Asia Pacific Centre for Military Law
Melbourne Law School
Defence Legal
Department of Defence
Annual Report 2017
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It is with pleasure that I present the Annual Report on the work of the Asia Pacific Centre for Military Law (APCML) for the year 2017.

The Rt Hon Sir Ninian Stephen KG AK GCMG GCVO KBE KSU PC QC, the Centre’s Patron from 2003 until 2017 passed away in November 2017. We greatly appreciated his support, guidance and interest in the Centre’s work. The Centre will continue to host the annual Sir Ninian Stephen Visiting Scholar in honour of the contributions made by Sir Ninian. In 2017, the Sir Ninian Stephen Visiting Scholar was Mr Stephen Mathias, Assistant Secretary-General for Legal Affairs, United Nations (see p. 26). Mr Mathias’ Sir Ninian Stephen lecture entitled ‘UN Peacekeeping Today: Legal Challenges and Uncertainties’ will be published in the Melbourne Journal of International Law, volume 18(2).

In October 2017, the Centre launched Muggleton on the Law of Non-International Armed Conflict. Work on the monograph was started by COL Paul Muggleton, who was a founding member of the APCML and an Associate Director of the Centre from 2001 until 2008. Paul’s untimely death in 2013 meant that he was unable to complete the book. However, with contributions from a number of colleagues the book was published.

Muggleton on the Law of Non-International Armed Conflict addresses issues such as the application of international humanitarian law and human rights law to internal armed conflict, the use of force in non-international armed conflict, and detention in non-international armed conflict.

The APCML’s Military Node in Sydney conducted seven courses and workshops and trained or engaged with more than 400 military officers and civilian personnel from the following countries: Bangladesh, Brunei, Cambodia, China, Egypt, Fiji, France, India, Indonesia, Japan, Jordan, Kenya, Kiribati, Korea, Lebanon, Malaysia, Micronesia, Mongolia, Myanmar, New Zealand, Nigeria, Pakistan, Palau, Papua New Guinea, Philippines, Qatar, Samoa, Saudi Arabia, Singapore, Solomon Islands, Sri Lanka, Tanzania, Thailand, Timor Leste, Tonga, Ukraine, United States of America, Vanuatu, Vietnam. Further details about the Centre’s outreach programs with regional defence forces can be found at pp. 37-41. Our outreach would not be possible without the support from the International Policy Division, Department of Defence and the International Committee of the Red Cross. Our sincere thanks also go to Group Captain Ric Casagrande who has for several years travelled from overseas to contribute to the work of the APCML.

We welcomed Captain Darryn Mullins (Royal Australian Navy) as the Deputy Director, APCML. Darryn completed his 12-month positing with us and has moved back to Canberra where he is now the Director of Military Discipline Law and Director Navy Legal Service. Ms Eva Lasky, Associate Director APCML also left the Centre in 2017. We are very grateful to both Darryn and Eva for the contributions they made to the APCML. The Associate Director role at the Military Node was taken up in July 2017 by Ms Grace Corbiau. Colonel Arun Lambert CSC was appointed Deputy Director of the Centre and takes up his appointment in January 2018. We look forward to working closely with Arun.

At the University Node we welcomed Dr Rosemary Grey, a Postdoctoral Fellow at Melbourne Law School. We also welcomed four scholars to undertake research, and engage in Centre and Law School life: Mr Kirby Abbott, OMM (ICRC), Ms Michelle Lesh, Ms Anne Quintin (ICRC), Ms Leticia Villeneuve, and Dr Phoebe Wynn-Pope.

There are many who have worked tirelessly to contribute to the work of the APCML. My sincere thanks to each of you for your commitment to achieving the Centre’s aims.

Professor Bruce Oswald CSC APCML Director 2017
Overview

The APCML was established in 2001 as a collaborative initiative of Melbourne Law School, University of Melbourne and Defence Legal, Department of Defence. It operates from a University and a Military Node, in the cities of Melbourne and Sydney respectively.

Aims
The APCML aims to provide a locus for critical engagement with the international and national law of war and armed conflict, to facilitate cooperation amongst military forces of the Asia Pacific Region and beyond in the research, training and implementation of the laws governing military operations, and 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. To this end we:

• Organise conferences, workshops, seminars and other activities
• Prepare and deliver training programs
• Promote academic research and publications in relevant fields, including international humanitarian law, the law of peace operations, international criminal law, and arms control and disarmament
• Undertake and support initiatives to promote and improve the flow of information to legal officers
• Develop relevant relationships within the Asia Pacific Region, and
• Develop contacts and mutual exchanges with other academic/military centres and with leading subject matter experts.

While our title refers to the ‘Asia Pacific’ the reality is that our work is not limited to this region. We do however focus on the Asia Pacific region for context.

Locations and Functions
The University Node is located within the Melbourne University Law School and supports 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 teaching, and supervision of postgraduate students, staff of the Centre publicly engage with the wider community by speaking at public forums, taking part in radio and television debates, and writing opinion pieces for newspapers and journals.

The Military Node at Victoria Barracks in Sydney comprises military and civilian staff of the Australian Defence Force’s (ADF) Legal Services. It provides the linkage between the military forces of the Asia Pacific region and the academic and humanitarian communities. The Military Node has the responsibility for the coordination, formulation and delivery of the APCML’s core suite of courses. APCML military staff regularly lecture to military and non-government organisations that may be involved in contemporary military operations.

Partners
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.

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 for Defence. Its head office is in Canberra.
Management Structure & Members

Patron
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.

Sir Ninian passed away in November 2017. We greatly appreciate his support, guidance and intellect in the Centre’s work.

Steering Committee
The control of policy, practices and overall management and operation of the Centre is vested in the Steering Committee.

Management Team
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, assisted by two Associate Directors, one for each node of the Centre. The Director, a Melbourne University Law School employee of an academic rank not lower than Associate Professor or his or her delegate. The Deputy Director, an Australian Defence Force Legal Officer of a military rank not lower than Lieutenant Colonel (or equivalent rank) or his or her delegate.

Centre Administrator
The Administrator of the Centre is based at the University node and is responsible for establishing and maintaining a professional, efficient and well-managed environment for the functioning of the Centre.

Members of the Steering Committee
Dean, Melbourne University Law School
Professor Carolyn Evans
Professor Jenny Morgan (acting)

Head, Defence Legal
Mr Mark Cunliffe PSM

Director General, Australian Defence Force Legal Service
Air Commodore Chris Hanna CSC and Bar

Dean’s nominee
The Hon Alastair Nicholson AO RFQ QC

Members of the Management Committee
Director
Professor Bruce Oswald CSC

Deputy Director
Captain Darryn Mullins RAN

Associate Director University Node
Professor Alison Duxbury

Associate Director Military Node
Ms Grace Corbiau

Centre Administrator
Mr Hamish Carr, University Node
Ms Amy Johannes, University Node
Ms Esther Taylor, University Node

Administrative Staff Military Node
Ms Kerrie Sanders, Business Manager
Mrs Sandra Pile, Training Administrator
Management Structure & Members

Faculty Members
Professor Bruce Oswald
Professor Alison Duxbury
Professor Hilary Charlesworth
Dr Inbar Levy
Dr Rain Liivoja
Professor Tim McCormack
Professor Dianne Otto
Professor John Tobin
Professor Tania Voon

Senior Fellow
Dr Helen Durham

Research Fellows
Dr Narrelle Morris

Professorial Fellows
Major General Ian Westwood

Principal Fellows
Dr Mike Kelly AM
Associate Professor Robert Mathews OAM

Graduate Research Degree Students
Ms Florence Adong
Ms Marie Aronsson
Ms Madeline Chaim
Ms Monique Cormier
Ms Treasa Dunworth
Ms Maria Elander
Ms Jennifer Hasselgard-Rowe
Assistant Professor Chris Jenks
Ms Magda Karagiannakis
Mr Jonathan Kolieb
Mr Tim McFarland
Ms Sasha Radin
Ms Sophie Rigney
Ms Cait Storr
Members’ Profiles

Director

Professor Bruce Oswald CSC
Professor Bruce ‘Ossie’ Oswald’s interests in law and practice are in the areas of international humanitarian law, peace operations, state building, accountability and responsibility, and the application of human rights law to military operations. More specifically, his interests are in examining the law and practice surrounding the protection of civilians, the taking and handling of detainees during military operations, and militias undertaking law and order functions.

Ossie has served in the Australian Regular Army as a legal officer. He has seen operations service in Rwanda, the Former Yugoslavia, East Timor, Iraq and Afghanistan. He has provided legal advice and held staff appointments as a legal officer at tactical, operational and strategic levels. Ossie continues to serve in the Army Reserves as a legal officer.

For his service as the Legal Officer for the Australian Contingent serving in Rwanda, Ossie was awarded the Conspicuous Service Cross (CSC).

In 1997 Ossie worked with the International Committee of the Red Cross in the Former Yugoslavia.

Ossie was a Jennings Randolph Senior Fellow (October 2012–June 2013) at the United States Institute of Peace in Washington DC, USA.

Deputy Director

Captain Darryn Mullins, RAN
Captain Darryn Mullins, RAN is a Royal Australian Navy officer and for 2017 was the Director of the Military Law Centre (a directorate of the Defence Legal Division) and Assistant Director of the Asia Pacific Centre for Military Law (a collaborative initiative between the University of Melbourne and Defence Legal).

He is a legal officer and a Maritime Warfare Officer, also specialized as a Military Geospatial Officer – Hydrographic. His last role as a Maritime Warfare Officer was as Commanding Officer of HMAS Shepparton in 2007.

His most recent significant legal postings were as the Fleet Legal Officer (responsible to Commander Australia Fleet for the provision of legal advice throughout the Fleet) and the Command Legal Officer to Commander Maritime Border Command, who is operationally responsible for Australia’s domestic maritime security operations.

Captain Mullins completed a Bachelor of Laws in 1993 and was admitted to practice in the Supreme Court of New South Wales in 1994. He also has a Graduate Diploma in Hydrographic Surveying and a Masters of Laws specializing in Environmental Law, Business and Management. He is a ‘Charge/Category A’ Hydrographic Surveyor, which is the principal hydrographic qualification recognized by both the International Hydrographic Organization and the International Maritime Organization.

In 2018 Captain Mullins will be taking up the dual roles of Director Navy Legal Services and Director of Military Discipline Law at Defence Legal.
Members’ Profiles

Associate Director University Node

Professor Alison Duxbury

Alison Duxbury is a Professor at Melbourne Law School and a member of Council of the Australian and New Zealand Society of International Law and the Executive Council of the Asian Society of International Law. She is also a member of the International Advisory Commission of the Commonwealth Human Rights Initiative and the Board of Directors of the International Society for Military Law. Alison’s major teaching and research interests are in the fields of international institutional law, human rights law and international humanitarian law. Her publications include *The Participation of States in International Organisations: The Role of Human Rights and Democracy* (Cambridge, 2011) and a co-edited book, *Military Justice in the Modern Age* (Cambridge, 2016). She is currently a member of the ASEAN Integration through Law Project, coordinated through the National University of Singapore.

Alison has undertaken advice work in the areas of international law and human rights law. She has been a Visiting Fellow at the Lauterpacht Centre for International Law in Cambridge, the Centre for Comparative and Public Law at the University of Hong Kong, the Oxford Institute for Ethics, Law and Armed Conflict and the Institute of Commonwealth Studies in London. She has also taught international humanitarian law and international institutions at the Centre for Transnational Legal Studies in London.

Associate Director Military Node

Grace Corbiau

Grace completed an Honours degree in International Relations at the Australian National University in 2006, focusing primarily on foreign policy, human rights, humanitarian issues, and a major in French. Grace’s Honours dissertation examined the EU’s response to the humanitarian crisis in Darfur, Sudan, and explored similarities with the response to the Rwandan genocide.

Grace started her career working for international non-governmental organisations in Brussels, where her work focused on human rights, equality and anti-discrimination. She spent the next 7 years working at the United Kingdom’s Representation to the European Union, in Brussels, on justice, security, human rights, and immigration policy, including negotiating EU law, international agreements, and practical cooperation measures. Grace’s primary role was to act as the senior point of liaison with elected Members of the European Parliament, and to brief the UK Permanent Representative, senior officials and Ministers on negotiation and engagement strategies. She also played a lead role in upskilling the British Government on EU decision making processes and the impact the Lisbon Treaty in the area of justice and home affairs.

Grace completed a Masters of Public International Law at the University of Kent’s Brussels campus (Brussels School of International Studies), graduating with Distinctions in Canterbury in 2010. Her studies centred on international criminal law, humanitarian law and human rights law. Her dissertation examined the strengthened fundamental rights regime in the EU under the Lisbon Treaty, including the roles of the European Court of Human Rights in Strasbourg and the European Court of Justice in Luxembourg.

Grace returned to Sydney in late 2014, and since that time has been serving as a Director on the Board of the International French School of Sydney, and the Australian Breastfeeding Association. Grace commenced work with the NSW Department of Justice in 2016, managing the Strategic Policy and Programs team in Victims Services, and in early 2017 she was charged with leading a team of 40 legal and admin staff to deliver on an election commitment for the reassessment of victims’ statutory compensation claims.
**Professor Hilary Charlesworth**

Hilary Charlesworth is a Melbourne Laureate Professor at Melbourne Law School. She is also a Distinguished Professor at the Australian National University. Her research includes the structure of the international legal system, art and international law, peacebuilding, human rights law and international humanitarian law and international legal theory, particularly feminist approaches to international law. Hilary has held both an Australian Research Council Federation Fellowship (2005–2010) and an ARC Laureate Fellowship (2010–2015).

Hilary is a member of various editorial boards, including the *International Review of the Red Cross*. She was appointed by the Australian government as a member of the Permanent Court of Arbitration. She is an associate member of the Institut de Droit International and served as judge ad hoc in the International Court of Justice in the *Whaling in the Antarctic Case* (2011–2014).

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**Dr Rain Liivoja**

Rain Liivoja is a Senior Lecturer and Society in Science – Branco Weiss Fellow at Melbourne Law School. He is also an Affiliated Research Fellow of the Erik Castrén Institute of International Law and Human Rights, University of Helsinki, where he was based before joining the University of Melbourne. Rain’s current research focuses on the regulation of emerging military technologies, in particular biotechnology.

Rain is a member of the board of directors of the International Society for Military Law and the Law of War, member of the council of the Australian and New Zealand Society of International Law, and chair of the Australian Red Cross (Victorian Division) International Humanitarian Law Committee. He is a Fellow of the Royal Society of Arts.

Rain holds an undergraduate degree in law from the University of Tartu and postgraduate degrees in public international law from the University of Helsinki. He has completed a Graduate Certificate in University Teaching at the University of Melbourne.
Dr Inbar Levy

Dr Inbar Levy joined Melbourne Law School as a Lecturer in 2015 having completed her DPhil in Law at University College, Oxford. Before going to Oxford, she served as a legal advising officer in the Military Advocate General unit of the Israeli Defense Forces (IDF). Inbar has also held visiting research appointments at Harvard Law School and Columbia Law School, New York. Her primary research areas are procedural justice and empirical legal research, with a particular interest in behaviour and decision-making, access to justice and institutional design.

Professor Tim McCormack

Tim McCormack is a Professor of Law at Melbourne Law School and the Special Adviser on International Humanitarian Law to the prosecutor of the International Criminal Court in The Hague. He is also an Adjunct Professor of Law at the University of Tasmania Law School and a Director of World Vision Australia.

In 2016 he returned from the US where he was a Fulbright Senior Scholar, the Charles H Stockton Distinguished Scholar-in-Residence at the US Naval War College in Newport, Rhode Island and the James Barr Ames Visiting Professor at Harvard Law School. He was the Foundation Australian Red Cross Professor of International Humanitarian Law (1996–2010) at Melbourne Law School and the Foundation Director of the Asia Pacific Centre for Military Law (2001–2010).

From 2002 – 2006 he acted as amicus curiae on international law matters to the judges of Trial Chamber III of the International Criminal Tribunal for the Former Yugoslavia in The Hague for the trial of Slobodan Milošević. From 2003 – 2007 he provided expert International Humanitarian Law advice to Major Mori for the defence of David Hicks. From July 2011 – March 2013 he served as one of two international observers for Phase 2 of the Turkel Commission of Enquiry into Israel’s processes for investigation of alleged violations of International Humanitarian Law and from 2015-2017 he was a member of the International Group of Experts to Draft the 2nd Tallinn Manual on the International Law Applicable to Cyber Operations.

He developed Australia’s first graduate coursework specialization in International Humanitarian Law and a specialist coursework graduate program in Military Law at Melbourne Law School and has regularly lectured to graduate recruits in the Department of Foreign Affairs and Trade (DFAT) and to ADF officers as well as to legal officers, operators and planning staff from militaries in the Asia Pacific Region.

He is co-editor-in-chief (with Sir Christopher Greenwood) of the world’s first academic book series dedicated to International Humanitarian Law Series (with Martinus Nijhoff Publishers in Leiden). He recently co-edited the forty-eighth volume of the series: Australia’s War Crimes Trials 1945–51 which was shortlisted for the 2017 NSW Premier’s Australian History Prize.
Members’ Profiles

**Professor Dianne Otto**

Dianne Otto is Professorial Fellow at Melbourne Law School where she held the Francine V. McNiff Chair in Human Rights Law from 2013-2016. Her research examines gender, sexuality and race inequalities in the context of international human rights law, the UN Security Council’s peacekeeping work, the technologies of global ‘crisis governance’, threats to economic, social and cultural rights, and the transformative potential of people’s tribunals and other NGO initiatives. Recent publications include the ground-breaking collection, which she edited, *Queering International Law: Possibilities, Alliances, Complicities, Risks* (Routledge 2017), an article on people’s tribunals in the *London Review of International Law* (2017) and ‘Feminist Approaches to International Law’ in Anne Orford and Florian Hoffman (eds), *Oxford Handbook of International Legal Theory* (2016).

**Professor John Tobin**

John Tobin is a Professor in the Melbourne Law School at the University of Melbourne. He has a combined commerce/law degree with honours and a PhD from the University of Melbourne. He also has an LLM with distinction from the University of London. He has designed and taught several subjects in areas of international law, human rights, children’s rights and public interest lawyering. He coordinates the MLS Human Rights Alumni Network. In 2010 he was awarded the Barbara Falk Award for Teaching Excellence by the University of Melbourne and in 2011 he was awarded a national citation for outstanding contribution to student learning in the area of human rights. In 2006 he was a Visiting Professor at both the American Academy of Human Rights and Humanitarian Law, Washington College of Law, American University and in the Law School at New York University. In 2011 he was the Senior Scholar in Residence at the Center for Human Rights and Global Justice at NYU Law School.

John is currently working on an ARC Discovery Grant with Professor Philip Alston from NYU titled ‘Children’s Rights: From Theory to Practice’ which will produce a comprehensive commentary on the Convention on the Rights of the Child. He has also published numerous reports and articles on human rights, especially children’s rights. His book, *The Right to Health in International Law*, was published by Oxford University Press in January 2012. John has provided human rights training and advice as a consultant and on a pro bono basis on numerous occasions to organisations such as UNICEF, Law Reform Commissions, the Law Institute of Victoria, Judicial College of Victoria, the Victorian Equal Opportunity Commission, NGOs, statutory bodies, Government Departments and community groups. He is an Advisory Board member to the *Melbourne Journal of International Law* and *International Journal of Children’s Rights*. He is also a member of several Advisory Committees and working groups for government bodies and NGOs. Prior to becoming an academic John worked as a commercial lawyer, legal aid lawyer with Victoria Legal Aid, and was a legal officer with the Department of Justice.
Members’ Profiles

Professor Tania Voon

Tania Voon is a former Legal Officer of the Appellate Body Secretariat of the World Trade Organization (WTO) and a graduate of Cambridge University (PhD in Law), Harvard Law School (LLM), and the University of Melbourne (LLB, BSc, Grad Dip Intl L). She has previously practised law with Mallesons Stephen Jaques and the Australian Government Solicitor, and she has taught law in Australia, Canada and the United States.

Tania has published widely in the areas of public international law, international trade law, and international investment law. She is the author of Cultural Products and the World Trade Organization (Cambridge University Press, 2007), editor of Trade Liberalisation and International Co-operation: A Legal Analysis of the Trans-Pacific Partnership Agreement (Edward Elgar, UK, 2013) editor of the Oxford University Press series on International Economic Law, and a member of the Indicative List of Governmental and Non-Governmental Panelists for resolving WTO disputes.

In addition to her core focus on international economic law, Tania has previously conducted research in the areas of humanitarian intervention, the laws of war, and the constitutional validity of military service tribunals, and she has supervised PhD candidates in fields including international humanitarian law, self-determination, and disarmament. In 2016 she was Visiting Fellow at the Lauterpacht Centre for International Law in Cambridge.

SENIOR FELLOW

Dr Helen Durham

Dr Helen Durham is Director for International Law and Policy at the International Committee of the Red Cross (ICRC) headquarters in Geneva. She has held this position for three years and is responsible for the activities of the ICRC globally in the area of international law (with a focus on IHL), policy development, and engagement with armed forces, Non-State armed groups, academic outreach and research. With over 120 lawyers, a number located in conflict zones, as well as former military officers and humanitarian diplomats, Helen regularly represents the ICRC at venues across the world to raise issues and negotiate on matters relating to ensuring respect for IHL.

Previously Helen worked for Australian Red Cross as Director of IHL, Strategy, Planning and Research and has also been Head of Office for ICRC in Australia and Legal Adviser for the ICRC Regional Delegation in the Pacific. She has been involved in ICRC operational work in the field (in Burma, Aceh, the Philippines and the Pacific) and has been part of negotiations for international treaties in New York, Geneva and Rome.

Admitted as a Barrister and Solicitor of the Supreme Court of Victoria, she has a law degree with honours (Melb Uni) and an SJD (Melb Uni with research at NYU). From 2006–2008 Helen was Director of Research at the Asian Pacific Centre of Military Law, Melbourne Law School, and continued to teach in the Master of Laws program at Melbourne Law School until she left Australia. In 2014 she was inducted into the Victorian Honour Roll of Women, in 2015 Helen was awarded as an Australian Centenary Peacewoman and in 2017 became an Officer in the Order of Australia.
PRINCIPAL FELLOW

Associate Professor Robert Mathews OAM

Robert (Bob) Mathews is an honorary Associate Professor at the University of Melbourne Law School, and until recently was Head of the Nuclear Biological and Chemical (NBC) Arms Control Unit in the Australian Defence Science and Technology (DST) Group.

Bob has been collaborating with the University of Melbourne Law School since 1991, which has included the study of various scientific / legal aspects of arms control agreements, and providing lectures and seminars. He is involved in the Programme on the Regulation of Emerging Military Technology, which includes consideration of the challenges to the Law of Armed Conflict (International Humanitarian Law) and disarmament and arms control law posed by advances in science and technology and the resulting emerging military technologies.

Bob has been actively engaged in the Asia-Pacific region since the late 1980s. He has organised several regional workshops, including within the Melbourne Law School, and has also made many visits to regional countries for arms control and disarmament consultations, including providing guidance in their national implementation of disarmament treaties and other security agreements.

Since the early 1990s, Bob has been a member of various committees, including the Australian Red Cross International Humanitarian Law Committee, the International Verification Consultants Network of the Verification Research, Training and Information Centre (VERTIC), the Organisation for the Prohibition of Chemical Weapons (OPCW) Scientific Advisory Board and related Temporary Working Groups, and the Advisory Board of the National Centre for Biosecurity at the Australian National University.

Bob was awarded the Department of Foreign Affairs and Trade Secretary’s Award in 1993 and an Order of Australia Medal in 1994 for his contribution to chemical disarmament. He was elected Fellow of the Royal Australian Chemical Institute in 1995, and in 2003 was awarded a Doctor of Science degree for his contribution to chemical defence and disarmament. In 2013, he was appointed a Fellow of the International Union of Pure and Applied Chemistry (IUPAC), and in 2014 was named as the first Recipient of the ‘OPCW-The Hague’ award, based on his contribution to achieving a world free of chemical weapons.
Members’ Profiles

PRINCIPAL FELLOW

Dr Mike Kelly AM

Mike is the Member for Eden-Monaro and the Shadow Assistant Minister for Defence Industry, and a former Minister for Defence Materiel.

Mike currently sits on the Shadow National Security Committee, he is a member of the bi-partisan Parliamentary Joint Committee on Intelligence and Security, and he is the Co-Convener of the bi-partisan Parliamentary Friends of Suicide Prevention group.

Mike began his career fighting for the rights of injured workers and campaigning for those suffering from asbestos related diseases in Sydney. In 1987 he joined the Army and has extensive military experience including serving in a number of international operational deployments including Bonsia Herzegovina and Croatia, Somalia, East Timor and Iraq. In Government he also worked on Afghanistan transition.

Mike is a leading expert on peace and stabilisation operations, post conflict reconstruction and counter-insurgency. He has a PhD in related fields, published two books, numerous articles, and has been a regular speaker at military training programs and conferences around the world.

With over 170 years of family tradition in this region, Eden-Monaro is in Mike’s blood. He is passionate about renewable energy, the need to act on Climate Change and a strong advocate for veterans and the interests of rural and regional Australia within the Labor Party and Parliament.

Mike lives in Queanbeyan with his wife Shelly.

PROFESSORIAL FELLOW

The Hon Alastair Nicholson AO QC RFD

The Honourable Alastair Nicholson graduated Melbourne University Law School in 1960 and was admitted as a Barrister and Solicitor of the Supreme Court of Victoria in 1961 and signed the Roll of Counsel of the Victorian Bar in 1963. He was appointed Queens Counsel in 1979, a Justice of the Supreme Court of Victoria from 1982–88, and Chief Justice of the Family Court of Australia and a Justice of the Federal Court of Australia from 1988 until his retirement in 2004. He was Judge Advocate General of the Defence Force from 1987–91 and held the rank of Air Vice Marshal in the RAAF and is an Officer of the Order of Australia.

Alastair has long been a children’s rights campaigner. He has chaired several international conferences on child protection and child justice systems, and served as a consultant to the Royal Children’s Hospital International Vietnam, and to UNICEF Vietnam. He has also been a consultant to the Queensland Government on legal recognition of Torres Strait Islander traditional child rearing practices. He was the recipient of the Human Rights Award at the Fifth World Congress on Family Law and Children’s Rights held in Canada in 2009.

He has been an Honorary Professorial Fellow of the University of Melbourne since 2003 and is currently Chair of Children’s Rights International.
Members’ Profiles

POST-DOCTORAL FELLOW

Dr Rosemary Grey

Dr Rosemary Grey is a Postdoctoral Fellow at Melbourne Law School. Her research focuses on gender issues in international criminal law, particularly the evolving law and practice regarding the prosecution of sexual and gender-based crimes.

Together with Jonathan O’Donohue from Amnesty International, she supervises the International Criminal Justice Clinic at Melbourne Law School.

Prior to coming to Melbourne, Rosemary completed her PhD at the University of New South Wales (UNSW). Her PhD thesis, titled ‘Prosecuting sexual and gender violence crimes in the International Criminal Court: Historical legacies and new opportunities’, presented an in-depth study of all cases before the ICC from 2002-2014.

Complementing her academic work, Rosemary has also worked and volunteered with a number of organisations including Amnesty International, Women’s Initiatives for Gender Justice, the International Bar Association, and the International Criminal Court.

RESEARCH FELLOW

Dr Narrelle Morris

Narrelle Morris was appointed as an APCML Research Fellow in January 2009 to work on the ARC Linkage Grant for ‘Australia’s Post World War Crimes Trials: a Systematic and Comprehensive Law Reports Series’, headed by Professor Tim McCormack. She is currently an honorary Research Fellow in Melbourne Law School and a Senior Lecturer in the Curtin Law School, Western Australia. In 2013 she was awarded an ARC DECRA grant for 2014–17 to conduct research on the Australian jurist Sir William Flood Webb.

She holds an LLB, a BAsian St and a BA (Hons) from Murdoch University. She completed her PhD in Japanese Studies at Murdoch University in 2007. She is the author of Japan-bashing: Anti-Japanism since the 1980s, London: Routledge, 2010 and a co-editor and contributing author to Australia’s War Crimes Trials 1945–51, Leiden: Brill Nijhoff, 2016. Her next journal article is ‘Gross inefficiency and criminal negligence’: the Services Reconnaissance Department in Timor in 1943–45 and the Darwin war crimes trials in 1946’, Intelligence and National Security, forthcoming.
RESEARCH HIGHER DEGREE STUDENTS

Florence Odora Adong
*Responsibility to Prevent Concept in International Law and its Application in Africa*

My thesis explores the implications of the adoption of responsibility to prevent concept for the practice of international institutions operating in Africa. In order to do so, it will analyse the history of practices of conflict prevention by international institutions in the UN era, the meaning of responsibility in international law, and the potential effects of the application of the notion of responsibility to the concept of prevention in the work of international institutions, particularly the World Bank. The core argument of the thesis is that the indeterminacy and malleability of the concept of responsibility as interpreted in international law means that it offers nothing of value to African states seeking to constrain or shape the conduct of international institutions in ways that might contribute to peace, stability, and the protection of life in Africa.

Supervisors: Professor Anne Orford, Professor Bruce Oswald

Marie Aronsson
*Covert Operations and the Development of International Law on the Use of Force*

This thesis examines how best to recalibrate the understanding of the development of the law on the use of force in light of increased reporting and legal debate around covert and quasi-covert operations. It unpacks the requirement of publicity in customary international law, and further examines how state silence around publicly known operations open up significant space for interventions by legal scholars concerning the dynamic interpretation of the law on the use of force in response to novel developments.

Supervisors: Professor Anne Orford, Associate Professor Kevin Jon Heller (SOAS, University of London)

Madelaine Chiam

This thesis uses close readings of the debates over Australia’s participation in the 2003 Iraq War, the Vietnam War and the First World War to examine the role of international legal language in public debate. This thesis argues that the contemporary prominence of international law in these debates is not new. Rather, the 21st century interest in legality is part of a longer practice of speaking international legal language, in different forms, in public debates about war.

Supervisors: Professor Hilary Charlesworth, Associate Professor Ann Genovese, Professor Gerry Simpson

Monique Cormier
*The Jurisdiction of the International Criminal Court over Nationals of States that are not Party to the Rome Statute*

The thesis looks beyond the Rome Statute to determine whether there is a basis for ICC prosecution of nationals of non-party states in customary international law. In particular, I analyse how the principles of jurisdiction that allow states to prosecute foreign nationals in domestic courts (territoriality, nationality, universality) may be exercisable by a treaty-based court with or without the consent of the state of nationality.

Supervisors: Professor Tim McCormack, Professor Alison Duxbury, Dr Rain Liivoja

Treasa Dunworth
*The Resurrection of Human Security in Disarmament*

The idea of human security—that people, not states, should be at the centre of security discourse—has started to inform the disarmament community. The Landmines and Cluster Munitions Conventions are well-known examples. There are also a number of initiatives to reframe the nuclear weapons disarmament debate in “human security” terms. However, many human security advocates ignore the complexities within the term itself, it’s poor track record in earlier disarmament attempts, and the risk that it will be called in aid of militarization, rather than disarmament. I consider each of these difficulties (and others) but nonetheless advocate a human security lens for disarmament.

Supervisors: Professor Tim McCormack, Professor Tania Voon
Jennifer Hasselgard-Rowe

Ending detention of drug users in Cambodia: International and domestic factors influencing the country’s substance use policies and practices

The thesis focuses on the substance use-related laws and policies in Cambodia, and in particular the practice of detention in the government compulsory ‘drug rehabilitation centres’. It explores the international (multilateral and bilateral) and domestic factors that influence the Royal Government of Cambodia’s engagement with the international community and with international human rights norms and treatment practices surrounding illicit substance use.

Supervisors: Professor Tim McCormack, Professor Sarah Biddulph, Professor Nick Crofts

Chris Jenks

The American Way of War Crimes: Reconceptualizing the United States’ Approach to Service Member Violations of the Law of Armed Conflict

The thesis is a comprehensive study of the effects of the U.S. decision to prosecute its service members who violate the law of armed conflict through an enumerated article of the Uniform Code of Military Justice and not a war crime charge. The thesis considers the historical origins of this charging preference and then traces its effects throughout the US military criminal process: reporting, investigating/fact finding, and trial. The thesis also considers both internal and external perceptions of the US process in terms of fairness and accountability.

Supervisor: Professor Bruce Oswald, Professor Jenny Morgan

Natalia Jevglevskaja

States’ Weapons Review Obligations under Article 36 of the 1977 Additional Protocol I to the Geneva Conventions and beyond

While military technology becomes increasingly more complex and its destructive power more advanced, Article 36 of the Additional Protocol I (‘AP I’) sends a clear signal that law should not simply follow such technological developments, but instead steer them. Given that only a handful of States are known to have a weapons review process in place, the situation is disconcerting. The thesis examines the role of Article 36 as well as its limits in ensuring that emerging military technology, such as cyber capabilities and autonomous weapons systems, remain consistent with international law. Where emerging technology fails to adhere to existing legal standards — for example, capacity of autonomous weapon systems (‘AWS’) to comply with the principle of distinction — an Article 36 review serves to identify these issues. Moreover, where new technologies challenge extant legal provisions — for example, whether the concept of attack under AP I adequately covers the employment of military cyber-capabilities — the law will only change if States see the need for such change. Without thorough weapons reviews this need would arguably remain undiscovered.

Supervisors: Professor John Tobin, Dr Rain Liivoja

Magda Karagiannakis

Corporate Officials and International Criminal Law

The thesis examines the questions of how individual private economic actors such individual business people or corporate officials such as directors, managers, contractors, associates and employees can be held individually liable under international criminal law. In doing so it addresses which substantive crimes and forms of liability are the most likely to be applied to these actors under the ICC statute. It also addresses the difficulties in successful prosecution of such actors,

Supervisors: Professor Gerry Simpson, Professor Christine Parker

Jonathan Kolieb

Corporate Peace-building: Regulating the private sector for conflict transformation

Transnational corporations have the capability and capacity to contribute to the prevention and resolution of armed conflicts around the globe. However, the potential of “corporate peacebuilding” remains unrealised. This thesis argues that unlocking this potential requires legal and regulatory innovation. A novel regulatory framework is developed for this purpose and its constitutive components examined in relation to the problem and promise of corporate
peacebuilding. It encompasses three key components: minimum legal standards for corporate conduct in conflict-affected areas, robust legal means of enforcement and incentives for businesses to go “above and beyond” and become partners, alongside government and civil society, in peacebuilding efforts.

Supervisors: Professor Christine Parker (from January 2016), Professor Gerry Simpson, Professor Sean Cooney (from September 2013)

**Kobi Leins**

*Legal Frameworks Governing the Use of Nanomaterials by the Military: A Review of Thermobarics, Optogenetics and Genetic Modification*

Nanotechnology is a rapidly developing area of science, and the military has been very keen to make use of its applications. Concerns have been expressed regarding the adequacy of the current legal framework to respond to potential military applications of nanotechnology. This research explores potential legal issues being raised by military applications of nanotechnology specifically. More broadly, the legal frameworks examined in this thesis have potential application to other new and emerging technologies, and highlight the breadth and depth of existing international legal frameworks.

Supervisors: Professor Alison Duxbury and Professor Christine Parker

**Tim McFarland**

*Autonomous Weapon Systems and the Law of Armed Conflict*

Many States are developing or acquiring increasingly autonomous robotic weapon systems for use by their armed forces. These systems promise vast operational changes in the conduct of armed conflict over the next few decades, but to date there has been no comprehensive assessment of the associated legal implications. This thesis draws on legal and technical sources as well as the development proposals that have been made public by relevant organisations, identifies key factors that may give rise to novel problems under the law of armed conflict, and discusses the major doctrinal and policy implications for States which operate autonomous weapon systems.

Supervisors: Professor Tim McCormack, Dr Rain Liivoja

**Simon McKenzie**

*Israeli Settlements and the ICC: Could there be a successful prosecution for the continued existence and expansion of Israeli Settlements in the West Bank?*

The International Criminal Court (ICC), established by the Rome Statute, was created to provide a venue of last resort for the prosecution of the most serious international crimes. However, whether the Statute successfully established a coherent and legally effective system of international criminal justice is open to question. This thesis examines this issue by considering how the crimes of the Rome Statute might apply to the continued existence and expansion of Israeli Settlements in the West Bank. The examination reveals some of the difficulties caused by incorporating some of the principles and obligations from international humanitarian law into the crimes of the Rome Statute. It also shows how the modes of liability used by the ICC could be tested by a situation where the accused acts as part of a democratic government and helps maintain criminal policies that have been developed over decades according to a coherent and consistently applied perspective of international law.

Supervisors: Professor Tim McCormack, Professor Bruce Oswald.

**Cait Storr**

*Nauru: Imperial Form, International Status, and the Histories of International Law*

This thesis responds to an apparently simple question: how did the island of Naoero become the Republic of Nauru? Considering in turn the declaration of the German protectorate in 1888, the designation of Nauru as a C Class Mandate in 1920, and the transition to independence in 1968, I argue that sovereign statehood is the latest stage in the rationalisation of a fundamentally imperial administrative form imposed on the island and its people. This thesis demonstrates that writing from place ‘up’ to ‘international law’, as opposed to writing from ‘international law’ ‘down’ to the world, radically reconfigures the perspective of ‘international law’ that emerges.

Supervisors: Professor Sundhya Pahuja, A/Professor Shaun McVeigh, and Professor Gerry Simpson (external).
Publications

Books
Liivoja, R. *Criminal Jurisdiction over Armed Forces Abroad*. (Cambridge University Press 2017)

Muggleton, P; Burke, R; Liivoja, R; McCormack, T; McLaughlin, R; Oswald, B; Radin, S; De Rochefort-Reynolds, A, *Muggleton on the Law of International Armed Conflict*. Asia Pacific Centre for Military Law 2017


Chapters


Charlesworth, H. 2017, ‘Culture and Tradition in the International Human Rights System’ in *Justice and World Order*:


Otto, Dianne. ‘Transnational Homo-Assemblages: Reading “Gender” in Counter-terrorism Discourses’ in Oishik Sircar and Dipika Jain (eds), New Intimacies, Old Desires: Law, Culture and Queer Politics in Neoliberal Times (Zubaan 2017) 73-96


Articles in Journals

Charlesworth, Hilary, ‘Australia’s Place at the Human Rights Table’ (2017) Pursuit

Charlesworth, Hilary, ‘International Legal Encounters with Democracy’ (2017) 8 Global Policy 34-43


Kolieb, Jonathan ‘Through the looking-glass: Nuremberg’s confusing legacy on corporate accountability under
Publications

International law’ (2017), 32(2) American University International Law Review 569


Otto, Dianne, ‘Tribunali dei popoli: sopravvivenza, protesta, giustizia e la politica dell’ascolto’ (2017) 33 Deportate esuli profughe (Deported women, female internally displaced persons and refugees), Special Issue on Women’s Tribunals (traduzione a cura di Sara De Vido) 123-144 http://www.unive.it/nqcontent.cfm?a_id=205022


Research Programs

Program on the Regulation of Emerging Military Technologies (PREMT)

GPCAPT Ian Henderson, Natalia Jevglevskaja, Kobi-Renee Leins, Dr Rain Liivoja, A/Prof Robert J Mathews, Prof Tim McCormack, Tim McFarland, Angus Willoughby

Advances in technology are quickly adapted for military ends. Yet the legal implications of using emerging technology for offensive purposes are often under-examined. At APCML, the Program on the Regulation of Emerging Military Technologies (PREMT) seeks to identify hostile uses of computer networks, robotics, nanotechnology and biotechnology that raise concerns in light of the humanitarian objectives of the law of armed conflict and evaluate the compatibility of these technologies with the existing law. With the aim of suggesting improvements to the current regulatory framework, the research group devotes particular attention to the challenges that these technologies pose to the central tenets of the law of armed conflict, such as the protection of civilians and individual accountability for violations.

A particular feature of this research program is the involvement of three Research Higher Degree Students who are engaged in research on the following topics:

Natalia Jevglevskaja – States’ Weapons Review Obligations under Article 36 to the 1977 Additional Protocol I to the Geneva Conventions and Beyond

Kobi Leins – Nanotechnology and the Law of Armed Conflict: Governing the Molecular


For an up to date list of funding sources and research outputs, please visit www.premt.net

Regulation of Private Military Contractors in Australia

Dr Rain Liivoja, Prof Tim McCormack, Mr James Ellis

This project entailed a comprehensive analysis of Australian law on the regulation of private military and security companies (PMSCs). This included law relevant to companies contracted by the Australian Defence Force while serving abroad or security contractors to other Australian Government agencies working overseas, as well as PMSCs operating out of Australia. The aim of the project was to make policy recommendations for the enhancement of the legal regime governing PMSCs.

Publications


Funding

This research was supported under Melbourne Research Office’s Research Collaboration Grants funding scheme (2011–2013) in the amount of $19,738.20.
2016–2017 NUS Law-MLS Research Partnership | Military Justice in the Asia-Pacific Region

Professor Bruce Oswald, Professor Alison Duxbury, Dr Rain Liivoja and Professor Simon Chesterman Dean at the National University of Singapore

A joint research project between the APCML, Melbourne Law School and the National University Singapore.

This research partnership aims to explore developments in military justice systems in the Asia Pacific region from a comparative perspective. In particular, it seeks to identify and analyse the domestic and international law factors that have driven change in the region. The project began with a joint conference at the National University in Singapore 2016. Selected papers from the conference are to be published in a special issue of the Journal of International Peacekeeping, (forthcoming 2017).

Hindsight Bias in Military Investigations

Dr Inbar Levy APCML Melbourne Law School, Professor Tomer Broude Hebrew University of Jerusalem

This research project entails a theoretical and empirical analysis of military investigations from the behavioural perspective. The project examines whether decision makers involved in military investigations could be influenced by the ‘outcome bias’, and more specifically, whether decision makers with military expertise and experience are less likely to judge events in hindsight comparing to lay people.

Research was undertaken with collaborators from the Hebrew University of Jerusalem, and data collection with Israeli students who are army veterans and Australian Defence Force participants is now taking place. The results will be presented in a conference in Jerusalem at the beginning of 2018.
The 2017 Sir Ninian Stephen Visiting Scholar was D. Stephen Mathias. Stephen Mathias was appointed Assistant Secretary-General for Legal Affairs on 1 September 2010 by United Nations Secretary-General Ban Ki-moon. In this position, Mr. Mathias is the head of the Office of the Legal Counsel and assists in the overall supervision of each of the units of the Office of Legal Affairs.

Prior to his appointment as Assistant Secretary-General for Legal Affairs, he was the Director of the General Legal Division in the Office of Legal Affairs. Before joining the United Nations, he served at the United States State Department for 20 years. From 1992-1996, Mr. Mathias was the Counsellor for Legal Affairs at the United States Embassy in The Hague, where a focus of his work was the start-up phase of the International Criminal Tribunal for the former Yugoslavia. From 2004-2007, he served as General Counsel to the Multinational Force and Observers, which supervises the implementation of the Security Annex to the Peace Treaty between Egypt and Israel. Before joining the public sector, Mr. Mathias worked from 1981-1987 in private legal practice at Milbank, Tweed, Hadley & McCloy. He is a graduate of the School of Foreign Service at Georgetown University and Columbia Law School.

Mr. Mathias has taught as an adjunct professor at Georgetown University Law Center and is a member of the American Society of International Law, the American Law Institute and the Council on Foreign Relations.
Mr. Mathias presented a public lecture on 10 October 2017 at the University of Melbourne Law School, entitled ‘UN Peacekeeping Today: Legal Challenges and Uncertainties’. In this lecture Mr Mathias outlined that UN peacekeeping operations have become multidimensional and are no longer limited to “keeping the peace”. They are increasingly deployed in contexts and with mandates that increase a risk of exposure to direct threats from armed groups and spoilers. Their mandates also increasingly call for the use of force for purposes other than self-defence. This has led to new questions about whether and how international humanitarian law applies to UN peacekeepers, including whether and when UN peacekeepers could become lawful targets in an armed conflict. At the same time, long-time challenges such as sexual exploitation and abuse by UN peacekeepers continue to require that the Organization improve its response to such challenges.

In addition to his public lecture on the 10 October, Mr. Mathias presented a seminar to MLS research higher degree students and staff, and delivered a further lecture on UN Peackeeping to members of the Australian Defence Force (ADF) and the Department of Foreign Affairs and Trade (DFAT) in Canberra. A podcast of which can be found on our website see - http://www.apcml.org/public-lecture-un-peacekeeping-today-legal-challenges-and-uncertainties/ . Further, he made himself available to Melbourne Law School students and staff to discuss their research.
Visitors

Kirby Abbott, OMM
International Committee of the Red Cross

Kirby Abbott has been the International Committee of the Red Cross (ICRC) Delegate to the Armed and Security Forces for South East Asia and the Pacific since August 2014. He is responsible for relations between the ICRC and the militaries of: Japan, Malaysia, Singapore, Brunei, Fiji, Australia, New Zealand and the United States’ Pacific Command. His responsibilities include providing support to military education at Staff and Defence Colleges and military legal institutes, training, exercises, other military activities, and doctrinal development.

In partnership with the National Defence University of Malaysia, he has recently created the Centre for Military and International Humanitarian Law which will begin to deliver a series of courses to military lawyers on IHL- in a way that will mutually compliment and reinforce the outstanding work done at the Asia Pacific Centre for Military Law (APCML).

While visiting the APCML Kirby is grateful to the University of Melbourne for giving him the opportunity to research recent legal developments on the interaction between IHL and International Human Rights Law regulating the use of kinetic force during armed conflict.

Kirby previously retired in the rank of Colonel from the Canadian Armed Forces Office of the Judge Advocate General. He holds a LLB from Dalhousie University Law School and a LLM from the London School of Economics and was a Visiting Fellow at the the Lauterpacht Center for International Law, University of Cambridge.

Host: The Asia Pacific Centre for Military Law

Michelle Lesh

As a Visiting Fellow at the APCML I have been conducting research towards a monograph, ‘The International Moral, Legal and Political Implications of Israel's Policy of Targeted Killing’. The fellowship has afforded me the opportunity to turn my experience in the field and my writing and thinking since completing the doctorate into a monograph. It is concerned with international humanitarian law and international human rights law, and the relationship between law, politics and morality as they showed in the implementation of that policy. Although other States, in particular the US and the UK, have developed their own practices and policies in regard to targeted killing, the Israeli case remains important because it was precedent setting. Much can be learnt from the way that it influenced the development of the practice by different States and legal responses towards it. Though over ten years have passed since Israel’s Targeted Killing case, its relevance to the issues it addressed has not diminished. Nor have the issues become less prevalent in the way wars are prosecuted. President Obama ordered thousands of drone attacks on targets worldwide. President Trump has continued and extended that practise. It is therefore of fundamental importance that there be a coherent body of international law that governs the conduct of States and non-State actors on this matter. My research during my time as a visitor of the Centre has also focused on a more general, yet central, issue of consideration in the monograph, which is the growing public concern with civilian casualties during war. Why are we troubled by proportionality during armed conflict? Is it because we suspect that the law as it stands is not adequate to the current realities on the ground? Identifying the way in which changing moral attitudes has shaped our understanding of the law will help in crystallizing what the principle of humanity entails – as expressed through the Martens Clause – and how this guides our interpretation of the law.

Michelle Lesh holds a BA/LLB (Hons) from Monash University and a PhD from the University of Melbourne. She was a Post-Doctoral Fellow at the Hebrew University of Jerusalem. She has served as a foreign law clerk for Chief Justice Barak (Ret.) at Israel’s Supreme Court, as the principal researcher for the Turkel Commission Report on Investigating Alleged Violations of the Law of Armed Conflict, and as a human rights officer at UN Office of the High Commissioner for Human Rights. Most recently she worked as an assistant to Israel’s Deputy Attorney-General for International Law, Dr Roy Schondörf. She is currently a Visiting Fellow at the Melbourne Law School, where she is writing a monograph analysing targeted killing according to international law, through the case study of Israel.

Host: Asia Pacific Centre for Military Law

Anne Quintin
International Committee of the Red Cross
Anne Quintin is the legal adviser leading the sector on training for International Humanitarian Law (IHL) at the International Committee of the Red Cross (ICRC). Prior to this, she has held various positions within the ICRC, both at the Headquarters in Geneva and in the Washington, DC delegation.

Currently finishing a PhD on International Law at the University of Geneva, Anne was a Visiting Scholar at the APCML (July-August 2017), where she focused on the function of IHL, in particular the question of whether IHL contains permissions or whether it is exclusively composed of prescriptions and prohibitions.

Anne previously worked for the Geneva Academy of International Humanitarian Law and Human Rights, for the International Institute of Humanitarian Law in San Remo and in Geneva, and was a Visiting Lecturer at the Elliott School of International Affairs at George Washington University. Anne is the co-author of the 3rd Edition of How Does Law Protect in War alongside Marco Sassòli and Antoine Bouvier.

Host: Asia Pacific Centre for Military Law

Léticia Villeneuve
Oxford University, University College

Léticia Villeneuve is a doctoral candidate in International Relations at University College, Oxford University. She holds an MPhil in International Relations from Oxford and a BA in International Relations and International Law from the Université du Québec à Montréal (Canada).

Ms Villeneuve was a visiting scholar at the APCML examining non-binding instruments in international law, the role of legal advice in government in the process, and issues of state commitment raised in international humanitarian law cases.

Host: Asia Pacific Centre for Military Law

Phoebe Wynn-Pope

Phoebe Wynn Pope has over 25 years experience in the humanitarian sector. After working with the victims and perpetrators of the Rwandan genocide, Phoebe returned to Australia to undertake a PhD in international law focusing on the international community’s Responsibility to Protect (R2P) against war crimes, crimes against humanity and genocide. Phoebe was a founding Director of the Humanitarian Advisory Group where she worked on the protection of civilians in armed conflict, and most recently, she was Director of International Humanitarian Law and Movement Relations at Australian Red Cross. Phoebe has been published in the Yearbook of International Humanitarian Law, the International Review of the Red Cross, and has written several book chapters.

As Visiting Scholar to the APCML Phoebe explored the impact of States apparent disinclination to fully engage in either the development or protection of IHL. This can be seen in States rejection of what became known as the “compliance resolution” at the International Conference of the Red Cross and Red Crescent Movement in 2015; States legislating against some of the most fundamental principles in international humanitarian law in the context of counterterrorism legislation; and the failure of States to provide international humanitarian law ‘opinio juris’ (Schmitt & Watts [2015]) leaving development of legal understanding to academics and international institutions such as the ICRC.

In November, Phoebe presented to Griffith University ‘Women in Political Leadership Symposium: The Effectiveness of Human Rights Institutions’ on her research.

Host: Asia Pacific Centre for Military Law
Roundtables & Workshops

2017 IHL Roundtable | Int’l Humanitarian Law: Challenges & Tensions from the Perspective of NGOs
Columbia Law School, USA | 13 April 2017

A roundtable discussion of contemporary IHL challenges confronting international organisations, ranging from the problem of foreign fighters to human rights law on the battlefield, and IHL in negotiations with the FARC. Keynote speakers included,

Mwatana’s experience in the middle of the war in Yemen

Radhya al-Mutawakel is a human rights defender. She is the chairperson and co-founder of Mwatana Organization, an independent Yemeni organization aiming to defend and protect human rights depending on investigative research methodology to issue statements, reports, and documentary films. Mwatana also works on advocacy, human rights awareness, and providing legal support to the victims of arbitrary detentions. Al-Mutawakel has been working in the field of human rights since 2004 covering different topics including war crimes, arbitrary detentions, enforced disappearance, and freedom of press. She graduated from the Faculty of Mass Media and Communication and holds two high diplomas on gender studies and political science.

Promoting human rights law in situations of armed conflicts: some challenges and solutions

Mr Jonathan Horowitz is a senior legal officer for the Open Society Justice Initiative where he focuses on issues of human rights, counterterrorism, and the law of armed conflict. Prior to joining the Justice Initiative, Mr. Horowitz worked at the U.S. Embassy in Kabul, Afghanistan where he advised on detention policies. Previously, he was an Open Society Foundations grantee documenting detainee and night-raid abuses in Afghanistan. Mr. Horowitz has also worked as a Sudan/Chad analyst at the International Criminal Court and as a consultant for Human Rights Watch. From 2005 to 2007, he was a U.N. human rights officer in Sudan documenting and reporting on human rights abuses and international humanitarian law violations in Darfur.

The Protection of Civilians under International Humanitarian Law: Operational Challenges and Legal Developments

Ms Sahr MuhammedAlly is the Director for MENA and South Asia at the Center for Civilians in Conflict. In this role she advises and provides technical assistance to governments, militaries, and international organizations on civilian protection and harm mitigation. Her expertise includes reduction of civilian harm and post harm assistance during combat operations, trainings on civilian protection, and civilian casualty tracking mechanisms. Sahr has worked for over 15 years in the fields of armed conflict and human rights including in Afghanistan, China, Indonesia, Iraq, Malaysia, Nigeria, Pakistan, Syria, and Yemen.

Sahr previously worked at Human Rights Watch and Human Rights First and practiced law at Gibbons P.C. and is a graduate of Mount Holyoke College and Brooklyn Law School (cum laude).

Strategic challenges from the perspective of a humanitarian organisation

Mr Scott Paul is Senior Humanitarian Policy Advisor at Oxfam America, where he focuses on the intersection of law, financial services, policy, and humanitarian emergencies. A graduate of Columbia College and the New York University School of Law, Paul previously worked at CIVIC and Citizens for Global Solutions.
The Future of ‘Zero Tolerance’ Policies in Peacekeeping

Melbourne Law School | 21 April

This workshop revisited the UN Secretary-General’s 2003 Bulletin (SGB) which elaborated a policy of ‘zero tolerance’ of sexual exploitation and abuse by UN staff in peace operations. The regulatory impact of the Bulletin has been questioned, given continuing serious allegations of abuse in a number of operations. The Bulletin has also been the subject of sustained critique for its paternalist approach to sexual activity. This workshop assessed the theory and practice associated with the Bulletin and considered other forms of regulation of peacekeeping sex.

The aim of the Workshop was to identify practical directions for reform of the SGB, speakers included.

Professor Bruce Oswald Melbourne Law School
Professor Christine Chinkin LSE
Dr Melanie O’Brien TC Beirne School of Law
Professor Dianne Otto Melbourne Law School
Dr Kate Grady SOAS
Dr Róisín Burke University of Canterbury School of Law
Dr Jasmine Westendorf Latrobe University
Professor Hilary Charlesworth Melbourne Law School
Jennifer Wittwer Policy Specialist and Military Liaison Officer, UN Women, New York
Roundtables & Workshops

The 5th Australian ICL Workshop
Where are we now? Looking forward to the 20th anniversary of the Rome Statute
Melbourne Law School | 4 & 5 September

Dr Rosemary Grey University of Melbourne
Dr Emma Palmer University of New South Wales
Professor Sarah Williams University of New South Wales
Dr Matt Killingsworth University of Tasmania
Dr Shireen Daft Macquarie University
Natalie Hodgson University of New South Wales
Assistant Professor Philipp Kastner University of Western Australia
Professor Tim McCormack University of Melbourne
Jonathan O’Donohue Amnesty International / University of Melbourne
Dr Monique Cormier University of New England
Simon McKenzie University of Melbourne
Dr Katherine Fallah University of Technology Sydney
Souheir Edelbi University of New South Wales
Professor Claus Kreß University of Cologne
Sephora Sultana Attorney-General’s Department
Associate Professor Treasa Dunworth University of Auckland
Shannon Maree Torrens University of Sydney
Assistant Professor Philipp Kastner University of Western Australia
Dr Melinda Rankin University of Sydney
Dr Michelle Burgis-Kasthala Australian National University
Georgia Hinds International Committee of the Red Cross
Victim Participation in International Criminal Justice

The Case of the Extraordinary Chambers in the Courts of Cambodia (ECCC): Real Power or Empty Rhetoric

Dr Rudina Jasini University of Oxford

Melbourne Law School | 22 February 2017

This presentation critically examined the role, scope and implications of victims’ participation in international criminal proceedings, drawing from developments in human rights doctrine, victimology and transitional justice. The comprehensive analysis of the complex and multifaceted legal mechanism of victim participation is conducted primarily through the lens of the ECCC. The interpretation of victims’ participatory rights has been significantly diffuse and at times divergent, betraying a far from cohesive and consistent approach, and making the study of civil party participation a meaningful and instructive endeavour. Victim participation is still in its infancy in international criminal proceedings, and as such, the trials at the ECCC have appeared more as ‘experimenting laboratories’ than as processes guided by sound and well-crafted rules and procedures. The research argues that whilst the apparent benefits of participation seem self-evident, and may lead, at least in theory, to the realisation of the aspiration of restorative justice for victims, the manner in which civil party participation has been crafted and interpreted in the trials before the ECCC has raised some important issues and questions regarding its role and impact with respect to the functionality of court proceedings, the rights of the accused, and the rights of victims themselves.
Aside from Article 51 of the UN Charter, a UN Security Council authorisation under Articles 39-42 is the only exception to the prohibition on the use of force provided for in Article 2(4). To authorise military intervention within a given situation, the Security Council must first determine whether or not that situation constitutes a ‘threat to the peace’ under Article 39. The Charter has long been interpreted as placing few bounds around how the Security Council arrives at such determinations. As such commentators have argued that the phrase ‘threat to the peace’ is undefinable in nature and that such decisions are fluid, arbitrary and lacking in consistency. Through a critical discourse analysis of the justificatory discourse of the P5 surrounding individual decisions relating to ‘threat to the peace’ (found in the meeting transcripts), I have determined that each P5 member has a consistent definition and understanding of what constitutes a ‘threat to the peace’. As a result, I argue that a Security Council wide definition, if this was ever possible, would sit in the middle ground of these national understandings.
Targeting operations and civilian casualties: giving meaning to the principle of proportionality in modern warfare

Dr Michelle Lesh | Melbourne@Defence

When: 9 May | 1230 - 1330

Where: Defence Legal, Canberra

The Trump administration has begun to explore options that would dismantle Obama-era constraints intended to minimise civilian deaths from drone attacks and other counterterrorism mission outside ‘active conflict’ zones like Afghanistan and Iraq – in Yemen and Somalia, for example. Reaction to the government’s policy review has expressed concern that it will cause too many civilian casualties. The involvement of Coalition forces further complicates the ability to attribute responsibility for civilian casualties. A growing focus on transparency and accountability indicate that attempts that have been made to address some of those concerns. These are welcome because they express the recognition that secrecy is not the solution to dilemmas about proportionality. However the question remains: why are we so concerned with proportionality during armed conflict? Is it because we suspect that the law as it stands is not adequate to the current realities on the ground?

Concern for civilians during armed conflict is not a new phenomenon: it was the impetus for the creation of the laws of armed conflict in the second half of the 19th century. However, the importance of civilian casualties to our understanding of how the law applies to current realities of armed conflict has changed, largely because the public has become intolerant of such casualties. There is now enormous pressure on States to re-examine the principle of proportionality. Israel has experienced that pressure most acutely because, at least since 2009, the international community and the Israeli human rights community have often expressed indignation over its response to rocket attacks from Gaza. For that reason and because the Israeli Supreme Court handed down a judgment in 2006, now commonly referred to as the Targeted Killing case, Israel provides a case study for thought about the adequacy of international humanitarian law more generally and the principle of proportionality in particular to the contemporary realities of armed conflict.

Michelle Lesh holds a BA/LLB (Hons) from Monash University and a PhD from the University of Melbourne.

Military Law and Psychology

Dr Inbar Levy | Melbourne@Defence

When: 6 March | 1230 - 1400

Where: Defence Legal, Canberra

Dr Levy will speak about the application of military law from a psychological perspective by considering such matters as availability bias, and hindsight bias in military decision-making. Case studies concerning targeting and military investigations will be used to consider the impact of understanding the application of military law using psychology as a framework.

Dr Levy is studying military investigations from a behavioural perspective. More specifically, she is examining whether decision makers involved in military investigations could be influenced by hindsight bias. She is collaborating with Professor Tomer Broude from Hebrew University of Jerusalem. Her research on this topic is covered in part by an APCML grant.

Dr Levy completed her DPhil in Law at University College, Oxford, where she was awarded the Modern Law Review Doctoral Scholarship and the Oxford Faculty of Law Scholarship. Her project, titled ‘Behavioural Analysis of Civil Procedure Rules’ investigates the implications of findings derived from empirical behavioural psychology for legal reasoning and practice. She had been awarded a Joint Law and Psychology LLB with Magna Cum Laude honours and subsequently an LLM with similar honours from the Hebrew University of Jerusalem. Before going to Oxford, she served as a legal advising officer in the Military Advocate General unit of the Israeli Defense Forces. Inbar held a Visiting Research Fellow position at Columbia Law School in the City of New York and a Visiting Researcher position at Harvard Law School.
‘Other’ Foreign Fighters under International Law: Treatment, status and due diligence obligations

Marnie Lloyd | Melbourne@Defence

When: 6 September | 1230 - 1330

Where: Defence Legal, Canberra

Marnie’s current doctoral research involves a critical historical reading of legal debates in international law regarding different types of foreign fighters - private individuals who voluntarily travel abroad to fight with an armed group in another country.

The term ‘foreign fighter’ is not defined in international law. The attention to terrorism in current scholarship and practice regarding foreign fighters overshadows the fact that throughout history, civil wars have also been fought by ‘other’ types of foreign fighters or international volunteers. We could think, for example, of foreign volunteers in the Spanish Civil War or, today, volunteers with Kurdish and Christian armed groups in Syria, pro-Russian foreign volunteers in the Donbass, allegations of foreign mercenaries in the Central African Republic, or dual Australian-South Sudanese citizens returning to South Sudan to fight.

Different countries have taken different domestic legislative approaches to such fighters, including through laws on neutrality, foreign enlistment, mercenarism, foreign incursion and anti-terrorism. My interest is on the level of international law – to what extent could it be said that states have a duty under international law to make reasonable efforts to stop would-be foreign fighters and/or prosecute them on their return? All of them, or which ones could be considered the problematic cases? What could such an obligation be based upon? How might a state’s own intervention in support of the same armed group affect this?

By taking a critical historical approach to key legal moments related to the phenomenon of these ‘other’ foreign fighters, my thesis considers debates in international law regarding private individuals who voluntarily travel abroad to fight with an armed group in another country. It looks at the fundamental and confronting questions that arise with the private taking up of arms across borders in solidarity with an armed group, and thinks about what looking at this topic might help us to understand about the interplay of international law and friendly relations between sovereign states during civil war.

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Marnie specialises in the field of international law in armed conflict and humanitarian affairs. Prior to joining Melbourne Law School, she worked for more than ten years as a Delegate and Legal Advisor with the International Committee of the Red Cross (ICRC), undertaking long-term postings in Ethiopia, Sri Lanka, Chad, Afghanistan and the Democratic Republic of Congo. She then worked at the Geneva headquarters where she advised on international humanitarian and human rights law in support of the ICRC’s activities in the Middle East, with a focus on conflict classification, the conduct of hostilities and detention in Syria, Iraq, Israel and the occupied territories, and Yemen.

She has taught and spoken on issues of IHL, arms control and humanitarian affairs with diverse audiences around the world, including engagement with armed forces and armed groups in the field. She has also advised NZDF on humanitarian issues in preparation of warfighting exercises in New Zealand (Exercise Southern Katipo 2015), and assisted with military trainings and seminars including the European Security and Defence College’s Course on International Law for Military Legal Advisers (Vienna), with ISAF legal advisors in Afghanistan (Kandahar), and at the UN Military Expert on Mission training jointly run by NZDF/ADF in Auckland. She has also been a guest lecturer at Victoria University of Wellington.

In addition to IHL, Marnie has prior experience in refugee law, minority rights and commercial law, having worked as a legal consultant for UNHCR (Geneva), legal researcher with the European Centre for Minority Issues (Germany) and solicitor at Kensington Swan law firm (NZ). Marnie holds an LLM in International Law in Armed Conflict from the University of Geneva, Switzerland, an MA in International Humanitarian Assistance from Ruhr-University Bochum, Germany, and degrees in Arts and first class honours Law from Victoria University of Wellington, New Zealand.
Maritime Operations Law Course
13–17 February 2017

Understanding the legal environment applicable to maritime operations is fundamental to the effective planning and conduct of operations.

The APCML Maritime Operations Law Course provided an introduction to the law of the sea, maritime law enforcement issues, the law of naval warfare, and the application of rules of engagement to maritime operations. It aimed to develop a sound understanding of key international law principles that govern maritime operations and produce an appreciation of how to apply those principles in a military and naval context.

The course was conducted over five days at Victoria Barracks in Sydney, Australia. The program was structured around a series of core learning modules taught by highly qualified instructors, and complemented by syndicate exercises and examination of case studies designed to illuminate and consolidate the issues raised during instructors’ presentations. The core learning modules included: Introduction to Law of the Sea; Maritime Zones; Use of Force; Regulation and Enforcement; Terrorism and Proliferation at Sea; Law of Naval Warfare; and Rules of Engagement.

The course was also designed to promote engagement and interaction between military personnel from across the Asia Pacific region and to build greater understanding and commonality in the application of international law to military operations.

In 2017, the course was attended by 30 participants comprising 23 International delegates from 14 countries, 5 Australian Defence Force (ADF) members, and representatives from the Department of Foreign Affairs and Trade, and the Australian Border Force.

Maritime Security Cooperation Workshop
3–7 April 2017 and 9–13 October 2017
The Maritime Security Cooperation Workshop was held on two occasions in 2017. The program was structured around a series of core learning modules taught by highly qualified instructors, and complimented by syndicate exercises and examination of case studies designed to illuminate and consolidate the issues raised during instructors’ presentations.

The course was conducted over five days at Victoria Barracks in Sydney, Australia. Topics included, but were not limited to: maritime security operations; international law and the use of force; freedom of navigation; rules of engagement; maritime environmental law and resource protection; and multinational operations and interoperability.

The course was also designed to promote engagement and interaction between military personnel from across the Asia Pacific region and to build greater understanding and commonality in the application of international law to military operations.

The April iteration of this workshop was attended by 24 participants comprising 22 International delegates from 15 countries, and two ADF members.

The October workshop was specifically aimed at Pacific Island Countries, with regional representatives from both military and law enforcement backgrounds in attendance. This workshop was a joint collaboration between the APCML, representing Australia, and our three other partners in the Pacific Region Quadrilateral partnership: the United States, New Zealand and France.

The course was conducted over five days at Victoria Barracks in Sydney, Australia and incorporated regionally-focused presentations from subject matters experts from the Pacific Region Quadrilateral partnership. France and New Zealand each fielded one instructor, and the United States contributed six instructors. The workshop covered many of the same topics as the April session, but with a regional focus, and provided practical guidance on matters such as fisheries and evidence collection in maritime law enforcement.

This workshop was attended by 20 participants, comprising 19 International delegates from 9 countries, from both the military and law enforcement, four ADF members, and one representative of the Australia Civil-Military Centre.
Law of Peace Operations Workshop

3–7 April 2017

Modern peace operations are increasingly complex and multidimensional. Thus a sound understanding of the legal frameworks that underpin and frame them is crucial – not only for those deployed as uniformed or civilian personnel on peace operations, but also for legal officers and policy makers involved in the planning and delivery of these missions around the world.

The APCML Law of Peace Operations Course explored the legal issues relevant to the creation and conduct of peace operations. The program was designed to build on the foundations of the relevant international legal frameworks and work through key legal considerations such as: host and contributing nation law; Status of Forces and Status of Mission Agreements; Rules of Engagement; use of force; and law of detention. Specific issues were also addressed such as policing, the role of private security companies, and civil-military cooperation and coordination on peace operations.

The course was conducted over five days at the Defence International Training Centre in Laverton, Australia. The program was structured around a series of core learning modules and complemented by examination of case studies, group work and an extended scenario exercise. The curriculum was designed to provide the flexibility for participants to contribute their own experiences and shape discussions through the more interactive sessions.

The course was also designed to promote engagement and interaction between military personnel from across the Asia Pacific region and to build greater understanding and commonality in the application of international law to military operations.

In 2017, the workshop was attended by 25 participants comprising 24 International delegates from 14 countries and one ADF member.
Command and Staff Operations Law Course
18–26 May 2017 (Philippines)

Command and Staff Operations Law Course
30 October–10 November (Australia)

For the Law of Armed Conflict to be useful in times of war it must be understood during times of peace – and it must be understood by the commanders and troops who will be directly impacted by it, and enforcing it, on the ground.

The APCML Command and Staff Operations Law Course gave an accessible yet comprehensive introduction to the laws of war, the application of the law in an operational context and the ramifications of breaching the law.

The objective of this two-week course was to raise the awareness of commanders and their staff about key operations law issues that impact on contemporary military operations. The course familiarized participants with the law applicable to the conduct of a wide spectrum of operations and with the planning tools that assist with mission success in compliance with the rule of law.

The course was also designed to promote engagement and interaction between military personnel from across the Asia Pacific region and to build greater understanding and commonality in the application of international law to military operations.

As in previous years, two iterations of the course were delivered in 2017, one in the Philippines, and one in Australia. The course in May was held at the Command and General Staff College of the Armed Forces of the Philippines, and was attended by 198 participants comprising 101 Philippines Army members, 23 Philippines Air Force members, 24 Philippines Navy members, 20 Philippines Technical and Admin Services members, 21 Non-Resident Instruction and 9 International delegates from 5 countries.
Courses & Workshops

The Command and Staff Operations Law Course held 30 October–10 November 2017 was delivered at Victoria Barracks in Sydney, Australia. It was attended by 29 participants, comprising 23 International delegates from 13 countries, including one representative from the International Committee of the Red Cross Regional Delegation for East Asia, five ADF members and one representative from the Department of Foreign Affairs and Trade.

Rules of Engagement Workshop
17–21 July 2017

Increasing political control over the use of force and the rules of engagement (ROE) used to regulate the conduct of armed forces by individual nations, and alliances and coalitions around the world have created a need to train in and understand the development of effective and appropriate rules of engagement.

The ROE workshop was delivered by the APCML instructing staff based on the Sanremo ROE handbook, developed by the International Institute of International Law, Sanremo. The workshop was designed as an advanced session that provides participants with a sound understanding of the ROE process, the ability to use the Sanremo ROE handbook and to draft ROE for a wide range of military operations.

The workshop was conducted over five days at Victoria Barracks in Sydney, Australia. In addition to core modules, the program included briefings on lessons-learned by military officers and legal advisors who have been involved in the drafting and implementation of ROE for national and multinational operations in the land, maritime, and air environments. It also included ROE case studies and syndicate exercises in order to explore contemporary ROE and ROE-related issues.

The workshop was also designed to promote engagement and interaction between military personnel from across the Asia Pacific region and to build greater understanding and commonality in the application of international law to military operations.

In 2017, the workshop was attended by 33 participants comprising of 29 International delegates from 15 countries, two ADF members, and two Australian Public Service legal advisers, of which one was from the Attorney General’s Department, Office of International Law, and the other from Australia Border Force.

Cyber Law and Emerging Technologies Workshop
16-20 October 2017

The Cyber Law and other Emerging Technologies Workshop was an unclassified, foundational level course intended to expose military officers to the strategic, legal and operational considerations associated with cyber conflict, computer network operations and emerging technology (eg, armed unmanned vehicles, autonomous weapons, and space assets). The course focused on the impact of new technologies on the legal landscape, and how the law (particularly the law of armed conflict) may be applied to military operations in cyberspace, ranging from cyber espionage to cyber warfare. The Tallinn Manual on the International Law applicable to Cyber Operations was used as the key reference for the workshop, and participants were fortunate to have the likes of Professor Sean Watts, a Senior Fellow at the NATO Collective Cyber Defense Center of Excellence, who was one of the drafters of the Tallinn Manual as one of the course instructors.

Specific topics covered during the workshop included: the international legal environment for cyber and space operations; an overview of computer network operations, including issues relating to the use of force and armed attack; the application of the law of armed conflict to actors (state and non-state) and military activities in cyberspace; the challenge of state responsibility in cyberspace; the purpose and objectives of the National Cyber Strategy; weapons law and the evaluation of new weapons under Article 36 of Additional Protocol I; developments in weapon technology, including unmanned and autonomous weapon systems, and associated legal issues; and an overview of the societal and ethical implications of advancements in technology.

In 2017, the workshop was attended by 42 participants comprising 28 International delegates from 14 countries, ten ADF members, three Australian Public Service members, including one from the Attorney General’s Department, and one Melbourne Law School graduate.