



# **REPORT OF THE 2004 EXTERNAL REVIEW**

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## EXECUTIVE SUMMARY

We, the undersigned members of the External Review Panel, are pleased to present the attached Report of our detailed review of the Asia-Pacific Centre for Military Law's (APCML's or the Centre's) performance over three years since the Centre's establishment in 2001, pursuant to the Agreement between the Commonwealth of Australia and University of Melbourne for the joint establishment and operation of the Centre.

As a result of extensive meetings with representatives from the University of Melbourne, the Australian Defence Force (ADF), members of the Centre's Advisory Board, APCML course participants and other related governmental and non-governmental organisations, the Panel has reached the unanimous view that the Centre represents enormous beneficial potential in the pursuit of Australia's strategic national interests in the Asia-Pacific Region and must be supported to enable it to reach its full potential. We are also convinced that the unique partnership between the Academy and the Military is one of the key guarantees of the Centre's success and must also be supported. We have formulated eight groups of recommendations regarding the continued operation of the APCML. Each of the recommendations are highlighted below and explained in greater detail in the body of the Report itself.

It is also our unanimous view that three of our recommendations clearly constitute priorities for the Centre. Without urgent and favourable decisions by Defence in relation to these three fundamental issues the future development of the Centre will be severely retarded. These three outstanding issues requiring immediate action are:

- *Location of the military node:*  
It is vital that a permanent home be identified for the military node of the Centre and HMAS Penguin is unquestionably the Panel's premier recommendation for location;
- *Staffing:*  
The military node urgently requires a full-time EL2 Legal position to be occupied by a civilian (possibly a former ADF officer or even a reservist provided they will not be deployed on military operations during the term of their appointment). The incumbent must be capable of and available for the full-time

intellectual development and management of the APCML training program;

▪ *Ongoing Funding of Research:*

The APCML currently receives no income for research and it is essential that an annual amount of \$100,000 (at least for an initial start-up period) be made available for this purpose.

The Panel Recommendations are as follows:

**1. Operation of the APCML**

**Recommendation 1**

That the collaboration between the Melbourne Law School and Defence Legal for the joint operation of the APCML continue and that the Centre be supported to enable it to expand its future operations.

**Recommendation 2**

- (a) That the Advisory Board be expanded to include representatives of Asia-Pacific countries participating in the work of the Centre;
- (b) That the Board meet more frequently and at least on three occasions over each two year period;
- (c) That the arrangements for the Steering Committee remain unchanged.

**Recommendation 3**

The Panel records the universal satisfaction of all concerned with the performance of the Director and the Deputy Director and reports accordingly.

**2. Training**

**Recommendation 4**

- (a) That the number and type of courses offered by the centre be expanded;
- (b) That in addition to Australian-based courses the Centre offer courses to particular countries in their own countries or at

convenient centres in the Asia-Pacific region to maximise the availability of such courses;

- (c) That in addition to its regular courses the Centre runs short workshops addressing current issues, such as the treatment of detainees and prisoners of war;
- (d) That courses also be offered to regional police forces, preferably at a convenient location such as Fiji.

### **3. Research**

#### Recommendation 5

- (a) That the Department of Defence fund the Centre initially for \$100,000 per year for research;
- (b) That the Centre explores with stakeholders the possibility of conducting research at their expense on topics selected by them;
- (c) That the Centre develops a list of research topics in conjunction with other stakeholders;
- (d) That the Centre be funded to launch publications, including a series of student research theses and the establishment of an academic refereed journal in military law.

### **4. Staffing**

#### Recommendation 6

- (a) That a position of EL2 Legal be created in addition to the current EL1 position;
- (b) That the APS Level 3 position be filled as soon as possible;
- (c) That increased numbers of members of the Reserve from all services should be used to support the Centre.

### **5. Facilities**

#### Recommendation 7

- (a) That HMAS Penguin be designated as the permanent home for the APCML and Military Law Centre as a matter of urgency – even if a purpose built replacement for the existing former

Naval Staff College Building will take several years to complete;

Alternatively (or as an interim arrangement):

- (b) That a permanent/temporary home which satisfies the above listed criteria be identified for the military node of the Centre as soon as possible as a matter of urgency;
- (c) That the permanent/temporary home be situated on a military base with accommodation available either on the Base or in close proximity to it;
- (a) That it is desirable that the APCML be co-located with the Military Law Centre.

## **6. *Finances***

### **Recommendation 8**

- (a) Cost of ADF participation in courses should be recovered from the military node and reimbursed to the university node;
- (b) Courses are to be run on a cost recovery basis, covering travel, accommodation, and additional expenses of the University of Melbourne staff;
- (c) The cost of courses is to include an additional margin to be made available for APCML use, for running costs and, for example, production of publications arising from the courses and incidentals.

## **7. *Future Developments***

### **Recommendation 9**

- (a) The concept of peace keeping should be expanded to include the training of regional police forces and to extend to operations of the type conducted in the Solomon Islands and to include the provision of police and like services to Papua New Guinea;
- (b) The Centre should be involved in the development of military justice systems;
- (c) The Centre should cover a broad spectrum of issues, including arms control and disarmament issues and legal issues arising out of conventional conflicts in which the ADF may find itself involved;

- (d) The Centre should develop as a ‘think tank’ modelled on the United States Institute for Peace whose work impacts directly on government and military policy. The Centre should be involved at the legal policy nexus level, to increase its influence and shape behaviours in the region and to eventually expand out into the region;
- (e) The Centre should develop a program to bring regional military officers on staff secondment to the Centre, for the purposes of assisting with their professional development, undertaking some graduate studies and presenting guest lectures;
- (f) The Centre should have the capacity to provide ‘reach back’ support to field missions – whether it be the drafting of key documents, conducting research or providing oral advice;
- (g) The Centre should develop closer relations with other relevant centres, including the ADF Peace Keeping Centre, the ADF Military Law Centre and the Australian Strategic Policy Institute, the International Centre of Excellence in Asia-Pacific Studies and Diplomacy and the Strategic and Defence Studies Centre at the Australian National University.

## 8. *Final Recommendation*

- (a) That the existing agreement be re-negotiated to provide for a term of 10 years, together with such other modifications or alterations as may be agreed;
- (b) That any further review of the operations of the Centre should take place after the new agreement has been operating for at least five years.

Hon. Alastair Nicholson  
AO RFD

Ms Lydia Morton  
First Assistant Secretary  
North Asia Division  
Department of Foreign  
Affairs and Trade

Hon. Greg Hunt MP  
Federal Member for  
Flinders

October 2004

## **1 Introduction**

### **1.1 The Review Panel**

According to the Agreement between the Commonwealth of Australia and University of Melbourne, signed on 17 May 2001, for the establishment and operation of the APCML (the Agreement), a comprehensive review of the Centre's performance is to be carried out in its third year to determine whether the parties are performing to the standards required under the Agreement and whether to extend the terms of the Agreement for a further period. The Parties agreed to extend the Agreement's three-year term by a further six months in order to give adequate time for the review to be carried out.

In July 2004, the APCML External Review Panel (the Panel) was established, consisting of the Hon. Alastair Nicholson AO RFD, former Chief Justice of the Family Court, and former ADF Judge Advocate General; Ms Lydia Morton, First Assistant Secretary, North Asia Division, Department of Foreign Affairs and Trade (DFAT); and Hon. Greg Hunt MP, Federal Member for Flinders and Parliamentary Secretary for Heritage and the Environment. Administrative assistance was provided to the Panel Members by Ms Leanne McKay, Research Fellow in the Melbourne Law School.

The Panel's Terms of Reference required Panel members to evaluate the operation of the APCML in its first three years, to recommend whether or not the mandate of the Centre in its current form should be renewed and to make observations and recommendations regarding the collaborative nature of the Centre.

The Panel met with representatives from the International Policy Division of the Department of Defence, the ADF Legal Services, DFAT and the Attorney-General's Department in Canberra on 3 August 2004. On 4 August 2004, meetings were held with the International Committee of the Red Cross (ICRC) and APCML military and university staff in Sydney. On 9 September 2004, the Panel met with university node staff, research higher degree students, Advisory Board members and Steering Committee members in Melbourne. Further meetings were held in Canberra on 10 September 2004 with the Deputy Secretary – Defence Infrastructure and Corporate Services and several high level foreign diplomats.

## **1.2 Representatives with whom the Panel met**

(in chronological order of meetings with the Panel)

Ms Myra Rowling, First Assistant Secretary, International Policy Division, Australian Defence Force;  
Group Captain Garry Dunbar, UN and Peace Operations Section, International Policy Division;  
Air Commodore Simon Harvey, Director General, ADF Legal Services;  
Mr Mark Fitzpatrick, National Practices Manager, ADF Legal Services;  
Mr Christos Moraitis, Senior Legal Adviser, Department of Foreign Affairs and Trade;  
Ms Robin Warner, Assistant Secretary, International Crime Branch, Attorney-General's Department;  
Dr Helen Durham, International Committee of the Red Cross Legal Adviser, Pacific Sub-Delegation, Sydney;  
Colonel Mike Kelly, APCML Deputy Director;  
Lieutenant Colonel Paul Muggleton, APCML Associate Director;  
Ms Sonja Khouri, APMCL Executive Officer;  
Professor Timothy McCormack, APCML Director;  
Mr Bruce Oswald, APCML Associate Director;  
Mr John Tobin, Lecturer, APCML Academic Staff, Melbourne Law School;  
Associate Professor Robert Mathews, APCML Academic Staff, Melbourne Law School;  
The RT Hon Sir Ninian Stephen, KG, AK, GCMG, GCVO, KBE, APCML Patron;  
Professor Michael Crommelin, Dean, Melbourne Law School;  
Professor Cheryl Saunders, Associate Dean (Graduate), Melbourne Law School;  
Ms Dianne Costello, APCML Centre Administrator, University Node;  
Colonel Ian Westwood, APCML Advisory Board member;  
Colonel Andrew Dunn, APCML Advisory Board member;  
Professor Stuart Kaye, APCML Advisory Board member;  
Mr Alan Henderson, Deputy Secretary – Defence Infrastructure and Corporate Services;  
Brigadier Lou Gardiner, Defence Adviser, High Commission for New Zealand;  
His Excellency Major General (Rtd) Jioji Konrote, High Commissioner for the Republic of the Fiji Islands;

His Excellency Major General Perera, High Commissioner for the Democratic Socialist Republic of Sri Lanka.

### **1.3 The APCML**

The APCML is a collaborative initiative of the Australian Defence Force Legal Service and the University of Melbourne Law School. The APCML operates from a military and a university node, in the cities of Sydney and Melbourne respectively. The military node is located on an interim basis at Randwick Barracks in Sydney and the university node is located within the University of Melbourne Law School.

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. In order to fulfil this charter the APCML prepares and delivers training programs for legal officers and operational commanders from the Asia-Pacific regional militaries, organises conferences, seminars and other activities and promotes academic research into key Military Law issues of current concern and relevance in the Asia-Pacific Region.

The Centre is also committed to 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 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.

## **2 The Operation of the APCML**

### **2.1 The Contribution of Partners**

Under the Agreement, both APCML partners agree to do all things necessary to enable the objectives of the Centre to be carried out.

To date both partners to the APCML have shown a strong commitment to the existence of the Centre however, because of uncertainties regarding the location of the military node, and the awaited outcomes of

the External Review, it has been difficult for either partner to undertake forward planning and explore expansion opportunities.

The ADF Legal Services currently provides an interim location for the Centre's military node at Randwick Barracks, Sydney, with several of the Centre's training courses being held at HMAS Penguin. A definite decision on a permanent location for the Centre is still pending. Both facilities are provided free of charge by the ADF. The military node's primary source of funding comes from the ADF Legal Services. The ADF pays the salaries of the two management and one administrative staff associated with the Centre, although neither management positions are solely dedicated to the APCML, both also holding positions within the Military Law Centre (MLC). There is also a vacant second administrative position available. The military node has hosted six APCML training courses since the Centre's launch in 2002. An expansion of the capabilities and activities of the military node have been hampered by the lack of a permanent physical home and by the lack of full-time dedicated staff, two issues which are discussed in greater detail below.

The Melbourne Law School provides a designated space from which the university node is able to operate. The use of conference facilities, valued at approximately \$40,000, has also been provided free of charge with the university node hosting two significant conferences since its establishment - the 'Pushing the Envelope: Australian Defence Force Contributions to the Development of International and Operations Law' Conference in February 2002 and the 11<sup>th</sup> Challenges Project Conference 'The Rule of Law on Peace Operations' in November 2002. The University runs several academic programs related to the work of the APCML, including Australia's first dedicated graduate coursework program in Military Law covering the core areas of Military Administrative Law, Military Discipline Law and Military Justice. The university node has seven academic staff whose salaries are paid by the University of Melbourne. None of these academics are full-time APCML staff, though all are expected to attend and participate in Centre activities as much as possible. In the case of the Director, Professor Timothy McCormack, a large portion of his salary is funded by the Australian Red Cross due to his position at the Melbourne Law School of Australian Red Cross Chair of International Humanitarian Law. There are also currently 18 Research Higher Degree students affiliated with the Centre, all of whom are enrolled at Melbourne Law School and are supervised by Professor McCormack. The university

node has also hosted several visiting academics, including two Sir Ninian Stephen Visiting Fellows.

## **2.2 Performance of the Centre**

The great majority of the representatives spoken to by the Panel emphasised the unique nature of the APCML academic/military collaboration.

Overall, representatives noted that international humanitarian law is an area that prior to the setting up of the Centre had not received a great deal of attention in the region. However, international humanitarian law and the training of regional forces on the importance of this area of law is a vital aspect of the work of the Centre. Such regional training is crucial due to the obvious difficulties of operating with forces that do not apply recognised humanitarian standards. Thus through the work of the Centre, a clear culture of respect and interest in international humanitarian law can be seen. As Ms Warner of the Attorney-General's Department pointed out, it is important that this culture is both maintained and enhanced.

Such sentiments were echoed by Professor Stuart Kaye, current Chair of the Australian Red Cross International Humanitarian Law Committee. The establishment of the Australian Red Cross Chair of International Humanitarian Law in 1996, a position currently held by Professor McCormack, was a significant factor in the creation of the APCML. Both organisations aim to promote international humanitarian law throughout the Asia-Pacific region and the APCML is recognised as providing an institutional structure through which this can happen. The Centre provides a contact point between the ADF and regional militaries and disseminates knowledge of international humanitarian law to military personnel, knowledge that is vital to the effective discharge of each nation's obligations. As Professor Kaye pointed out, the Australian Red Cross does not have the resources to undertake these types of activities and therefore it strongly supports the activities of the APCML.

Ms Myra Rowling, First Assistant Secretary, International Policy Division, Department of Defence, and Group Captain Garry Dunbar, Director of United Nations, Peace Operations (UNPO) Section, International Policy Division, noted that where the military node provides the operational and practical input, the university node

provides an academic rigour which, when combined, gives the Centre the ability to develop and put forward much more substantial thinking than either node could produce alone. Group Captain Dunbar used the example of East Timor and the rule of law issues that arose in the development of a new nation as demonstrating the need for this type of expertise.

ADF Legal Service representatives, Air Commodore Simon Harvey, Director-General, and Mr Mark Fitzpatrick, National Practice Manager, similarly expressed support for the operation of the Centre, noting that the unique interface between the military and the university nodes provided a broad and balanced spectrum of responses to military law issues. They noted that the Centre had begun well but the development of both the research and training arms had been limited by resourcing issues.

Dr Helen Durham, representative for the International Committee of the Red Cross, the international arm of the organisation whose Asia-Pacific head office is in Fiji, reinforced the view that the Centre's merging of the military and the academic in such a seamless manner is unique and provides an invaluable opportunity for the harnessing and development of knowledge.

Professor Michael Crommelin, Dean of the University of Melbourne Law School, also regarded the relationship of the University with the Commonwealth as very important. Academic staff and students involved with the APCML university node also emphasised the fact that without the Centre's collaboration it would be virtually impossible for them to have the same level of interaction with military personnel and perspectives.

The success of the APCML's merging of academic and military nodes appears to be largely due to the close relationships between the four management staff and their combined enthusiasm and extraordinary commitment to the Centre and its activities. Thus whilst the ability of the Centre to function and achieve its aims is in large part due to its highly personality driven nature, this also raises issues regarding the adequate passing on of knowledge and the ability of the Centre to function in the absence of key management staff. There appears to be a need for the implementation of some sort of transition system, or institutionalisation, to ensure that the appropriate transfer of knowledge is carried out as and when office bearers leave their positions. This issue is discussed in greater detail below.

Significant support was shown for the APCML training courses; with representatives such as Mr Christos Moraitis, Senior Legal Adviser, Department of Foreign Affairs and Trade (DFAT) and Group Captain Dunbar pointing out that the level of interest in the APCML training courses currently exceeds the places available. This is discussed in more detail subsequently.

### **2.2.1 Comparable Facilities Elsewhere**

The only other comparable facility to the APCML is the International Institute of Humanitarian Law in San Remo, Italy. The Institute teaches International Humanitarian Law, Human Rights and Refugee Law and tends to have a stronger focus on the academic, through round table discussions, as opposed to military operations. Therefore whilst there is a broad philosophical cross over between the two centres, the scope of the APCML courses which are technically broader with their more operational focus, coupled with the geographical differences and the need to respond to different issues means that the APCML retains its unique nature. As Associate Director Lieutenant Colonel Paul Muggleton pointed out, the two bodies are not intended to be operating in competition and they in fact complement each other. Dr Durham also noted that the ICRC continues to encourage Australians to attend the San Remo courses, ensuring Australian and European dialogues continue to be combined, rather than running in parallel.

### **2.2.2 Relationships Between the Centre and Overseas Organisations**

A major focus of the Centre has been the development of good working relationships with overseas organisations. Associate Director Oswald has played a particularly prominent role in developing strategic ties with organisations such as the United States Institute for Peace and the United States Army College. Mr Oswald's continued involvement with the international Challenges of Peacekeeping Project and his organisation of the successful 11<sup>th</sup> Challenges Project Conference has both consolidated relationships and produced opportunities for new relationships with organisations of sufficient integrity, which provide strategic links to others and whose philosophy and agenda value-adds to that of the APCML. Another key partner organisation for the APCML is the Center for Law and Military Operations (CLAMO) at The Judge Advocate General's School, United States (US) Army. An agreement has been reached between the ADF, MLC and CLAMO for a formal

exchange program. The first US Army JAG officer to come on exchange arrived in Australia in July 2003 for a period of two years. Following that officer's posting, an ADF Legal Officer will spend 12 months at CLAMO in Charlottesville, Virginia. The APCML is expected to benefit from this exchange by developing a relationship with the CLAMO exchange officers and, through them, its own relationship with CLAMO.

No one whom the Panel consulted in any way questioned the importance and value of the APCML and the Panel itself is convinced of the need for it not only to continue but for its operations to be enhanced. Therefore the Panel is in no doubt that its first recommendation should be for the continuation of the APCML.

### **Recommendation 1**

**That the collaboration between the Melbourne Law School and Defence Legal for the joint operation of the APCML continue and that the Centre be supported to enable it to expand its future operations.**

#### **2.2.3 The Advisory Board**

Two issues were raised in relation to the Advisory Board, these being its size and composition and the frequency of its meetings. Currently, the Advisory Board meets once a year. Mr Moraitis of DFAT, and a member of the Board, raised the issue of the need to expand the membership of the Board in order to reflect the fact that the Centre is an Asia-Pacific initiative with one of its aims being the development of military, government and academic relationships within the region. This expansion could include, for example, the addition of regional diplomats who were based in Australia. It was further felt that if the Centre's activities expanded, it would be preferable to have at least twice yearly Board meetings.

Professor Michael Crommelin, member of the APCML Steering Committee, also welcomed a broadening of Advisory Board membership and noted that the University of Melbourne would be interested in supporting such an initiative. However, he considered that regular attendance by overseas members would be best garnered by

linking an Advisory Board meeting to another event such as a seminar, forum or training course.

The Panel's discussion with the High Commissioners for Sri Lanka and Fiji revealed that they would welcome an expansion of the Board to include representation from Asia-Pacific nations.

Professor Cheryl Saunders, the second University-based member of the APCML Steering Committee, noted that the Advisory Board meetings needed to be well run and this required a great deal of organisation. Indeed the Board had initially intended to meet more regularly but now much work is delegated through the Centre's directorship.

#### **2.2.4 The Steering Committee**

The Steering Committee controls the policy, practices and overall management and operation of the Centre. Under the Agreement, the Centre's directors are answerable to the Steering Committee which currently consists of Air Commodore Simon Harvey, Director General of the ADF Legal Services, Dr David Lloyd, General Counsel of the ADF Legal Services, Professor Michael Crommelin, Dean of Melbourne Law School, and Professor Cheryl Saunders AO, Associate Dean Graduate Studies, University of Melbourne. The Committee was intended to provide an interim bridge whilst the issue of whether regular advisory board meetings were necessary to ensure the Centre remained on track was resolved. It was intended that the Committee would meet annually to set the courses and framework for the upcoming year. However, Professor Saunders noted that these activities had happened naturally anyway and regular Steering Committee meetings had not been necessary. Thus the Committee tends to operate in a fairly informal fashion, although regular discussions are held between members of the Committee.

#### **2.2.5 Panel Recommendations**

##### *Discussion*

So far as the Advisory Board is concerned, the Panel does think that it would benefit from membership outside Australia. It is important, we think, that as the Centre develops it comes to be seen as something more than a purely Australian organisation. We are conscious of cost factors, but we nevertheless think that these could be addressed in a number of ways. First, the inclusion of suitable diplomatic representatives of Asia-

Pacific countries provides an opportunity to achieve their involvement at comparatively little cost. Secondly, we see merit in Professor Crommelin's suggestion that Board meetings could be held in conjunction with appropriate courses or seminars. Thirdly, we can see no reason why modern communications could not be employed such as video conferencing to enable participation from abroad.

The Panel also considers that the Board should, if possible meet more often. If twice per year is thought to impose too much of a burden, we would see an appropriate option being to meet three times over a two year cycle.

As to the Steering Committee, the Panel sees no reason to alter the present informal arrangements which seem to be working in a satisfactory manner.

### **Recommendation 2**

- (a) That the Advisory Board be expanded to include representatives of Asia-Pacific countries participating in the work of the Centre;**
- (b) That the Board meet more frequently and at least on three occasions over each two year period;**
- (c) That the arrangements for the Steering Committee remain unchanged.**

### **2.3 Performance of the Director and Deputy Director**

The APCML Director, Professor McCormack, and the Deputy Director, Colonel Michael Kelly, are responsible for the direction, control, supervision, overall management and performance of the Centre, and the planning and implementation of all Centre activities.

After meeting with various representatives, the Panel concluded that the prevailing view regarding the performance of the Director and Deputy Director was that they performed exceedingly well in terms of their commitment, professionalism and desire to see the APCML succeed. Represented organisations were more than happy with the responsiveness of the Centre to their requests. It was noted that both the Director and Deputy Director are at times restricted in the amount of time they can give to the Centre due to other commitments, for example

the military deployments of the Deputy Director, although all agreed that they also saw the value to the organisation in the experience so gained.

The Steering Committee members all indicated strong support for the directors and the APCML as a whole, with Professor Crommelin noting that the APCML had got off to a flying start.

### **Recommendation 3**

**The Panel records the universal satisfaction of all concerned with the performance of the Director and the Deputy Director and reports accordingly.**

## **3 The Collaborative Initiative**

### **3.1 Primary Activities**

#### **3.1.1 Training**

The APCML has developed a suite of four core operations law courses which are intended to be run annually. The Civil Military Cooperation Course, the Operations Law Course for Legal Advisers and the Law of Peace Operations Course are all five days in length. The Command and Staff Operations Law Course runs over two weeks. To date, the APCML has run six training courses at HMAS Penguin and Randwick Barracks.

All courses are designed to involve both ADF personnel and officers from regional armed forces and/or police. However, APCML courses are also attended by representatives from non-governmental organisations (NGOs) and civilians. Non-military attendees have included representatives from UNICEF, UNHCR, ICRC, RedR, DFAT and civilian members of the ADF.

The involvement of non-military personnel on the courses, particularly of the NGOs, is extremely important. Traditionally humanitarian agencies and military forces have had a tense relationship with humanitarian agencies wanting total separation between their aid work

and the activities of military forces in order to maintain their neutrality. This tension is further exacerbated when peace keeping forces enter a situation and attempt to enforce their mandate. The relationships between these actors has become an important issue in light of events such as the targeting of NGOs in Iraq, thus forcing NGOs to have to try and reconcile the need for protection with the need for neutrality. The involvement of NGOs in the APCML courses is therefore vital for ensuring all participants begin to understand how issues will play out on the ground.

APCML courses are primarily taught by university and military node staff; however, the Centre also relies on outside subject matter experts, both as a resourcing issue but mainly to ensure that course subject matter remains current and that new ideas and fresh experiences and perspectives are regularly obtained. For example, His Excellency Major General (Rtd) Jioji Konrote, High Commissioner for the Republic of the Fiji Islands presented a guest lecture on 'regional perspectives on operations law' at the Operations Law for Legal Advisers Course in November 2003; Colonel Krisna Bovornratanaraks, Deputy Director of the Military Legislation and Foreign Affairs Division of the Ministry of Defence, Thailand, has lectured on United Nations issues regarding the application of law on peace operations; and the Head of the ICRC Regional Delegation Suva has presented on the ICRC and was involved in role plays with course participants. The APCML funds the cost of travel, accommodation and other expenses of overseas guest lecturers through the money it is allocated for each course by the ADF Legal Service Division.

The APCML also organises for external visits where appropriate, for example to the civilian training facilities at Sydney Technology Park during the Command and Staff Operations Law Course held in October 2003. Social activities are also arranged, which allow for the continued networking and exchange of ideas amongst Australian and regional military and non-military personnel that is a unique and fundamental aspect of the APCML courses.

The intellectual development of the APCML courses has been demanding for staff of the APCML since each course is entirely original and unique requiring development from scratch. Associate Director Oswald has spearheaded the development of the content, structure and materials for each course as well as identifying a target audience and potential guest speakers both domestically and regionally. As Colonel Andrew Dunn noted, no other training programmes have the regional outreach focus of the APCML courses. This training has added value

for the region in the sense that regional and Australian officers are all being provided with the same basic training ensuring that the militaries are all able to operate from the same fundamental premise thus improving the ability of regional militaries to cooperate when necessary.

As Associate Director Oswald noted, the training courses provide a relaxed, non-controversial environment within which all students can participate on an equal footing. This type of environment can be invaluable in assisting in the development of cooperation and interaction between Australia and other forces in the region. For example, Indonesia continues to send officers to attend the courses despite tensions regarding East Timor as both Australia and Indonesia try to rebuild their relationship and move forward. Ms Rowling noted that from the ADF's perspective, the environment created by the APCML courses offered a good way in which to expand relationships with other nations where relations are only in the early stages of development, for example with Vietnam, Cambodia, Laos and Pakistan. DFAT representatives also saw the courses as a way in which to develop relationships.

Group Captain Dunbar saw the regional benefits of the courses to be primarily at a strategic level whilst Mr Moraitis of DFAT noted that specific training such as training in the Status of Forces Agreement (SOFA) had been particularly useful within the region with, for example, the SOFA model assisting in a breakthrough in Papua New Guinea negotiations, despite being a non-SOFA situation.

With the ICRC's broad knowledge and involvement within the Asia-Pacific region, Dr Durham saw the training courses as providing an invaluable environment within which ideas could be exchanged, noting that it is often difficult to develop this cross-fertilisation within the Asia-Pacific region. The courses also provided an excellent opportunity to showcase both the ADF's excellence in humanitarian law and the laws of war, as well as the positive professional relationship between the ICRC and the ADF.

Dr Durham also pointed out that the APCML staff are very professional and serve a valuable role as good interlocutors who can act as a sounding board for ideas before they are raised by the ICRC more formally with the Australian government.

The courses enable ADF commanders and legal advisers, as well as other government representatives and non-governmental organisations

to be kept up to date with knowledge and trends in current and especially overseas thinking regarding military law and international humanitarian law.

Members of the Panel met informally with a number of course participants during their visit to HMAS Penguin. Amongst them were Colonel Krisna Bovornratanaraks, Deputy Director of the Military Legislation and Foreign Affairs Division of the Ministry of Defence, Thailand, who has attended previous APCML courses and returned on this occasion as a guest lecturer. He and Lieutenant Colonel Thng Chee Meng, Head of the OOTW Control and Development Branch of the Singapore Navy, another attendee, were both very enthusiastic about the quality of the APMCL courses.

An examination of the student evaluation questionnaires from the inaugural Operations for Legal Advisers Course (10-14 November 2003) and the Law of Peace Operations Course (2-6 August 2004); both held at HMAS Penguin, revealed an overwhelmingly positive response to the training.

Specific comments from the Operations for Legal Advisers Course included, "Fantastic course that I will recommend to others," "Great course I thoroughly enjoyed it," "This was a great course that I gained much from," "I have done a lot of courses in the military and this is the best one I have done, by far." The responses from the Law of Peace Operations Course were equally as positive with comments such as, "A fantastic course in all," "The course was extremely well run and very informative," and "I strongly hope that this course will be held annually, and will continue to provide the good opportunity to students in the Asia-Pacific." Students from both courses highlighted the excellence of the location at HMAS Penguin and saw the social activities, including the end-of-course dinner, as being an important and enjoyable part of the course. Others requested the APCML run an advanced Operations for Legal Advisers course, and that the Law of Peace Operations Course be held annually whilst approximately one quarter of the students specifically noted that the courses provided a great opportunity to network and exchange perspectives and ideas, especially with regional colleagues. The few criticisms of the courses were primarily that they were too short, that there needed to be more practical exercises, and that more course information be distributed before the course so that regional students in particular could prepare and thus participate more fully in discussions.

Dr Durham felt that there was a demand for more courses to be held, a point supported by Ms Rowling, Mr Moraitis, Group Captain Dunbar and the above student evaluation questionnaires. Colonel Kelly also highlighted the reality that post-Iraq, there is a need for more courses and training, noting that although the Australian army is already doing some training there are gaps that the APCML could fill.

Mr Fitzpatrick also suggested that Staff Colleges may be interested in outsourcing courses to the APCML, who could develop the course and offer the course for a fee. The Aerospace Centre, Naval Sea Power Centre and the Land Warfare Centre could all possibly be interested in this concept.

### **3.1.1.1 Off Shore Courses**

There was considerable support for the concept of the Centre running off shore courses in other countries for foreign military officers.

Mr Oswald, for example, explained that the Fijian Army has recently taken on six new legal officers and that their superior officer would like the APCML Operations Law Course for Legal Advisers to be a prerequisite course for them. The ideal scenario would therefore be for the Fijian Army to provide lecture facilities and accommodation, and the APCML to fly trainers to Fiji. Mr Oswald would also like to see the Law of Peace Operations Course being run in the region with participants for example from Thailand, Cambodia and Vietnam, as well as some Australian officers taking part and with trainers from both Australia and the participating countries.

Mr Oswald articulated one aim as being to assist with the development of a Fijian-based organisation which could be a regional base for the Centre that helped to overcome cultural issues and allowed the Centre to expand into training of police forces, for example, in regional countries that have no military or where the police force acts in a military-type capacity. This involvement of police forces was also raised by Dr Durham. It was felt that police could fit into the current training structures and indeed have been involved, but this relationship needed to be further explored and expanded. Associate Professor Robert Mathews noted that a Pacific Islands Security Forum is held annually in Nadi, Fiji, which could provide an opportunity for the presentation of seminars or workshops by the APCML.

Colonel Westwood also described how the US military has developed a suite of courses on US military justice issues that they take on ‘travelling tours’ overseas. Due to their ability to take courses to those that need them, they are being widely consulted, for example recently going to Papua New Guinea. However, the courses are of limited use because of their American focus and the failure to adapt to country specific needs. Colonel Westwood noted that this could be an area where the Commonwealth could have some influence through the development of country specific, useful courses, thus making Australia the reference point instead of the US.

A further goal is to be able to run ‘lessons learned’ workshops in the wake of military involvements particularly in regional situations, for example in the Solomon Islands, Papua New Guinea and Bougainville. The aim of the workshops would be to bring in the commanders who were involved in the operations to discuss in a non-classified manner issues such as what rule of law issues were raised, how they were dealt with, what worked well and what could have been done better. The results of the workshop could then be collated into a non-classified document that could be distributed to other militaries regionally and further afield. Such an initiative however, would require funding to host it in the region, to bring participants together and to employ a research assistant that could collate the information and write up the final document.

Mr Moraitis also expressed support for the development of more regional links for example to his Singaporean counterparts, and felt that as part of the desired “whole of government” approach, it would be useful from a DFAT perspective to see an increase in the training of diplomats from the region.

### **3.1.2 Panel Recommendations**

#### *Discussion*

There needs to be an expansion in the number and type of courses that are offered by the APCML. This recommendation is to an extent dependent on the acceptance of our subsequent recommendation as to a permanent home for the military node. These courses could be funded as at present on a cost recovery basis, for Australian non-military personnel and on the existing basis in relation to regional military officers, ie, by the International Policy Division.

In particular, the Panel considers that it would be valuable for the Centre to offer off shore courses to Asia-Pacific countries in their own countries, as this has the potential to train greater numbers of people at comparatively low cost. The Australian participation in such courses would need to be funded by the Department of Defence. We think that this would be immensely valuable in countries like Papua New Guinea and Fiji.

The proposal to work towards a centre at Fiji, particularly for the training of regional police forces was also supported.

#### **Recommendation 4**

- (a) That the number and type of courses offered by the centre be expanded;**
- (b) That in addition to Australian-based courses the Centre offer courses to particular countries in their own countries or at convenient centres in the Asia-Pacific region to maximise the availability of such courses;**
- (c) That in addition to its regular courses the Centre runs short workshops addressing current issues, such as the treatment of detainees and prisoners of war;**
- (d) That courses also be offered to regional police forces, preferably at a convenient location such as Fiji.**

#### **3.1.3 Research**

Within a relatively short space of time the APCML has already developed several areas of expertise including peace operations, disarmament, the enforcement of international humanitarian law, the role of international human rights law in armed conflict, and the role of the Commonwealth in maintaining peace and security.

However, as Air Commodore Harvey and Mr Fitzpatrick noted, the research element of the Centre's activities appears to have generally fallen by the wayside somewhat due to a lack of resources, whilst Lieutenant Colonel Muggleton referred more broadly to a general hiatus in research activities in the past few months in the lead up to the Review and its outcomes.

Currently 18 research higher degree students are affiliated with the APCML with all but one working on research topics of their own

choosing. Nine of the research higher degree students are funded by the University of Melbourne whilst the other nine receive funding from external sources including other Australian universities, AUSAid, the Australian Research Council and the Australian Defence Force. According to Professor McCormack, this group of students undoubtedly constitutes the largest concentration of research higher degree work in international humanitarian law in Australia and one of the largest groups in the world. Further, once the three full-time academic staff who are currently undertaking PhDs have completed their studies the capacity of the Centre to take on more research higher degree students will increase.

The research contribution of the APCML's seven university staff is more difficult to quantify but is equally as extensive.

Three of the university node staff positions are honorary positions. These staff members are associated with the Centre due to the intellectual contribution they can make, often in a specialist or niche area, even if not physically based at the university node. The honorary positions give the Centre the flexibility to harness the knowledge and expertise of various people without making them law school employees. Honorary Principal Fellow Associate Professor Robert Mathews, for example, sees his role as being an adviser and guide providing the full-time university staff with access to information about what is going on in the larger world. Associate Professor Mathews is currently employed by the Defence Science and Technology Organisation (DSTO) as Principal Research Scientist and also works with other academic institutions and has used his position as an honorary principal fellow to develop relationships between the APCML and these institutions. With expertise in chemical and biological weapons arms control, Associate Professor Mathew's involvement with the APCML enhances the Centre's ability to disseminate information on this issue. He has presented short courses in the area of international humanitarian law and its links with arms control. He has also given informal presentations to other students, and is a resource for not only the university staff but the APCML military staff as they deal with operational and deployment issues.

Associate Professor Mathews noted that conversely some of the work he does could not be done without the involvement of the APCML. For example, he is organising a conference to be held in February 2005 on compliance and anti-terrorism issues surrounding the implementation of the Chemical and Biological Weapons Convention in the Asia-Pacific region. The Conference is being hosted by the APCML in Melbourne

and funded by the International Policy Division and DFAT, the final product of which will be a monograph from the APCML.

The full-time academic staff members also contribute to the development of the Centre in many ways. Much of their daily academic work is highly relevant to the Centre's aims, for example, Mr John Tobin is working on a book examining the Convention on the Rights of the Child which includes a chapter on children in armed conflict. He has also presented lectures during APCML training courses, including a presentation on the application of human rights during armed conflict as part of the Operations for Legal Advisers course. This involvement in the training courses is very important as it allows both APCML staff and course participants to explore and discuss challenging issues such as the relationship between international human rights law and international humanitarian law from a range of perspectives, academic, military and humanitarian.

Mr Tobin also noted that if he was not connected to the APCML it would be almost impossible for him to interact in such a way with military personnel. Thus the Centre provides a formal structure and point of entry for academic staff and their interests. The contact with military personnel enhances the depth of their research and writing and provides a melting pot of ideas where staff and students can disseminate ideas and receive critical feedback.

The research higher degree students that the Panel spoke with also emphasised the unique opportunity that the Centre provides in allowing them to meet and discuss ideas with not only academics but lawyers and others who have the practical military experiences. All felt that they could not have undertaken such effective research into international humanitarian law in Australia without their involvement in the work of the APCML.

The students also highlighted the great opportunities the Centre provides through its relationships with other international institutions. For example, they were all able to contribute to the 11<sup>th</sup> Challenges Project Conference held at Melbourne Law School by acting as rapporteurs. The Conference exposed them to different ideas and intellectual processes, and allowed them to see how theoretical ideas actually work in practice, as well as allowing them the chance to meet and interact with high profile academics and experts. Not only did the students learn a great deal but they also felt that they were making a real contribution to the wider debate.

The students also saw the APCML as a think-tank and centre of intellectual pursuit, where the academic and the military cross pollinate one another without emphasising one area over the other.

There is great scope for the research arm of the Centre's activities to expand. Representatives from the ADF Legal Services and the International Policy Division as well as Ms Robin Warner of the Attorney General's Department and Mr Moraitis of DFAT all indicated that their departments could potentially commission and fund specific research projects. Air Commodore Harvey and Mr Fitzpatrick felt there would be great benefit if the research was in an area that had direct reference to the military node, for example on issues of interoperability and targeting. They noted that these types of legal issues are being raised more and more often, a point reiterated by Dr Durham, who stated that the ICRC receives numerous calls from lawyers interested in international humanitarian law issues, and Ms Rowling who stated that knowledge of military law, its application and its importance will only continue to increase over time.

It was also suggested that the MLC, which does some mainly doctrinal research, could sub-contract research out to the APCML or the two could overlap in some other way.

Professors Crommelin and Saunders felt that many PhD students may appreciate some guidance regarding their thesis topics and that this guidance could be provided more explicitly by the Advisory Board who could help to devise areas related to the APCML that were in need of research. Professor Saunders stated that these research topics need not be confined to PhD students but could be offered to Bachelor of Laws or Master of Laws students as well. Mr Ben Clarke, a research higher degree student, agreed that a list of areas of research would be useful and may motivate others to embark on research projects but that to be effective it would need to be coupled with greater publicity of the APCML and its activities.

Professor Crommelin saw that there was great research scope and that a more coherent research programme would be welcome. However, Professor Crommelin also recognised that there needed to be a secure funding commitment to achieve this growth in research and the Centre's directors also identified insufficient funding as the primary inhibitor to the development of the research capacity of the Centre.

Professor McCormack and Mr Oswald both raised the point that there is no ability for the Centre to engage short-term research assistants to

examine specific topics or areas of law as required. For example, whilst some funding has been obtained from the United Nations Office of the High Commission for Human Rights to allow Mr Oswald to work on a research project developing training materials on human rights for military personnel deployed to United Nations peace operations, the funding is insufficient and with no additional funding available from the APCML, Mr Oswald is forced to use his university research grant to employ a research assistant. These types of constraints have prevented the Centre from fully exploring research ideas and proposals that could contribute extensively to policy and doctrinal developments.

### **3.1.4 Panel Recommendations**

#### *Discussion*

The research area provides an opportunity for considerable future development to the benefit of Australian and Asia-Pacific military forces. It does however need dedicated funding. It is difficult to quantify this in terms of amount, but the Panel considers that much could be achieved with a dedicated \$100,000 per annum, which could be funded from the Department of Defence.

In addition, the Centre should develop a list of research topics in conjunction with other stake-holders, who should in appropriate cases be prepared to assist with the funding of the research.

It is not intended that these recommendations should mean that students should not be able to continue to study research topics of their own choosing in consultation with the Director and Deputy Director of the Centre.

There must be an appropriate method available to disseminate the research findings including appropriate publications under the auspices of the Centre.

### **Recommendation 5**

- (a) That the Department of Defence fund the Centre initially for \$100,000 per year for research;**
- (b) That the Centre explores with stakeholders the possibility of conducting research at their expense on topics selected by them;**

- (c) **That the Centre develops a list of research topics in conjunction with other stakeholders;**
- (d) **That the Centre be funded to launch publications, including a series of student research theses and the establishment of an academic refereed journal in military law.**

### **3.2 Staffing**

Currently all of the APCML management staff are employed in other demanding positions, and receive no additional funding for their APCML roles. For example, the APCML Deputy Director is also the Director of the MLC, whilst those associated with the university node also have teaching commitments. Staff are also frequently required to be absent from their directorship positions.

These absences and competing job interests can also make it difficult for the four directors to meet frequently and for the lines of communication between the four to remain open. It is also difficult for the directors to devote sufficient time to the APCML to enable it to expand.

Staffing within the university node appears to be generally adequate. There is sufficient administrative support with the full-time position of Centre Administrator, held by Ms Dianne Costello, and staff are able to fill in for absent staff members as required. For example, when Professor McCormack was absent from the university node from August 2003 to July 2004, Associate Director Oswald assumed the role of Acting Director. One issue that was raised about this however was by Professor McCormack who articulated concern at the impact the APCML activities have on Mr Oswald's university position due to a lack of formal recognition by the University of much of the activities that he undertakes on behalf of the APCML. Staff absences, however, also benefit the Centre as staff build up contacts nationally and internationally and return with new ideas that contribute to a strong knowledge base for the APCML. Mr Oswald, for example, has put considerable effort into networking and building relationships with overseas organisations such as the United States Institute for Peace on behalf of the APCML, whilst Professor McCormack has gained intensely practical experience through his involvement in the trial of Slobodan Milosevic that compliments his teaching and research in the area of international criminal law and the enforcement of international humanitarian law.

The staffing situation within the military node appears to be more problematic. Currently the APCML share both resources and staff with the MLC with the only dedicated full-time APCML staff member being the Executive Officer, Ms Sonja Khouri. The APCML Deputy Director is the Director of the MLC and the APCML is not seen by the ADF as a separate entity requiring specific allocated billets. This situation is further exacerbated, according to Colonel Dunn, by the fact that the APCML is not 'owned' by one of the services, and is therefore almost in limbo.

Further, the nature of the military has required staff to be absent for long periods of time on deployment. Since the establishment of the Centre, both the Deputy Director and Associate Director, Lieutenant Colonel Muggleton, have been absent for various lengthy periods of time. Although other management staff are generally able to temporarily fill these positions, the reduction in personnel from what is already a small working unit can impact heavily on the quantity of activities that the Centre can undertake. While this is a common problem throughout the Defence Force, the very small size of the APCML magnifies the effect of the temporary loss of senior staff. This was noted in the lack of activities by the military node for the period July 2003 to June 2004 during which Colonel Kelly and Lieutenant Colonel Muggleton were both deployed to Iraq. However, the advantage of these absences, as Lieutenant Colonel Muggleton pointed out, is that staff are able to bring back a constant stream of fresh ideas to the Centre. Colonel Kelly, for example, has gathered a wealth of operational knowledge during his frequent military deployments.

Whilst the co-location of the MLC with APCML has proved to be a positive arrangement in terms of resource sharing and for enhancing the MLC's capabilities, the significantly increased tempo of the MLC and the desire of the APCML to expand its activities has placed a strain on MLC/APCML shared human support resources, which are no longer adequate for current or future demands. This issue was discussed in a submission to the Panel by Lieutenant Colonel Craig McConaghy, the Acting Director of the MLC. We agree with this but we do not consider it appropriate to separate the location and activities of the MLC and APCML in the short or medium term. We agree in this regard with Colonel Kelly that this would involve unnecessary duplication of effort and would not use the skills of personnel to the best advantage.

Various solutions to the staffing issues were discussed by APCML staff. Colonel Kelly and Lieutenant Colonel Muggleton suggested that there was the possibility of involving increased numbers of reservists in the

military node, a suggestion also raised by the ADF Legal Services representatives who posited the idea of separating the position of Deputy Director from the Director of the MLC position, and having a reservist fill the Deputy Director position on either continued full-time service, or charging training day rates for the days on which work is done for the APCML. They noted it would be unlikely that a permanent military billet could be obtained for this role. It was also felt that this suggestion may not adequately address the issues of continuity and corporate knowledge. Another suggestion was to continue with the current arrangement but provide a reserve backup, for example on a six or twelve month rotation, who could do the bulk of the work, although, this appears to already be happening informally with Lieutenant Colonel Muggleton.

Colonel Kelly and Lieutenant Colonel Muggleton noted the urgent need to increase the administrative support, which presumably could occur by filling the currently vacant APS Level 3 clerical position. All the management staff also raised the need for an additional staff member to relieve the pressure on the Associate Directors through the creation of an EL2 Legal position, the holder of which could devise and develop training courses on both an intellectual and administrative level. The position holder would need to be responsible for ensuring intellectual momentum throughout each of the courses with the aim of taking the pressure off Associate Director Oswald and to provide institutional continuity which was identified by several people, including Professor Saunders, as being an important issue in discussions of the APCML's development.

This new position would preferably be a civilian post to avoid the possibility of loss of continuity through military deployment but could also be a military reservist post.

It was also noted that if the Centre was to run further conferences on the scale of the previous Challenges Project Conference there needed to be at least one if not two staff dedicated full time to developing the substance of and managing the administration of such events.

### **3.2.1 Panel Recommendations**

#### *Discussion*

Without having a full appreciation of the amount of funding that the Defence Department is prepared to devote to the Centre, it is difficult to make specific staffing recommendations beyond what we see as the

minimum necessary. Our recommendations should not therefore be taken as indicating that we see their implementation as all that is necessary for the future running of the Centre, but rather a bare minimum.

### **Recommendation 6**

- (d) That a position of EL2 Legal be created in addition to the current EL1 position;**
- (e) That the APS Level 3 position be filled as soon as possible;**
- (f) That increased numbers of members of the Reserve from all services should be used to support the Centre.**

### **3.3 The Nodes**

As noted above, the general consensus from the representatives interviewed by the Panel is that the combination of the military and university nodes works well and provides a unique collaboration which greatly enhances the effective development, study and practice of international humanitarian and military law within the Australian Defence Force and the armed forces throughout the Asia-Pacific region.

None of the representatives or APCML staff members expressed any negativity towards the collaboration.

### **3.4 Facilities**

The most important and most frequently discussed issue regarding the future development of the Centre is the need for a permanent home for the APCML military node. Whilst the university node has a permanent space of outstanding quality allocated to it at Melbourne Law School, the military node currently operates on a sub-optimal and temporary basis from two locations – Randwick Barracks, where it has office space and shares both resources and staff with the MLC and HMAS Penguin where it conducts courses.

The Review Panel has concluded from all the information presented to it that HMAS Penguin is the stand out premier joint location for the

APCML military node and the MLC and that an expeditious decision to that effect from Defence would greatly assist the future development of the Centre. The inability of Defence Infrastructure to date to provide a satisfactory permanent location for the military node has impacted negatively on the continued development of the APCML. As was discussed under the training section above, there is great scope for the APCML to develop its training courses. There is a clear demand for more courses to be run beyond the two or three that are currently run each year. However, to be able to plan a more rigorous training schedule there needs to be certainty of the availability of suitable facilities and accommodation. Further, there is a concern among APCML staff that the viability of the APCML is currently dependent upon the personalities of the Directing Staff. Thus there is an urgent need to begin 'institutionalising' the Centre and consolidating a Program of Activities so that the longer term future of the Centre is guaranteed despite the inevitability of personnel changes. This process can only begin if there is permanent home for the military node.

Further, the training courses must also be run from an appropriate venue that can accommodate up to 35 staff and students, including overseas military officers and guest lecturers, often of high rank, for periods of up to two weeks at a time in a way that permits the ongoing discussions and exchanges beyond the classroom walls and which adequately showcases Australia's commitment to the promotion of military law through cooperation and relationship building with regional militaries. Australia's focus is turning increasingly to the Asia-Pacific region as part of its broader security focus, and military governance issues are becoming a more important part of the government's broader work within the region. As such, the APCML, with its unique academic and military relationship and regional outreach focus has the potential to develop exponentially over the next few years.

The current situation for facilities is entirely inadequate in meeting the APCML's needs. The APCML office space has been allocated on a temporary basis at Randwick Barracks but live-in courses (teaching facilities, accommodation and messing) are currently run at either HMAS Penguin or Randwick Barracks. Because the APCML has no priority ranking among ADF entities for access to facilities and accommodation, courses must work around other ADF facility requirements resulting in a constant concern that, despite advanced booking, they may be displaced from conference facilities at either Randwick Barracks or HMAS Penguin at very short notice. Mr Oswald noted that at Randwick Barracks, courses can only be run at certain times and even then the APCML have on occasion been told they

cannot use lecture theatre facilities. Randwick Barracks also offers substandard accommodation which has heavy demands made upon it by pre deployment training that occurs at relatively short notice. This issue of uncertainty was raised by not only the APCML staff, but also representatives such as Ms Rowling and Group Captain Dunbar of the International Policy Division, and Air Commodore Harvey and Mr Fitzpatrick of the ADF Legal Services, all of whom also mentioned the problem of the provision of adequate accommodation for course attendees, when course locations remain undetermined.

The Panel spent an afternoon at HMAS Penguin, observing an APCML course in progress and speaking with course participants. It was clear that HMAS Penguin possesses all the attributes required to facilitate the successful operation of the APCML. The site provides:

- A premier location for the hosting of international guests and an environment conducive to the ongoing exchange of ideas and views outside the lecture room;
- good quality accommodation (with more than the requisite 30 rooms for each APCML course);
- excellent mess facilities – not only for dining but also for informal relaxation and interaction;
- conference facilities and syndicate rooms;
- proximity to relevant and operational ADF units (for example, APCML Courses regularly visit Holsworthy Barracks and receive presentations from staff at HQJOC), to the ADF Warfare Centre and to the respective environmental commands;
- proximity to an international airport facilitating ease of access not only for students on courses but also for guest presenters from the region flying into Australia for one or more days of an APCML course.

The preference for HMAS Penguin has also been supported by the Defence Minister Senator Hill, Deputy Secretary Carmody and the APCML patron, Sir Ninian Stephen, since the very opening of the Centre.

However, it is also acknowledged that the debate regarding HMAS Penguin's long term future is a continuing one. In particular, the old Naval Staff College building that is currently used for courses by the Centre itself has a doubtful future. It is unfurnished and the Centre has to hire furniture for each course. While it would be adequate for the Centre's purposes, it would clearly need refurbishment if it was to become the permanent home of the Centre and the MLC. We

understand that it is considered uneconomical to refurbish it because of the cost of bringing it up to modern requirements. Assuming this to be the case an obvious solution would be to demolish it and rebuild. Both the MLC and the APCML could then be co-located using shared amenities with the Medical and Hydrographic Schools in a new purpose built facility.

We have no doubt that in the long term HMAS Penguin is the most suitable location for this purpose, assuming that it continues to remain Defence property. What is important is that a decision be taken promptly, in order to ensure that the future of the Centre can be properly planned.

In the short term, while these issues are being resolved, we consider that Victoria Barracks in Brisbane would provide a possible solution. We appreciate that the future of the Barracks is also uncertain, but its attraction is that it could be used with little additional expenditure to accommodate both the MLC and APCML.

Victoria Barracks is a premier facility with adequate lecture room capabilities, ample office accommodation and rooms that could be used for break out purposes. It has good mess facilities which would provide a focus for meals and social activities during courses. The Barracks is also in close physical proximity to an international airport and only a few kilometres from Enoggera Barracks.

Its major drawback is its lack of accommodation, having only four bedrooms, currently unused, in the mess. However, adequate hotel accommodation in the immediate vicinity and within easy walking distance is available at an estimated \$100 per night. If the premises were considered as a long term proposition, there would be the possibility of constructing accommodation. Of course discussions would need to be held with various entities about the possibility of co-location of the APCML and MLC at Victoria Barracks but we raise the possibility of the location either as interim or longer term because it does seem to meet most of the criteria referred to above in relation to HMAS Penguin.

### **3.4.1 Panel Recommendations**

#### *Discussion*

The Panel does not see its function as dictating a particular location for the military node. We have discussed two desirable locations. There

may be other possibilities such as HMAS Cerberus or Fort Queenscliff both in Victoria. We understand the argument that since the University node of the APCML is already in Melbourne another Victorian location for the military node does little to promote a national flavour to the Centre. HMAS Penguin is a premier location and, if the base is to be retained by Defence, we strongly recommend it since the site offers all that the APCML requires to become a much more strategically effective institution. However, if HMAS Penguin is not to be retained by Defence we strongly recommend in the alternative that a permanent home be found for the military node of the Centre as soon as possible as a matter of urgency if the Centre is to fulfil its proper function.

We think that it is essential that the military node be located in a military environment and that it be the one military environment (unlike the current arrangement with office space at Randwick Barracks while courses are delivered at HMAS Penguin) so that participants and faculty are accommodated on the same location as that at which the training is conducted or in very close proximity to it.

We also think it essential that the APCML be co-located with the MLC because of the joint use of personnel.

### **Recommendation 7**

- (a) That HMAS Penguin be designated as the permanent home for the APCML and MLC as a matter of urgency – even if a purpose built replacement for the existing former Naval Staff College Building will take several years to complete;**

**Alternatively (or as an interim arrangement):**

- (b) That a permanent/temporary home which satisfies the above listed criteria be identified for the military node of the Centre as soon as possible as a matter of urgency;**
- (c) That the permanent/temporary home be situated on a military base with accommodation available either on the Base or in close proximity to it.**
- (d) That the APCML be co-located with the MLC.**

## **3.5 Finances**

Another major issue that has impacted on both the current operation and possibilities of future development of the APCML is funding, or more specifically the lack of consistent funding preventing any concrete forward planning.

The main sources of current funding are from the partners and the International Policy Division. In addition to paying staff salaries, the ADF Legal Services allocated \$90,000 to the military node of the Centre in the last financial year, the spending of which is left to the discretion of the military node. The Melbourne Law School also grants the university node an annual sum of \$5,000.

The International Policy Division provides funding through its sponsoring of regional students to attend the APCML courses. Each regional officer is charged \$1,500 plus GST for a one-week course and \$2,500 plus GST for a two-week course. These course fees cover all course costs incurred by the APCML, including social functions, accommodation and food, with a small excess. ADF participants are not charged a course fee and reduced introductory offers have been provided to other government departments with positive responses. The ICRC also funds 2 students to participate in APCML courses.

The Challenges Project Conference held at Melbourne Law School in November 2002 proved to be an additional source of funding for the APCML. The APCML was approached by the UNPO section of the International Policy Division to be the designated Australian partner organisation of the Challenges Project, an initiative established in 1997 by the Swedish National Defence College. The APCML did not receive any specific funding for taking on this role; however the International Policy Division did underwrite and significantly fund the Melbourne Challenges Project Conference. The significant surplus resulting from this conference has financed the continued involvement of Mr Oswald, on behalf of the APCML, in the Challenges Project, including covering overseas travel and associated research projects.

Mr Oswald also teaches pre-deployment training courses for the Australian Federal Police under the auspices of the APCML, however he does not charge for his time.

Air Commodore Harvey and Mr Fitzpatrick of the ADF Legal Services noted that the Commonwealth funding arrangements under the *Financial Management Accountability Act* do cause some difficulties in terms of direct funding. One approach to overcoming this has been in terms of the professional development programme run by the MLC

where the ADF can ‘purchase’ the services of the University of Melbourne in providing programmes such as the Masters in Military Law. This program is a Melbourne Law School program and does not provide a pecuniary benefit to the APCML.

It is recognised that the lack of significant and consistent funding to undertake additional research and training activities such as employing research assistance for specific projects or funding a regional military officer to come to Australia for a few weeks or off shore training courses is seriously impacting on the development of the Centre, with Air Commodore Harvey noting the ideal situation would be for the APCML to be a separate entity with its own funds and independent activity. At the very least the Centre needs to be in a situation where it is not dependent on one-off activities such as the Challenges Project Conference to provide extra finances.

Ms Rowling of the International Policy Division emphasised that the APCML is very useful to her division and that when the Centre comes to the International Policy Division with a proposal favourable to their objectives, they are happy to provide funding. In the past the Centre has presented the Division with a forward plan, for example for the Challenges Project Conference, and if this is done before the new financial year any required funding can be factored into the next year’s budget.

### **3.5.1 Panel Recommendations**

#### *Discussion*

In the view of the Panel, there is something of an imbalance between the contribution of the University and that of the Defence Department, to the detriment of the University. We take the view that it would be appropriate for the Department to cover the travel and associated costs associated with University personnel travelling to APCML events. We have already recommended the payment of a dedicated sum for research, but we also think that the conduct of courses should also provide a regular source of income to the Centre, to enable it to offer more of such courses and to assist with a properly planned programme.

It may be that this could be achieved by the ADF purchasing the services of the Centre to conduct such courses from the University at a figure that would achieve this.

### **Recommendation 8**

- (d) Cost of ADF participation in courses should be recovered from the military node and reimbursed to the university node.**
- (e) Courses are to be run on a cost recovery basis, covering travel, accommodation, and additional expenses of the University of Melbourne staff.**
- (f) The cost of courses is to include an additional margin to be made available for APCML use, for running costs and, for example, production of publications arising from the courses and incidentals.**

### **3.6 Promotion, Capacity Building and Future Developments**

According to the Deputy Director, the initial phase of the APCML establishment required the Centre to set up training courses, build and develop regional contacts and pursue research and doctrinal development through the university node. All these requirements have been met with the APCML running successful courses for which demand exceeds supply. Networking activities of all staff, and most prominently Mr Oswald, have ensured relationships have been built within the region for example through the Challenges Project Conference, as well as through the courses which have included representatives from Vietnam, Cambodia, Lao, Indonesia, the Philippines, Thailand, China, Japan, Papua New Guinea and Fiji.

To date the APCML has focused on issues of peace keeping in the belief that within the Asia-Pacific region the Centre can contribute most by focusing on a non-controversial issue. However, as the Director stressed, the Centre and staff do not want to focus solely on this issue and the Centre has therefore defined peace keeping broadly including, for example, regional police forces and situations such as the Solomon Islands and Papua New Guinea. An issue such as the development of a national military justice system (including, for example, the approach taken by Australia to this issue and the establishment and operation of the Defence Force Discipline Appeal Tribunal under the presidency of a justice of the Federal Court) is a good example of the sort of issue the Centre can assist with in the Region. Another issue is arms control and disarmament which clearly impacts upon military operations and is a field in which Australia has traditionally contributed significantly both regionally and globally. With adequate resources the Centre could be

making profound regional contributions in these strategically important areas.

Indeed, the ADF Legal Service Division representatives stressed that although peace keeping will remain the core function of the Centre, due to resource issues as well as the simple need for there to be a specific area of focus for the Centre, it is most attractive from a domestic and overseas perspective to be seen as a centre covering a broad spectrum of issues, rather than only covering a niche market and potentially being seen as not being available to offer expertise in other aspects of military law. It was also suggested that the Centre should broaden its coverage to legal issues within the more traditional or conventional conflicts in which the ADF may find itself involved. Other regional forces, such as Japan and China, have traditional conventional warfare thinking and come to the APCML courses for a development of their ideas and exposure to current thinking.

Both APCML staff and representatives had numerous suggestions for the way in which the APCML could expand and capacity build within the region. According to Colonel Kelly, stage two of the APCML's development is to establish the Centre as a proper 'think tank' modelled on the United States Institute for Peace whose work impacts directly on government and military policy. The Centre aims to be involved more at the legal policy nexus level, to increase its influence and shape behaviours in the region and to eventually expand out into the region.

As part of this the Centre's directors recognise the need to move away from their current Australia-centric position and expand activities within the Asia-Pacific region. This idea was supported by the ADF Legal Services representatives who also stressed the desire to see the Centre be recognised in the region as a centre of excellence, just as the San Remo Institute is in Europe. This requires an increase in the training capabilities but also the development of a more coherent research capability for the APCML.

The APCML directors expressed several ideas for the future development of the training courses offered by the Centre. One goal is to provide training courses and/or seminars and workshops *in situ* in the region as has already been discussed.

If the APCML was able to obtain appropriate funding, it could also run short workshops addressing current issues, such as the treatment of detainees and prisoners of war.

The APCML directorship would also like to see a program developed to bring regional military officers on staff secondment to the Centre. The aim of the program would be to assist with their professional development; however visiting officers could also contribute to the Centre by presenting guest lectures and/or undertaking some graduate study. This would also contribute to the Centre's growing appreciation of different approaches to military law within the region and would be an excellent sounding board for staff and research higher degree students.

The Centre could also play a more proactive role in identifying the research needs of particular players and responding to them as has been discussed above. The Centre's directors would also like to have funding available to launch several publications, including a series of student research theses and the establishment of an academic refereed journal in military law.

Finally, the Centre would like to be able to provide 'reach back' support to field missions – whether it be the drafting of key documents, conducting research or providing oral advice. Through the training courses, APCML staff are constantly developing relationships with regional military legal officers who will be deployed on future military operations. This proposal would therefore allow the APCML to continue this relationship and capacity building in the region and simultaneously ensure the research arm of the Centre keeps pace with regional developments.

In terms of domestic relationship building, Ms Rowling and Group Captain Dunbar noted the need for a closer relationship between the APCML, the Peace Keeping Centre (which exists within the ADF Warfare Centre) and the MLC looking at courses on the legal aspects of peace operations. For example, the Peacekeeping Centre is a centre of excellence which could provide conceptual input if the APCML developed specific peace keeping operations courses aimed at the command level. They also agreed that there could be some sort of linkage made between the APCML and the International Centre of Excellence in Asia-Pacific Studies and Diplomacy, located at the Australian National University, Canberra.

### **Recommendation 9**

- (a) The concept of peace keeping should be expanded to include the training of regional police forces and to extend**

- to operations of the type conducted in the Solomon Islands and to include the provision of police and like services to Papua New Guinea;
- (b) The Centre should be involved in the development of military justice systems;
  - (c) The Centre should cover a broad spectrum of issues, including arms control and disarmament issues and legal issues arising out of conventional conflicts in which the ADF may find itself involved;
  - (d) The Centre should develop as a ‘think tank’ modelled on the United States Institute for Peace whose work impacts directly on government and military policy. The Centre should be involved at the legal policy nexus level, to increase its influence and shape behaviours in the region and to eventually expand out into the region;
  - (e) The Centre should develop a program to bring regional military officers on staff secondment to the Centre, for the purposes of assisting with their professional development, undertaking some graduate studies and presenting guest lectures;
  - (f) The Centre should have the capacity to provide ‘reach back’ support to field missions – whether it be the drafting of key documents, conducting research or providing oral advice;
  - (g) The Centre should develop closer relations with other relevant centres, including the ADF Peacekeeping Centre, the ADF Military Law Centre and the Australian Strategic Policy Institute, the International Centre of Excellence in Asia-Pacific Studies and Diplomacy and the Strategic and Defence Studies Centre at the Australian National University.

#### **4 Final Recommendations**

##### *Discussion*

The Panel thinks it important that the Centre have an opportunity to develop and grow. This is not possible in a situation where its continued existence is dependent upon three year reviews. This is not to criticise the original arrangement which was experimental and innovative and it was therefore proper that it be the subject of a review of this nature and that its initial term be relatively short.

However the Centre has more than proved its value during that period and events that have since occurred in the world and in the region are indicative that the decision to establish the Centre was prescient.

We think that having regard to our recommendation for the continuance of the Centre a new agreement needs to be negotiated between the University and the Department of Defence. This should not be difficult as the present agreement provides an adequate basis that can be modified in accordance with the recommendations that the Panel has made, insofar as they are accepted.

The important thing is that the agreement must have a much more extensive term, which we suggest should be as long as ten years. It may be that the parties would wish for an independent review during that period and if so we recommend that it not take place until the new agreement has been in operation for five years. We do not suggest that such a review should be directed at the continued existence of the Centre but rather as to its performance, progress and development and what steps need to be taken to further improve its performance. We think it important for the overall performance of the Centre that all those dealing with the Centre and in particular its own staff has a degree of confidence in its permanence.

### **Final Recommendation**

- (a) That the existing agreement be re-negotiated to provide for a term of 10 years, together with such other modifications or alterations as may be agreed;**
- (b) That any further review of the operations of the Centre should take place after the new agreement has been operating for at least five years.**

## **5 Appendices**

**Appendix 1 - Agreement between the Commonwealth of Australia and University of Melbourne for the establishment and operation of the APCML**