentation for the Australian Red Cross, IHL Instructors’ Course, Melbourne, 22 September 2005

Bruce Oswald

‘The Applicability of International Law in Modern Conflict’, paper for the ICRC Regional Seminar for Senior Editors on the Subject of ‘Reporting Armed Conflict: The Media and its Role’, New Delhi, India, 28-29 March 2006

‘Cultural Factors in CIMIC’, presentation for the APCML Civil Military Co-operation Course, Sydney, 3 April 2006

‘Rule of Law’, presentation for the APCML Civil Military Co-operation Course, Sydney, 4 April 2006

‘Rules of Engagement: Some Key Legal and Operational Issues’, presentation for the Royal Thai Armed Forces 2nd Annual Rules of Engagement Training Course, Bangkok, Thailand, 5-8 June 2006

Tania Voon

‘Dispute Settlement’, presentation for the World Trade Organization’s 34th Trade Policy Course, Geneva, Switzerland, 29 November-2 December 2005 (with Dariel de Sousa)

‘Law vs Fact in WTO Appeals’, paper for the University of Hong Kong’s conference on The Legal Dimensions of the Doha Round, Hong Kong, 17 December 2005

‘Law of the World Trade Organization’, Juris Doctor course for the University of Western Ontario Faculty of Law, London, Ontario, Canada, 2-26 January 2006 (with Andrew Mitchell)

Judge, European Law Students’ Association World Trade Organization Moot Court Competition, February-March 2006 (written rounds for Europe and Asia-Pacific, oral rounds for Asia-Pacific)

‘Trade and Terrorism’, presentation for the International Trade Law Symposium organised by the Attorney-General’s Department and the Law Council of Australia, Canberra, 3-4 March 2006 (with Andrew Mitchell)

‘World Trade Organization Law’, graduate course for the Monash University Law School, Melbourne, 7 March-30 May 2006 (with Andrew Mitchell)

‘Cultural Products in the World Trade Organization’, paper for the Academic Conference on WTO Law of the Institute for International Economics, Business and Law, Adelaide, 17 March 2006

‘Lawyering in International Institutions’, presentation for the University of Melbourne’s LLB Guest Speakers’ Forum, Melbourne, 21 March 2006 (with Andrew Mitchell)

Judge for the University of Melbourne Law Students’ Society Senior Mooting Competition, 29 March 2006

Judge for the Australasian Law Students’ Association International Humanitarian Law Moot Championship, Melbourne, 4 May 2006

Briefing on WTO dispute settlement to the Department of Foreign Affairs and Trade and Australian nominee for the WTO Appellate Body, Andrew Rogers QC, Canberra, 24 May 2006

‘A New Approach to Audiovisual Products in the WTO: Rebalancing GATT and GATS’, paper for the Symposium on WTO Issues and Law organised by the Gilbert + Tobin Centre of Public Law and the University of New South Wales, Sydney, 23 June 2006

MEMBERSHIP OF BOARDS & COMMITTEES

Advisory Commission of the Commonwealth Human Rights Initiative (CHRI)

Member: Alison Duxbury

Appellate Body Secretariat of the World Trade Organization

Legal Officer: Tania Voon (to December 2005)

Australian Red Cross (ACT) Advisory Board

Vice-Chairman: Michael Carrel

Australian Red Cross (ACT) International Humanitarian Law Committee

Chairman: Michael Carrel

Australian Red Cross (VIC) International Humanitarian Law Advisory Committee

Member: Alison Duxbury

Advisory Board for the Bachelor of Arts, The University of Melbourne

Member: Helen Durham

Foreign Minister's National Consultative Group on Bio-Security Issues

Tim McCormack and Bob Mathews

Foreign Minister's National Consultative Committee on International Security Issues

Tim McCormack

International Monetary Fund, Geneva.

Consultant: Andrew Mitchell (to December 2005)

International Society for Military Law and the Law of War

Member of the Board of Directors: Bruce Oswald (from May 2006)

NEW APPOINTMENTS OF APCML MEMBERS & ASSOCIATES

Safeguarding Australia Expert Subcommittee

Professor Tim McCormack was appointed in October 2005 to the Safeguarding Australia expert subcommittee, one of four subcommittees established by the Australian Government Department of Education, Science and Training, to advise on the development of the National Collaborative Research Infrastructure Strategy (NCRIS) for the distribution of \$540 million over five years for major research infrastructure capabilities. Subcommittees have been established in each of the four identified national research priority areas and the Chair of the Safeguarding Australia expert subcommittee is Dr Roger Lough, Australia's Chief Defence Scientist and the CEO of the Defence Science and Technology Organisation.

Interpol Bioterrorism Prevention Programme Board of Experts

APCML Principal Research Fellow Associate Professor Bob Mathews was invited, in June 2006, to join the Informal Board of Experts for the Bioterrorism Prevention Programme currently being undertaken by Interpol, the International Criminal Police Organization. The purpose of the Board of Experts is to strengthen Interpol's relationship with the scientific and health communities, and to assist Interpol in its long-term objective of asserting global leadership in bioterrorism issues by centralising intellectual consideration of leading-edge issues that directly affect relevant law enforcement capabilities.