

CONTENTS

MESSAGE FROM THE PATRON	1
DIRECTOR'S REPORT	2
OVERVIEW.....	4
PARTNERS.....	4
LOCATION AND FUNCTIONS.....	5
CENTRE STRUCTURE, MANAGEMENT AND MEMBERS.....	6
Overview	6
Management and Administrative Staff.....	7
Academic Staff.....	7
2004 EXTERNAL REVIEW.....	9
CENTRE COURSES.....	13
RESEARCH PROGRAMMES	15
Centre Participation in Major Projects	15
Research Fellows and Appointments	17
Research Higher Degree Students	18
PUBLICATIONS	22
APCML Monograph Series.....	22
Publications by APCML Members and Associates.....	22
CENTRE CONFERENCES, WORKSHOPS AND SEMINARS	25
Expert Workshop.....	25
Work in Progress Seminars	25
Conference, Professional & Other Presentations by APCML Members and Associates	26
AWARDS AND APPOINTMENTS.....	30
Awards to APCML Members and Associates.....	30
New Appointments of APCML Members and Associates 2004–2005	31
Ongoing Appointments of APCML Members and Associates.....	32
VISITORS JULY 2004 – JUNE 2005.....	33

MESSAGE FROM THE PATRON

The Rt Hon Sir Ninian Stephen KG AK GCMG GCVO KBE



I am delighted to report that the Asia Pacific Centre for Military Law has continued to grow from strength to strength in its fourth year of operation. The External Review Panel, which presented its Report to the Minister of Defence on 1 December 2004, spoke of the Centre's 'enormous beneficial potential in the pursuit of Australia's strategic national interests in the Asia Pacific Region' and urged that the Centre 'be supported to enable it to reach its full potential' (further details of the External Review Report appear on page 9).

The Review Panel also referred to the exceptional qualities of leadership shown by the Centre's Director, Professor Tim McCormack, and Deputy Director, Colonel Michael Kelly, who have worked tirelessly since the establishment of the Centre in 2001 to consolidate its reputation for excellence in research and in the provision of training courses. The Panel, after its various meetings with those bodies most closely connected with the Centre, was able to conclude that the prevailing view with regard to 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'. This view has also been supported by the Dean of the Law School, Professor Michael Crommelin, and the other members of the Centre's Steering Committee.

Professor McCormack, despite his ongoing commitments overseas including as *amicus curiae* in the trial of Slobodan Milosevic in The Hague, has maintained an active public role in both academia and in the media, with many presentations on topics related to the Centre's work. He is supported by a talented and committed team of academics and general staff both in the university node at the Melbourne Law School and in the military node at the Randwick Barracks in Sydney. I know that he would want me to acknowledge their pivotal role in the success of the Centre over the past year.

In my foreword to last year's Annual Report I indicated that I would be looking forward to seeing the recommendations of the Centre's External Review. One year later, with the Centre embarking on a new phase of progress, I am confident that the glowing future I predicted for the Centre in my remarks at the launch in August 2002 will be fully realised.



Sir Ninian Stephen

DIRECTOR'S REPORT

Professor Tim McCormack



It is a pleasure to present this Annual Report for the Asia Pacific Centre for Military Law on its fourth year of operation to 30 June 2005.

In my Director's Report last year I referred to the External Review of the Centre that was currently taking place. The Review Panel — comprising 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; and the Hon Greg Hunt MP, Federal Member for Flinders and Parliamentary Secretary for Heritage and the Environment — was required to evaluate the operation of the Centre 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 with the Department of Defence.

The Centre's Patron, the Rt Hon Sir Ninian Stephen, has written on page 1 above of the very favourable response by the Panel to the work of the Centre. A full report of the Review's recommendations appears on page 9. As Director, I am greatly heartened by the positive response of the Review Panel, and I wish to express my gratitude to all those who took part in the Review for their recognition of the importance of our vision 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.

The success that the Centre has achieved in its first four years of operation is due in no small part to the dedication and commitment of my colleagues and I wish to pay tribute to them here. Firstly I wish to record my deepest gratitude and thanks to the Deputy Directors with whom it has been my pleasure to work over the past year. From the inception of the Centre to December 2004 the position was held by Colonel Mike Kelly who in his inimitable way did so much to make the Centre a reality and to strengthen the commitment of the Department of Defence to our collaboration. His contribution lives on in our ongoing work.

In January 2005 Lieutenant Colonel Geoff Cameron CSC took over the position of Deputy Director and in the first six months of our partnership we have established an excellent working relationship. Geoff has enthusiastically embraced the aims and objectives of the Centre and has already made his own mark on our joint endeavours.

I also wish to record my thanks to Associate Directors Bruce Oswald CSC and Lieutenant Colonel Paul Muggleton, both of whom have worked tirelessly to advance our work. At the time of writing Bruce is on deployment in the Middle East and we look forward to welcoming him home safely soon.

Ms Dianne Costello, the Centre's Administrator since its establishment in 2001, took up another position in the Melbourne Law School late in 2004 and I wish to record our thanks to her for her support of the Centre in its first years of operation.

The Centre was pleased to welcome two new staff in January — Ms Jessica Howard as Lecturer and Ms Cathy Hutton as Administrator. On arrival in the Centre, Jess and Cathy immediately plunged into the hectic preparations for the Biological Weapons Convention Regional Workshop held in February (see page 25 for details). The success of this Workshop, attended by over 30 regional participants and organised in a relatively short space of time, reflects the supportive and harmonious working relationships that exist among Centre staff. In April, Cathy began working with the Centre's web consultant Mr Ian McGowan on a major revamp of the Centre's website and this has resulted in much more effective promotion of the Centre and its activities.

The Centre endorses the Melbourne Law School goal of enriching the legal, educational and cultural life of the City of Melbourne and the State of Victoria by making its resources and expertise available to local, regional, national, and international communities. Staff are encouraged to serve on professional and community bodies, to contribute to the debate on issues of public significance and undertake law reform projects. Students are encouraged to be actively engaged in the community. This Annual Report gives details of a broad range of activities and achievements by those associated with the Centre, both as members of the Centre and as individuals, in the period July 2004 to June 2005.

In particular I wish to mention the award of the Conspicuous Service Cross for outstanding achievement to Deputy Director Lieutenant Colonel Geoff Cameron in the Queen's Birthday Honours List, and the Visiting Fellowship awarded to Ms Alison Duxbury by the prestigious Lauterpacht Research Centre for International Law at the University of Cambridge. Two of the Centre's young Research Fellows were also selected for significant appointments — Ms Sarah Finnin worked for three months in the United States Office of Military Commissions with Major Michael 'Dan' Mori who had been assigned to represent Australian citizen David Hicks before the US military commission at Guantanamo Bay, and Ms Leanne McKay took up a six month internship in the Pre-Trial Chamber of the International Criminal Court in The Hague, working with Judge Neroni Slade of Samoa. Further details of these remarkable achievements appear in the following pages.

A particular highlight of the year for me, and for my colleagues who had the memorable experience of meeting with her, was the visit to the Centre of HRH Crown Princess Victoria of Sweden in March. Further details of the visit appear on page 33.

Finally, may I express the thanks of all those involved in the Centre to our generous and gracious patron, Sir Ninian Stephen, who has attended a number of Centre events in the past year and continues to support and encourage us in every way he can.



Timothy L.H. McCormack

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

OVERVIEW

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.

PARTNERS

Overview

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 AND 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.

CENTRE STRUCTURE, MANAGEMENT AND MEMBERS

OVERVIEW

Patron

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

Director and Deputy Director

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

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.

Locations

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

MANAGEMENT AND ADMINISTRATIVE STAFF

Director

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

Deputy Directors

Colonel Mike Kelly AM, Director, Military Law Centre, Defence Legal, Department of Defence (to December 2004).

Lieutenant Colonel Geoff Cameron CSC, Director, Military Law Centre, Defence Legal, Department of Defence (from January 2005).

Associate Directors

Lieutenant Colonel Paul Muggleton, Defence Legal, Department of Defence.

Mr Bruce Oswald CSC, Lecturer in Law, Melbourne Law School, The University of Melbourne.

Executive Officer

Mr Ian Martin, Military Law Centre, Defence Legal, Department of Defence.

Centre Administrator — University Node

Ms Dianne Costello (to December 2004).

Ms Cathy Hutton (from January 2005).

Administrative Support — Military Node

Ms Michelle Garreffa (from December 2004).

Web Consultant — Military Node

Mr Ian McGowan.

ACADEMIC STAFF

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

- Ms Alison Duxbury, Senior Lecturer in Law
- Ms Jessica Howard, Lecturer in Law (from January 2005)
- Associate Professor Bob Mathews OAM, Principal Fellow
- Mr Andrew Mitchell, Senior Fellow
- Mr John Tobin, Lecturer in Law
- Ms Tania Voon, Senior Fellow

Research Higher Degree Students

For details of the Research Higher Degree students affiliated with the APCML and their areas of research see page 18.

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

The Centre did not have a Fellow during the period covered by this Report.

Advisory Board Membership 2004–2005

- Professor Michael Crommelin, Dean, Melbourne Law School, The University of Melbourne
- 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
- Mr Mark Fitzpatrick, National Practice Manager, Office of the Director General, Australian Defence Force Legal Service (to December 2004)
- 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 Major General Len Roberts-Smith, Judge Advocate General, Australian Defence Force
- Professor Cheryl Saunders AO, Associate Dean (Graduate), Melbourne Law School, The University of Melbourne
- Professor Ivan Shearer AM, Sydney University Law School
- Rt Hon Sir Ninian Stephen KG AK GCMG GCVO KBE (Patron)
- Colonel Ian Westwood, Chief Judge Advocate, Australian Defence Force
- Ms Robin Warner, Assistant Secretary, International Branch of the Criminal Justice Division, Commonwealth Attorney-General's Department
- Management Staff of the Centre
- Academic Staff of the Centre

2004 EXTERNAL REVIEW

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 Asia Pacific Centre for Military Law (APCML), a comprehensive review of the Centre's performance was to be carried out in its third year of operation.

In July 2004, the APCML External Review Panel was established:

- 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)
- The Hon Greg Hunt MP, Federal Member for Flinders and Parliamentary Secretary for Heritage and the Environment

The Panel was required 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 Report of the Panel was completed in November 2004 and was presented to Senator Hill, Minister for Defence, Mr Ric Smith, Secretary of Defence, and General Peter Cosgrove, Chief of Defence Force in Canberra on 1 December 2004.

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):

- (a) 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;
- (b) That the permanent/temporary home be situated on a military base with accommodation available either on the Base or in close proximity to it;
- (b) 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.

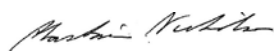
7. Future Developments

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.



The Hon Alastair Nicholson
AO RFD



Ms Lydia Morton
First Assistant Secretary
North Asia Division
DFAT



The Hon Greg Hunt MP
Federal Member for Flinders

CENTRE 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:

Law of Peace Operations Course, 2–6 August 2004

The inaugural APCML ‘Law of Peace Operations’ course was conducted at HMAS Penguin, Sydney, from 2–6 August 2004. This five day course examined legal issues relevant to the creation, management and conduct of military and civilian police peace operations. Particular areas of focus were: the legal regulation of the use of force by military force and civilian police, privileges and immunities, the application of the laws of armed conflict and human rights law to peace operations, the application of contributing state and host state law, the role and application of mediation on peace operations and the impact the International Criminal Court is likely to have on the planning and management of peace operations.

The Course Director was Bruce Oswald, Associate Director, APCML. Other directing staff included: Colonel Krisna Bovornarakataks, Military Legislation & Foreign Affairs Division, Judge Advocate General’s Department, Thailand; Colonel Aziz Mohammed, Director, Army Legal Services, Fiji; and Andrew Ladley, Director, Institute of Policy Studies, Victoria University of Wellington.

The course was attended by seven ADF officers, 11 officers of regional defence forces (including Cambodia, India, Malaysia, Pakistan, New Zealand, Singapore, Indonesia and the Philippines) and four civilians from relevant government and non-government organisations.

Throughout the week participants were involved in lectures and practical exercises, as well as several group social activities which provided opportunities to interact socially and develop links between the various organisations represented.

Command and Staff Operations Law Course, 11–22 October 2004

The Command and Staff Operations Law Course was conducted at HMAS Penguin from 11–22 October 2004. The objective of the course was to raise the awareness of commanders and their staff about key operations law issues that impact on contemporary military operations.

The course was divided into three modules — Conventional Operations; Operations Other Than War, including peace operations; and Training, with specific topics within these modules including the Laws of Armed Conflict: Sources and Content; Maritime Zones and Naval Operations; Air Operations; Rules of Engagement; the International Criminal Court; Command Responsibility; Status and Protection of UN Personnel and the Status and Treatment of Detainees and Counter-Terrorist Operations.

The course involved 25 participants, including 13 regional officers, 11 ADF personnel and 1 defence civilian. The course Director was Lieutenant Colonel Paul Muggleton, Associate Director, APCML. Special guest lecturers included APCML Director, Professor Tim McCormack; His Excellency Major General Janaka Perera, High Commissioner of Sri Lanka; Colonel Kevin Riordan, Director of Legal Services NZDF; Professor Stuart Kaye, University of Wollongong; and Colonel Quentin Flowers AM, Army Land Headquarters.

Civil Military Co-operation Course, 11–15 April 2005

The objective of the Civil Military Cooperation Course, held at HMAS Penguin from 11–15 April 2005, was to equip its 26 participants with a knowledge of the planning factors that are critical to the successful conduct of CIMIC operations. An additional facet



of the course is the opportunity for the attendees to familiarise themselves with each other's perspectives, operating procedures, methods, limitations and advantages in this respect.

The course was opened by Brigadier Brian Dawson AM, CSC. The course was attended by a diverse range of participants, including 6 regional officers, 16 ADF officers and 4 ADF civilians. Such diversity was further reflected in the selection of special guest speakers, including Major General (Retd) Mike Smith, CEO Austcare; Mr Michael Elmquist, Deputy to the Humanitarian Coordinator and Chief, UN Office for the Coordination of Humanitarian Affairs (OCHA); Mr Tony Craig, UN Department of Peace Keeping Operations; Mr Jean-Jacques Bouvay, Head of the ICRC Regional Delegation for the Pacific; and Professor Amin Saikal, The Australian National University.

Together, speakers and participants were able to discuss the doctrinal and strategic rationale for CIMIC, placing it in the context of the contemporary operating environment and highlighting both the general principles that have emerged as relevant to the conduct of CIMIC, and the legal framework within which CIMIC occurs and the international law that impacts on how CIMIC is conducted.

RESEARCH PROGRAMMES

CENTRE PARTICIPATION IN MAJOR PROJECTS

International Humanitarian Law Series — Martinus Nijhoff Publishers

Martinus Nijhoff Publishers, based in Leiden, are the publishers of the International Humanitarian Law Series — 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 twelve volumes in the series:

Michael J Kelly, *Restoring and Maintaining Order in Complex Peace Operations: the Search for a Legal Framework*

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

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

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

Lal Chand 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*

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

Karen Hulme, *War-Torn Environment: Interpreting the Legal Threshold*

Helen Durham and Tracey Gurd (eds), *Listening to the Silences: Women and War*

Marten Zwanenburg, *Accountability of Peace Support Operations*

Hirad Abtahi and Gideon Boas (eds), *The Dynamics of International Criminal Justice: Essays in Honour of Sir Richard May*

Frits Kalshoven, *Belligerent Reprisals*

Pablo Antonio Fernandez-Sanchez (ed), *The New Challenge of Humanitarian Law in Armed Conflicts: In Honour of Professor Juan Antonio Carillo Salcedo*

Australia's Post WW II War Crimes Trials — Australian War Memorial

It is generally little known that Australian military tribunals tried more than 820 Japanese defendants for alleged war crimes and crimes against humanity in the aftermath of WW II. Professor McCormack successfully applied to the Australian Research Council for research grant funding in collaboration with the Australian War Memorial to enable a PhD student to undertake research on this important part of Australia's military and legal history. The grant involved \$97 000 over three years and Michael Carrel was awarded the scholarship to complete his doctoral thesis on this project. Michael was based in Canberra working with the historical records of both the Australian War Memorial and the Australian Archives. Dr Peter Londey, one of the Memorial's historians, and Professor McCormack acted as Michael's supervisors. At the time of writing, Michael has submitted his PhD for examination and is waiting to hear the result.

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.

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 as well as the Partners Draft Report Session for the Challenges Project Phase II: Concluding Report 2005.

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 Australia.

United Nations Convention on the Rights of the Child

John Tobin's principal research project has been a commentary to the United Nations Convention on the Rights of the Child which he is co-authoring with Professor Philip Alston, Special Rapporteur on Arbitrary Executions and Extrajudicial Killings, who is based at the Centre for Human Rights and Global Justice at New York University.

The Commentary is an extremely ambitious project which aims to fill an enormous gap in the literature concerning children's rights by providing the most comprehensive commentary ever written on the Convention on the Rights of the Child. The scope of the topics addressed is certainly without precedent and ranges from considerations of a child's right to an identity and protection against violence and abuse, to areas such as child labour, prostitution, pornography, trafficking and armed conflict. It is anticipated that the Commentary will be completed in 2006 and be published by Oxford University Press.

The Use of Force in Peacekeeping Operations — The East Timor Experience

In 2005 the Centre established a series of monographs to be written by outstanding scholars in contemporary military law issues in the Asia Pacific region. The first in this series was written by Commander Dale Stephens CSM, RAN and published in June 2005. The author was Chief Legal Advisor to the United Nations Transitional Administration in East Timor (UNTAET) Force Commander in 2000. Further details of the publication appear on page 22 of this Report.

RESEARCH FELLOWS AND APPOINTMENTS

Bob Mathews

Associate Professor Bob Mathews is a Principal Research Scientist in the Chemical, Biological, Radiological and Nuclear Centre at the Australian Defence Science and Technology Organisation's (DSTO) laboratories at Fishermans Bend in Melbourne. Bob has been involved in the provision of technical and policy advice on arms control issues to the Australian Government for more than 20 years. Bob has been awarded a DSc (*honoris causa*) from La Trobe University in acknowledgement of his outstanding achievements in the field of arms control and disarmament. He is currently undertaking a PhD at the University of Melbourne on 'The Lessons from the Chemical Weapons Convention for Other Arms Control Regimes'. Bob has been involved with the APCML since its inception and managed the highly successful Regional Workshop on National Implementation of the Biological Weapons Convention at the Melbourne Law School in February 2005 (see page 25 for more details). Jointly with Tim McCormack, Bob will deliver the Law School's first Arms and Control and Disarmament Course in the Graduate Program in 2005. DSTO and the Law School are intending to sign an MOU to formalise Bob's involvement in the work of the Centre.

Andrew Mitchell

Andrew has worked on his PhD at the University of Cambridge titled the 'The Role of Principles in WTO Dispute Settlement' and has also prepared three book chapters that will be published later in 2005. Two concern the principle of procedural fairness in WTO Disputes and will appear in books published by Cambridge University Press and DFAT. The third chapter was co-authored with Professor Kristen Walker, and is titled 'A Stronger Role for Customary International Law in Domestic Law'. It will appear in *The Fluid State: International Law and National Legal Systems*, to be published in 2005 by Federation Press.

During the period of this Report, Andrew was a Fellow of the Tim Fischer Centre for Global Trade & Finance, Bond University Faculty of Law.

Tania Voon

Tania finalised her PhD thesis on 'Cultural Products in the World Trade Organization' for submission to the University of Cambridge in September 2005. She wrote two articles on WTO law for publication later in 2005. These are on the reform of the WTO dispute settlement system with respect to appeals (with Appellate Body Member John Lockhart) and on the distinction between fact and law in WTO appeals (with Alan Yanovich).

During the period of this Report, Tania was a Fellow of the Tim Fischer Centre for Global Trade & Finance, Bond University Faculty of Law.

Alison Duxbury

Alison was a Visiting Fellow at the Lauterpacht Research Centre for International Law, University of Cambridge, from September 2004 to January 2005. At the Centre she worked on her PhD, which examines the role of human rights and democracy in determining the participation of states in international organisations. While in the UK, Alison also gave seminars at the Faculty of Law, the London School of Economics and Political Science and the Institute of Commonwealth Studies at the University of London.

Sarah Finnin

In August 2004 Sarah was selected to work for three months in the US Office of Military Commissions with Major Michael ‘Dan’ Mori who had been assigned to represent Australian citizen David Hicks before the US military commission at Guantanamo Bay, Cuba. Sarah assisted Major Mori in preparing motions to have the charges against David Hicks dismissed before the military commission. These motions argued that the Guantanamo Bay military commission was illegal under international law and were filed in early October 2004.

Leanne McKay

In March 2005 Leanne was selected for a six month internship in the Pre-Trial Chamber of the International Criminal Court, The Hague, The Netherlands, to work with Judge Neroni Slade of Samoa in matters concerning Pre-Trial Chamber II (Uganda), Pre-Trial Chamber III (Central African Republic), and the Division as a whole.

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

Andrew Macleod

‘New Asylum Laws for Australia — A Post Election Study’

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

Thomas Paul Muggleton

‘The International Crime of Aggression’

Supervisor: Tim McCormack (expected completion date: December 2005)

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: December 2005)

Doctor of Philosophy (PhD)

Sheree Bailey

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

Supervisors: Tim McCormack (expected completion date: September 2005)

Gideon Boas

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

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

Michael Carrel

‘Australia’s Prosecution of Japanese War Criminals: Stimuli and Constraints’

Supervisors: Tim McCormack and Peter Londey (expected completion date: August 2005)

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: July 2006)

Andrew Coleman

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

Supervisor: Tim McCormack (expected completion date: December 2005)

Neri Colmenares

‘International Jurisdiction and Amnesty’

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

Britt Conidi

‘Justice and Reconciliation after Mass Violence: Challenging the Linkage Assumption of the United Nations Security Council’

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

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: January 2006)

Robert Mathews

‘The Negotiation of the Chemical Weapons Convention, and its Implications for Other Arms Control Regimes’

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

Carrie McDougall

‘Prosecuting Individuals for State Acts of Aggression: Issues that the States Parties to the Rome Statute of the International Criminal Court Must Resolve’

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’

Supervisor: Tim McCormack (expected completion date: December 2005)

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: October 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’

Supervisors: Tim McCormack and 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

‘The Development of an International Responsibility to Protect’

Supervisors: Tim McCormack and Tim Lindsey (expected completion date: December 2009)

Master of Laws (LLM) (Minor Thesis)

Victoria Bannon

‘Rethinking Legal Mechanisms for Access and Facilitation of International Disaster Response in Cases of Natural Disaster’

Supervisors: Alison Duxbury and John Tobin (completed December 2004)

Udara Jayasinghe

‘To What Extent does Australia’s Women at Risk Visa Category Comply with the State’s International Law Obligations in Providing Protection for Female Asylum Seekers?’

Supervisor: John Tobin (completed December 2004)

Justine Copley

‘Putting Rights Theory into Medical Practice — The Relevance of the Convention on the Rights of the Child to Medical Procedures Involving Children’

Supervisor: John Tobin (completed December 2004, conferred April 2005)

LLB (Research Project)

Alexandra Folie

‘The Israeli Wall Case’

Supervisor: Alison Duxbury (completed November 2004)

Joel Zyngier

‘The Legal Rights of Detainees at Guantanamo Bay’

Supervisor: Alison Duxbury (completed June 2005)

LLB (Legal Internship)

Sarah Finnin

‘Is there Any Place for the Rule of Law in a War on Terror?’

Supervisor: Tim McCormack (completed June 2005)

Phoebe Knowles

‘The Special Court for Sierra Leone’

Phoebe acted as a legal assistant to a defendant before the Special Court and was involved in determining the legal strategy for the case, including the drafting of cross-examination, and the research and drafting of motions before the Court.

Supervisor: Alison Duxbury (completed June 2005)

Nicolas Chandler

Nicolas worked for Reprieve Australia and considered whether in light of the legislative changes ushered in by the federal *Antiterrorism and Effective Death Penalty Act* in the state of Texas, the Supreme Court should revise its decision in *Murray v Giarratano* 492 US 1 (1989) to find a Due Process right to the effective assistance of counsel in state post-conviction review.

Supervisor: Bruce Oswald (completed June 2005)

Julia Watson

‘Can Hybrid Tribunals Foster the Incorporation of International Human Rights Norms in the Domestic Context?: East Timor and The Special Panel for Serious Crimes’

Julia worked for the Judicial Systems Monitoring Program (JSMP) in East Timor

Supervisor: Bruce Oswald (completed June 2005)

PUBLICATIONS

APCML MONOGRAPH SERIES

In 2005 the Centre established a series of monographs to be written by outstanding scholars on contemporary military law issues in the Asia Pacific region. The first in this series was published in June 2005.

The Use of Force in Peacekeeping Operations — The East Timor Experience* **Commander Dale Stephens CSM, RAN**

The mission of the United Nations Transitional Administration in East Timor (UNTAET) in overseeing the transition of East Timor to an independent sovereign nation was representative of a new approach to the conduct of peace operations. It was a peace enforcement operation, and was accorded ample strategic legal authority to achieve the ambitious goals set by the Security Council. The constant challenge of the mission lay in the translation of this broad legal authority to the tactical level, thus ensuring that the peacekeepers were able to do their job effectively. With the confluence of broad strategic authority set by the Security Council in conjunction with innovative legal thinking at the tactical or ‘ground’ level, the mission serves as a critical case study for exploring enduring questions relating to the application of armed force by United Nations peacekeepers.

During the period from mid to late 2000, both the integrity of the UNTAET mission and the lives of United Nations peacekeepers were threatened daily by violent militia forces. An amplification of the UNTAET Peacekeeping Force Rules of Engagement was required in order to provide peacekeepers with the legal foundation to adequately meet the pernicious militia threat. The author’s experience as Chief Legal Advisor to the UNTAET Force Commander during this period has given him a unique appreciation of the practical context in which an appropriate legal framework for the use of force needed to be achieved. His review therefore provides a useful analysis of the application of force by peacekeepers as he deals with questions concerning individual and unit self-defence and the limitations of these concepts in a combat scenario. Moreover, he undertakes a thought-provoking discussion of an alternative framework for applying requisite force available under a Law of Armed Conflict framework. While no two United Nations peace operations are identical, the author draws important lessons from the UNTAET experience with respect to the legal framework regulating the use of force. His consideration of the Law of Armed Conflict as a useful framework where the factual context of a conflict means that self-defence has reached its juridical limit is equally valuable.

**(The views expressed in this publication are those of the author alone and do not necessarily reflect the position of the Australian Government or the Australian Defence Force.)*

PUBLICATIONS BY APCML MEMBERS & ASSOCIATES

Books (authored and edited)

Mitchell, A., (ed), *Challenges and Prospects for the WTO* (London: Cameron May, 2005)

Stephens, D., *The Use of Force in Peacekeeping Operations — The East Timor Experience* (Melbourne: APCML, 2005)

Chapters in Books

Howard, J. and McCormack T.L.H., 'Australia' in B. Brandon and M. du Plessis (eds), *The Prosecution of International Crimes: A Practical Guide to the Prosecution of ICC Crimes in Commonwealth States* (London: Commonwealth Secretariat, 2005) 127–152

Kelly, M.J., 'The Role of the Military in Globalising the Rule of Law', in S. Zifcak (ed.), *Globalisation and the Rule of Law* (Routledge, 2005) 184–203

Kelly, M.J., 'The UN, Security and Human Rights: Achieving the Winning Balance', in N.G. White and D. Klaasen (eds), *The UN, Human Rights and Post Conflict Situations* (Manchester University Press, 2005) 118–148

McCormack, T.L.H. 'Use of Force' in S. Blay, R. Piotrowicz and B. Martin Tsamenyi (eds) *Public International Law: An Australian Perspective* (2nd ed, Melbourne: Oxford University Press, 2005) 223–257

Mitchell, A., 'Regional Trade Agreements under GATT 1994: An Exception and its Limits' in Andrew Mitchell (ed), *Challenges and Prospects for the WTO* (London: Cameron May, 2005) (with Nicolas Lockhart)

Voon, T., 'What is the Measure at Issue?' in Andrew Mitchell (ed), *Challenges and Prospects for the WTO* (Cameron May, 2005) 115–163 (with Alan Yanovich)

Refereed Journal Articles

Clarke, B., 'A Man's Home is his Castle — Or is it? How to Take Peoples' Homes without Convicting them of Anything: the Criminal *Property Confiscation Act 2000 WA*' (2004) 28 *Criminal Law Journal* 263

Coleman, A. and Maogoto, J., 'After the Party, is there a Cure for the Hangover: the Challenges of the Global Economy to Westphalian Sovereignty' (2003) 30(1) *Legal Issues of Economic Integration* 35–60

Coleman, A. and Maogoto, J., 'Democracy's Global Quest: a Noble Crusade Wrapped in Dirty Reality?' (2005) 28(2) *Suffolk Transnational Law Review* 175–242

Duxbury, A., 'A Fracture in the Family: Zimbabwe and the Commonwealth' (2004) 4 *Oxford University Commonwealth Law Journal* 103–119

Duxbury, A., 'Bigger or Better? The Role of Human Rights and Democracy in Determining Membership of the European Institutions' (2004) 73 *Nordic Journal of International Law* 421–460

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

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

Tobin, J., 'Partners Worth Courting: The Relationship Between the Media and the Convention on the Rights of the Child' (2004) 12 *International Journal of Children's Rights* 139–167

Other Contributions to Refereed Journals

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

Howard, J., 'Book Review: The Torture Papers: The Road to Abu Ghraib' (2005) 6(1) *Melbourne Journal of International Law* 189–203

Other Articles

Duxbury, A., 'The Iraqi Special Tribunal' (2004) 15 *Interights Bulletin* 36–37

Duxbury, A., 'The Progressive Development of Human Rights Standards at CHOGM' (2004) 11 *CHRI News* 1–3

Kelly, M.J., 'Legal Factors in Military Planning for Coalition Warfare and Military Interoperability: Some Implications for the Australian Defence Force' in M. Evans, (ed.), (2005) *Australian Army Journal* 161–172

Mathews, R.J. 'The Development of the Australia Group Export Control Lists of Biological Pathogens, Toxins and Dual-use Equipment' (2004) 66 *CBW Conventions Bulletin* 1–4

Cameron, G. and Kelly, M.J., 'Anti-Personnel Mines: No Legal Minefield for the Military', *Australian Red Cross IHL Newsletter* (Issue 12, April 2005)

Reports

Duxbury, A., Coordinated and co-wrote Australian entry to (2004) *Yearbook of International Humanitarian Law* on behalf of the ARCV International Humanitarian Law Advisory Committee

Mathews, R.J. and Webb, J.M., 'Codes of Conduct for Scientists: Considerations during a BWC Regional Workshop and Subsequent Reflections'. BWC/MSP/2005/MX/WP.35 (Working Paper presented to the BWC Meeting of States Parties, Geneva, 13–24 June 2005)

McCormack, T.L.H., *Prosecutor v. Slobodan Milošević*, 'Amicus Curiae Observations *Proprio Motu* on Relevant Issues of International Law', Case No. IT-02-54-T (25 August 2004)

McCormack, T.L.H. and Ben Clarke, 'Aspects of the Jurisdiction *Ratione Materiae* of the Military Commission for the Proposed Trial of David Hicks' (filed as an Expert Opinion in the Motions Phase of Proceedings against David Hicks, Guantanamo Bay, November 2004)

McCormack, T.L.H., *Prosecutor v. Slobodan Milošević*, 'Amicus Curiae Observations *Proprio Motu* on the Desirability of Submissions on the Alternative Bases of Individual Criminal Responsibility Alleged in the Case and on Trials *In Absentia*', Case No IT-02-54-T (25 April 2005)

Tobin, J., *The Convention of the Rights of the Child: The Rights and Best Interests of Children Conceived through Assisted Reproduction* (Melbourne: Victorian Law Reform Commission, 2004)

CENTRE CONFERENCES, WORKSHOPS & SEMINARS

EXPERT WORKSHOP

Biological Weapons Convention Regional Workshop (21–25 February 2005)

The APCML organised a Regional Workshop for South East Asian Government Officials on more effective national implementation of the 1972 Biological Weapons Convention (BWC) from 21-25 February 2005. The Workshop was co-hosted by the Australian Department of Defence and the Indonesian Foreign Ministry and convened by Associate Professor Bob Mathews, a Principal Research Scientist with the Defence Science and Technology Organisation.

The Workshop was officially opened by the Minister for Defence, The Hon Senator Robert Hill. He was joined by the Indonesian Consul General to Melbourne, Mr Wahid Supriyadi. Both speakers identified the growing threat of bio-terrorism in the Asia-Pacific Region with Senator Hill suggesting that the rapid advances in the biological sciences and bio-technology, and the widespread availability of this information and associated material make the regional threat of terrorist use of biological weapons all the more real.

Experts from Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, New Zealand, Papua New Guinea, Philippines, Singapore, Thailand and Vietnam joined Australian colleagues to discuss the obligations of States Parties to the BWC, codes of conduct for scientists involved in biological research, different approaches to national implementing legislation, biological defence and surveillance, detection and combating of infectious diseases.

Papers from the Workshop will be published by the APCML in early 2006.

WORK IN PROGRESS SEMINARS

In May 2005, the APCML reinstated a program of Work In Progress seminars for staff and RHD students in the Centre and the Faculty.

The Australia Group - Twenty Years in Forty Minutes

Assoc Prof Bob Mathews — APCML Principal Fellow

The Australia Group is an informal group of representatives from countries which export chemical and biological materials and equipment that meets once a year in Paris to agree on export controls. Bob has been a member of Australian delegations since the inception of the Group in 1985, and in this seminar held on 17 May he provided an overview of the 20-year history of the Group, including the background to its establishment, its major milestones and its key achievements.



Above: Senator the Hon Robert Hill, Australian Minister for Defence, giving the Opening Speech to the BWC Regional Workshop

Australia's Prosecution of Japanese War Criminals: Stimuli and Constraints

Michael Carrel — PhD student

In this seminar, held 14 June, Michael examined the Australian war crimes trials programme that took place between 1945 and 1951, discussing the 'stimuli' that first impelled Australia to commence a war crimes trials programme and the various 'constraints' that limited the effectiveness of that programme and eventually brought it to its end.

CONFERENCE, PROFESSIONAL & OTHER PRESENTATIONS BY APCML MEMBERS & ASSOCIATES

Tim McCormack

'The Geneva Conventions of 1949 and the Additional Protocols of 1977', guest presentation to Australian Red Cross – Victoria's International Humanitarian Law Instructors' Training Course, ARCV, 7 March 2005

'International Human Rights and International Humanitarian Law', paper presented to the US Pacific Commander's Annual Military Operations Law Conference, Singapore, 23 March 2005

'The Red Cross and International Humanitarian Law', guest presentation to Year 7 group, St Brendan's and Shaw College, Devonport, 5 April 2005

'The Proposed Trial of David Hicks by US Military Commission', guest presentation to the Year 11 and 12 group, St Brendan's and Shaw College, Devonport, 5 April 2005

'The Genocide Convention and International Criminal Law', guest lecture to Genocide and the Holocaust Course, Faculty of Arts, The University of Melbourne, 12 April 2005

'Update on the Milosević Trial', guest presentation to the University of Tasmania Foundation Ladies' Group, University of Tasmania, Hobart, 4 May 2005

'Proposed Trial of David Hicks by US Military Tribunal', guest presentation to the Australian Tertiary Education Managers' Group, University of Tasmania, Hobart, 4 May 2005

'60 Years From Nuremberg: What Progress for International Criminal Justice?', Victoria Law Foundation and Australian Red Cross Law Week Oration and Victorian Criminal Bar Association Annual Advocating for Justice Lecture, University of Melbourne Law School, 17 May 2005

'World Peace Begins With You', guest presentation to the Wesley College Senior School Assembly on World Peace, Wesley College, Glen Waverley, 16 June 2005

Right: Tim McCormack with Senior Students at Wesley College



‘The ICRC Customary International Humanitarian Law Study’, paper presented to the US Naval War College Annual International Law Conference: ‘Law of War in the 21st Century: Weaponry and the Use of Force’, Newport, Rhode Island, 22 June 2005

Lieutenant Colonel Paul Muggleton

Guest presentation to Australian Red Cross — Victoria’s International Humanitarian Law Instructors’ Training Course, ARCV, 7 March 2005

Bruce Oswald

Participated, in his capacity as an OHCHR Consultant, in the Expert Meeting on Human Rights Training for Military Peacekeepers, Geneva, Switzerland, 16-18 August 2004

‘Accountability of Contractors on Peace Operations: Suggestions for Better Governance’: Paper presented at the 15th Challenges Seminar, which was hosted by the Peacekeeping Affairs Office of the Ministry of National Defence of China and the China Institute of International Strategic Studies, 3-5 November 2004

Lectured, in his capacity as an OHCHR Consultant, on the application of human rights to the planning and conduct of peace operations, for the course in Training for African Military Personnel in Conflict Prevention, Human Rights and Peacekeeping, Brindisi, Italy, 15-18 November 2004.

Lectured, in his capacity as an OHCHR Consultant, on the application of human rights to the planning and conduct of peace operations, for the United Nations Training Course on Human Rights for Trainers of Military Personnel of Peace Operations, BIPSOT, Bangladesh, 7-15 December 2004

Lectured, in his capacity as an OHCHR Consultant, on the application of human rights to the planning and conduct of peace operations, for the United Nations Training Course on Human Rights for Trainers of Military Personnel of Peace Operations, 26 February - 1 March 2005

Lieutenant Colonel in the Army Reserves. From May 2005 serving with the ADF in the Middle East.

Ben Clarke

‘Legal Obstacles to the Establishment of an International Tribunal for the East Timor’ and ‘The Concept of International Commission of Experts’, Justice for East Timor International Conference, Dili, East Timor, 23 - 24 September 2004

Alison Duxbury

‘Participation in International Organisations: The Role of Human Rights and Democracy’, Faculty of Law, London School of Economics and Political Science, London, October 2004

Participant, Conference on ‘Think Tanks and the Work of the Commonwealth Policy Studies Unit’, Canada House, London, 18 November 2004

‘The Commonwealth’s Approach to Human Rights’, Institute of Commonwealth Studies, School of Advanced Studies, University of London, January 2005

'Protection of Conflict-Affected Populations: International Humanitarian Law and the Effects of Conflict and Displacement on Women', guest lecture in Public Health in Complex Disaster Settings Unit, Master of Public Health, Macfarlane Burnett Institute for Medical Research and Public Health, February 2005

'The Enforcement of International Humanitarian Law', guest presentation to Australian Red Cross – Victoria's International Humanitarian Law Instructors' Training Course, ARCV, 10 March 2005

Chair, the Australian Red Cross Solferino Lecture on the Solomon Islands, March 2005

International Humanitarian Law Expert for Australian Red Cross International Humanitarian Law Division (WA) Hypothetical Panel, Perth, 11 May 2005

Chair, Law Week Oration 'Beyond Nuremburg', 17 May 2005

'The ADF and the Australian Constitution', Military Operations Law Course, Randwick Barracks, Sydney, 26 May 2005

'Rights, Regionalism and the Integration of Europe', paper presented at the thirteenth Annual Conference of the Australian and New Zealand Society of International Law (ANZSIL), 'International Institutions in a Uni-Polar World', Canberra, 16 June 2005

Member, Organising Committee, Australia and New Zealand Society of International Law Annual Conference, June 2005

Preparation of background paper for the Commonwealth Human Rights Initiative on Human Rights Implementation by the Commonwealth Secretariat (completed June 2005).

Ian Henderson

Acted as a volunteer judge in the quarterfinals of the Australian Regional Round of the Jessup International Law Moot Court Competition in Canberra, 4 February 2005

'Practical LOAC Case Studies' and 'Symbols of International Law (Part 2)', guest presentations to Australian Red Cross — Victoria's International Humanitarian Law Instructors' Training Course, ARCV, 8-9 March 2005

Lead presentation on 'Aviation Law and Defence', at the annual conference of the Aviation Law Association of Australia and New Zealand 'Aviation 2005 Conference - Across the Spectrum: Policy & Law', 16 March 2005

Jessica Howard

Presentation, 'The Human Rights Implications of Extra-Territorial Protection for Asylum Seekers', presented at the International Summer School in Forced Migration, University of Oxford, 5–23 July 2004

Presentation, 'Australia's Treatment of Onshore "Unauthorised" Arrivals', presented at the British Council Seminar, Migration: Philosophies and Practices of Integration, held in Cork, Ireland, 20-24 June 2004

Presenter, 'Done By Law' 3CR, Community Radio Station (monthly)

Bob Mathews

‘Addressing the ‘Dual-Use’ Dilemma: Non-proliferation and Mitigating Strategies against Biological Warfare and Bio-terrorism Threats’, Presented at the US National Academy of Sciences International Workshop on ‘Advancing Technologies: Surveying the Global Capacity for Research, Development and Application, and the prevention of their application in the next generation Bioterrorism and Biological Warfare Threats’, Mexico City, 21-22 September 2004

A Model Legislation for the implementation of the Biological Weapons Convention and UN Security Council Resolution 1540’, Presented at the 1st Interpol Global Conference on Preventing Bioterrorism, Lyon, France, 1-2 March 2005 (with Dunworth, T., and McCormack, T.L.H.)

‘Twenty years in forty minutes: A brief history of the Australia Group’, Presented at the 20th Anniversary meeting of the Australia Group, Sydney, 19–22 April, 2005

Andrew Mitchell

‘New Perspectives on Customary International Law and Australian Law’, paper presented by co-author Professor Kristen Walker at ‘International Challenges to the Australian Legal System’, Expert Workshop, ANU, 12–13 August 2004

Tania Voon

Presentations on dispute settlement, 31st and 32nd Trade Policy Courses of the World Trade Organization, Geneva, Switzerland, 24 March – 1 April 2005

Presentations on dispute settlement, 2nd Regional Trade Policy Course of the World Trade Organization for the Caribbean, Kingston, Jamaica, 4 – 8 April 2005

Judge, European Law Students’ Association Moot Court Competition on World Trade Organization Law 2004–2005

AWARDS AND APPOINTMENTS

AWARDS TO APCML MEMBERS & ASSOCIATES

Queen's Birthday Honours 2005

APCML Deputy Director Lieutenant Colonel Geoff Cameron was awarded the Conspicuous Service Cross in the Queen's Birthday Honours List in June 2005, for outstanding achievement as the Chief Legal Officer for Headquarters Training Command and the Command Legal Officer for Land Headquarters. The Citation reads:



‘Lieutenant Colonel Cameron has demonstrated exceptional service, consistently providing sound legal advice and unwavering support to both formations. Through his sharp intellect, the clarity of his analysis and diligence he has been instrumental in significantly improving the quality of command decisions and operational legal planning for land operations.’

APCML Advisory Board member Colonel Andrew Dunn was also awarded the Conspicuous Service Cross in the Queen's Birthday Honours List.

NEW APPOINTMENTS OF APCML MEMBERS & ASSOCIATES 2004–2005

National Consultative Group on Bio-Security Issues

APCML Director Professor Tim McCormack and APCML Principal Fellow Associate Professor Bob Mathews were appointed in June 2005 to Foreign Minister Alexander Downer's newly constituted National Consultative Group on BioSecurity Issues (NCGBI). The Group is composed of members from the biotech industry, academia and relevant government departments. The inaugural meeting of the Group took place in Canberra on 3 June 2005 and Bob Mathews reported extensively at the meeting on the success of the Biological Weapons Convention Regional Workshop held at the APCML in February 2005.

National Consultative Committee on International Security Issues

APCML Director Professor Tim McCormack was appointed in April 2005 for a three-year term to Foreign Minister Alexander Downer's National Consultative Committee for International Security (NCCISI). The Committee functions as a channel for the exchange of views on peace, arms control, security and disarmament issues between the Australian Government and the community.

Membership of Editorial Boards

Yearbook of International Humanitarian Law

(TMC Asser Instituut Press, The Hague, The Netherlands)

General Editor (from October 2004): Tim McCormack

The *Yearbook of International Humanitarian Law* provides a forum for high-quality, peer-reviewed articles, commentaries on current developments, reports on state practice, and documentation that have international humanitarian law as their focal point. All aspects of international law applicable during international and non-international armed conflicts are covered, in addition to interesting and significant developments in related fields, such as international peace and security, international criminal law, human rights law, disarmament law and refugee law.

Jurnal Hukum Humaniter

(Centre for Humanitarian Law & Human Rights, Faculty of Law, Trisakti University, Jakarta)

Member of Honorary Advisory Board: Tim McCormack

The *Jurnal Hukum Humaniter* was inaugurated in 2005 and is the first academic journal dedicated to the study of International Humanitarian Law to be published in Indonesia. Articles appear in Bahasa and in English.

Membership of Other Boards

Alison Duxbury was appointed in October 2004 to the Advisory Commission of the Commonwealth Human Rights Initiative (CHRI). The organization is based in New Delhi and its mandate is to promote awareness of and adherence to the Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments and declarations made by the Commonwealth Heads of Governments as well as domestic instruments supporting human rights in the Commonwealth.

ONGOING APPOINTMENTS OF APCML MEMBERS & ASSOCIATES

Membership of Editorial Boards

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)
Members of the Advisory Board: Tim McCormack, Alison Duxbury, Bruce Oswald

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

Membership of Other Boards

Appellate Body Secretariat of the World Trade Organization
Legal Officer: Tania Voon

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

International Monetary Fund, Geneva.
Consultant: Andrew Mitchell

VISITORS JULY 2004 – JUNE 2005

Professor Chunying Xin (27 July 2004)

Member of the Standing Committee of the National People's Congress
People's Republic of China

Professor Xin met with the APCML Director and other staff members to discuss human rights and women's rights issues. Professor Xin's visit was coordinated by the Department of Foreign Affairs and Trade.

HRH Crown Princess Victoria of Sweden (15 March 2005)

APCML Director Professor Tim McCormack hosted a visit to the Centre by HRH Crown Princess Victoria of Sweden on Tuesday 15 March 2005.



The Crown Princess had expressed interest in having substantive discussions on defence, strategic policy and military law during her visit to Melbourne, and Australia's Ambassador in Sweden, Richard Rowe, had immediately suggested the Centre and its Director as the best source of information on these topics.

During discussions with Professor McCormack and other members of the Centre's Management Team, the Crown Princess proved to be well-informed and asked many pertinent questions on Asia Pacific regional aspects of the Centre's work. A particular feature of the discussions was the Centre's involvement in the Swedish-led International Challenges of Peacekeeping project.

Maria Agnes Bere (16 June 2005)

Coordinator, Women's Justice Unit of the Judicial System Monitoring Programme (JSMP)
East Timor

Ms Bere met with the APCML Director and other staff members to discuss recent activities by JSMP, an NGO that conducts court monitoring, provides legal analysis and outreach activities in order to contribute to the ongoing evaluation and development of the justice system in East Timor.

Professor Philippe Sands QC (16 June 2005)

University College London

Professor Sands joined the APCML Director and other staff members over lunch to discuss recent developments in international law. Professor Sands is the author of 'Lawless World: America and the Making and Breaking of Global Rules' (Penguin 2005) and had delivered the 2005 Melbourne Law School Alumni Lecture the previous evening.