

# Monash hosts the Harvard World Model United Nations

By Alexandra McAlpine and Kate Lyle

Held in Australia for the first time in its twenty-two year history, Monash University was proud to be a major sponsor of the Harvard World Model United Nations ("WorldMUN"). Two thousand young delegates from over eighty countries discussed, debated and shaped ideas concerning international affairs and addressed current breaches in universal human rights. We were lucky enough to be involved with a committee that simulated the International Criminal Court (ICC) and conducted two mock trials across the five days. Our nineteen person committee deliberated *The Prosecutor v. Joseph Kony* and *The Prosecutor v. Bashar Al Assad*. The first case is an ongoing matter presently before the ICC whilst the later is a fictional case.

Throughout both trials the Court found itself focused on several legal issues concerning the "principle of complementarity" and the breach of human rights in both the Republic of Uganda and the Syrian Arab Republic. Over the course of the five days, the two trials illustrated the strengths and shortcomings of international criminal law, sometimes in surprising ways.

## Working out when the ICC can hear cases

The first issue before the Court was to establish whether or not the ICC held the jurisdiction necessary to hear the alleged crimes in each case. The principle of complementarity, found in Article 17 of the Rome Statute (the founding document of the ICC), ensures that the ICC does not have priority over a State's own national authority when prosecuting criminal offences. It is first the responsibility of the State to prosecute any serious crime of international concern. It is only when a State fails in that duty, due to an inability or unwillingness to prosecute, that the ICC may assert its jurisdiction.

In our mock cases, the judiciary ruled that both cases were admissible before the Court due to the failing of the national courts to prosecute the alleged offences effectively. More specifically, in the case of *The Prosecutor v. Joseph Kony* the judiciary held the case to be admissible before the ICC even if local justice measures were considered to be national judicial systems, for there is a State discretionary element to the principle of complementarity. As the



The mock ICC panel hands down its Joseph Kony judgment.

Republic of Uganda referred the case to the ICC, and given its continued struggle to bring the Lord's Resistance Army ("LRA") members to justice, it was found these local justice measures were insufficient to sever the admissibility of the case.

## Human Rights not Actionable before the Court

The second issue concerning human rights before the Court presented itself during witness questioning in the case of *The Prosecutor v. Bashar Al Assad*. During cross examination, deputy prosecutor Michael de Smedt asked defence witness Wallid Muallem whether he had, in his experience, observed any breach of human rights. Chief defence counsel, Mr. Xavier Jean-Keita, immediately objected on the basis that any breach of human rights is not in itself actionable before the Court. The judiciary conferred and sustained the objection on the basis that although the Universal Declaration of Human Rights has been adopted by the General Assembly and subsequently written into international treaties and covenants, many of the rights listed in the declaration have not been carried over to the Rome Statute. Therefore, because human rights are not a stand-alone cause of action, the alleged breach must relate to a crime as defined within the Rome Statute.

This objection sparked much interest among the judiciary and counsel within our Court. We found that there was a difference in a layman's understanding of what constitutes a breach of human rights and the legal reality of what can be prosecuted as a breach under the Rome Statute. The dichotomy between the

Universal Declaration of Human Rights and the Rome Statute was an important consideration for the judges on this issue.

For example, the Universal Declaration of Human Rights states that everyone has the right to a standard of living adequate for their health and well-being, which includes access to food. Yet the Rome Statute only acknowledges that the deprivation of access to food is a crime against humanity where it has been "calculated to bring about the destruction of part of a population". This would limit prosecution of offenders who had denied food, not for the purpose of the population's demise, but to redirect their supplies to their militia. This ensures that poor policies such as collectivisation can go unpunished if the offending party can prove their policy did not intend to bring about the destruction of a population.

## Looking forward

Each of our mock trials highlighted inadequacies in current international law treaties, such as where human rights violations are condemned but are not actionable under the Rome Statute. Our short week acting as the ICC gave us a taste of the real issues faced by the Court in its endeavour to implement justice. WorldMUN was a challenging and intellectually stimulating experience that provoked our understanding of human rights within the international framework and we are looking towards acting in the next trial for WorldMUN 2014!

**Alexandra McAlpine and Kate Lyle are Monash University Law students who attended the World Model UN.**