

Moot Court

Judges rule in favour of Morian Hobbits

Usually, sunny Sydney seems a universe away from the “old world-meets-new world order” atmosphere of The Hague. But on Friday, December 7th, the University of New South Wales’ Centre for Refugee Research brought The Hague to Pitt Street. Or more specifically, to the Wesley Centre, where a moot court version of the International Court of Justice was held. In a packed “courtroom” learned counsel battled it out over the rights of refugees. Hobbit refugees.

In a timely move, the organizers of the event used examples from JRR Tolkien’s epic “Lord of the Rings” trilogy to highlight many of the problems encountered by asylum seekers in Australia today.

The case heard by the moot court was prompted by a dispute between the fictional Esgaroth and its neighbour Mirkwood. As a result of the persecution of Hobbits in their homelands of Mordor and Moria, the bordering nation of Mirkwood had been experiencing an influx of asylum seekers. While Mirkwood allowed that the Hobbits of Mordor were refugees under the definitions set forth by the Geneva Convention, they did not recognize the Hobbits of Moria as such. They claimed that the persecution of Hobbits in Moria was not government-sponsored, placing the Hobbits outside Geneva Convention definitions (see below), and any Morian Hobbits were systematically pushed back at the border. As a result, Morian Hobbits flocked to Mirkwood’s southern neighbor Esgaroth, a nation known for its humanitarianism.

Esgaroth brought suit against Mirkwood on the grounds that, as a much smaller and poorer nation, it could not sustain the influx of refugees indefinitely. All diplomatic parleys had failed and, in a last ditch effort, Esgaroth decided to take Mirkwood to the ICJ in hopes that the Court would find that Mirkwood

must take responsibility for the Hobbits fleeing its borders for Esgaroth.

If any of this has a ring of familiarity, it certainly is no accident. Throughout the proceedings, both Justices (played with aplomb by The Honorable Justice Margaret Beazley; The Honorable Justice John Dowd, AO and Elizabeth Evatt, AC) and Counsel (John Basten, QC; Robert Beech-Jones; Kate Eastman and Nick Poynder) made sly references to Australia’s controversial refugee policies. Counsel for Esgaroth complained about the ghastly conditions under which Mirkwood held asylum seekers. From the razor wire to the armed guards, they could easily have been describing Australia’s refugee detention centers. Later in the trial, Esgaroth accused Mirkwood of *refoulement*, or the Geneva Convention-barred practice of sending asylum seekers back to their country of origin. Australian policies were clearly under fire.

In many ways, the moot court offered a forum for the Australian human rights community to work through their frustration at the national policies on refugees. When the verdict was returned, the court condemned many of the policies that characterize the Australian approach to the refugee problem. For example, the detention centres were found to be in violation of the 1951 Convention. More damning was the court’s decision that Mirkwood’s policy of pushing Morian Hobbits back at the border was in contravention of the hallowed non-*refoulement* clause in the 1951 Convention. In essence, the Australian human rights community has tried its government and found it sorely lacking.

While the moot court represents a step in the right direction, it is a world away from the here and now.

by Jenny Queen

1951 Convention relating to the Status of Refugees

Article 33. Prohibition of expulsion or return (“refoulement”)

1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.