

2015 Moot goes to a new level

By Marius Smith

A stellar line up of teams representing law schools from six states and territories gathered in Melbourne over three intense days in September this year to battle for supremacy in the annual Castan Centre Human Rights Moot.

To add to the rigours of the competition, the organisers included a quarter final round this year to accommodate the growing number of teams. By the time the University of Melbourne and University of New South Wales had reached the final, they were lining up for their fifth moot in three days, and the team members were on the brink of exhaustion.

The 2015 problem had plenty to keep everyone interested, with a suspected Ebola outbreak in a small Victorian community leading to urgent action from the authorities to try and contain the outbreak. In the process, respect for freedom of movement, religious beliefs and more were tested as everyone tried to look out for their best interests.

As always, the goal for the competitors was to argue whether the various authorities had violated the Victorian Charter of Human Rights and Responsibilities, which remains one of only two comprehensive human rights acts in Australia (the other is in the A.C.T.). The University of Queensland team, however, can dream of competing in a similar local competition one day soon as momentum builds for a human rights act in the Sunshine State.

In the final at the court of appeal before Justice Pamela Tate, Justice Michael Croucher and Victorian Equal Opportunity and Human Rights Commissioner Kate Jenkins, the Melbourne University team triumphed with a sophisticated display of legal reasoning. It was a tight competition as the University of New South Wales team also competed strongly.

The previous day had seen high-calibre semi finals featuring the Australian National University (who lost in an agonisingly close decision against UNSW) and the University of Queensland. Illustrating the truly national nature of the competition, the quarter-finals earlier that day had also featured teams from Monash University, the University of South Australia, Sydney University and last year's runners up, the University of Tasmania.

Each year, the moot competition is a huge logistical organisation for a small organisation. This year, it featured 19 moots presided over by 39 judges from the Victorian Bar, the Victorian Equal Opportunity and Human Rights Commission, Victoria Legal Aid, Clayton Utz, the Department of Education and more.

The Castan Centre Human Rights Moot is the only one of its kind in the country, providing the next generation of young lawyers the chance to hone their knowledge of human rights in an intense but enjoyable atmosphere. It even gives the judges the chance to mull over legal arguments that are only just being explored as the Charter develops.

Congratulations go to all of the participants, who represented their universities so well.



The winning team (L-R): Jack Maxwell, Kelly Butler and Raoul Renard

The terrifying future of warfare

By Marius Smith

The term "Killer robots" conjures up all sorts of images of futuristic sci-fi movies, but according to a UN expert, they could be a reality sooner rather than later.



Christof Heyns delivers the 2015 Castan Centre Annual Lecture

"There was a time when you saw the whites of your enemy's eyes before you killed them", said Professor Christof Heyns while delivering the Castan Centre/King and Wood Mallesons Annual Lecture in Melbourne recently.

Heyns, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, explained how combat is growing increasingly remote, so that one day soon humans may not be involved in killing their enemies at all. Already, remote controlled drones are common on the battle field, but they could be superseded by autonomous weapons systems programmed to make decisions about who to kill.

The difference between a drone and an autonomous weapon is profound and raises serious ethical questions according to Heyns – in the case of drones, at least a person is ultimately accountable for the decision to pull the trigger. But on the other hand, humans can be too slow to make decisions on an increasingly automated battlefield, which may lead some to conclude that it is better to remove them from the process and allow computers to take the decisions on whether and against whom to use force, said Heyns.

In his UN role, Heyns has extensively studied drone warfare and stated that drones are not unlawful weapons in international law but – like any weapon – can be used in unlawful ways. Heyns also claimed that autonomous weapons could lower the threshold for the use of force, and would result in totally asymmetrical wars if only one side has them. This scenario could be likely in coming years, particularly as many current conflicts involve a nation state battling non-state actors such as terrorist groups and rebels.

Heyns also outlined the arguments in favour of killer robots – they will allow military forces to better target their opponents, which may result in fewer civilian casualties, and they will also ensure that fewer body bags return home from war – an outcome that is likely to be very tempting for politicians according to Heyns.

In concluding, Heyns said that all autonomous weapons systems would not necessarily be unlawful, but if there is no longer meaningful human control, they probably are and he supports a ban. Such machines cannot make the necessary qualitative decisions about whether someone should be killed. Heyns quoted Monash University academic Rob Sparrow, who said:

Giving an autonomous weapon system the power to kill seems a bit too much like setting a mousetrap for human beings; to do so would be to treat our enemies like vermin.

Autonomous weapons systems may be on the way, and for experts like Christof Heyns, regulating them will involve answering difficult moral questions.