

## **Approaching a moot problem: Aspects of International Humanitarian Law**

*Kelisiana Thynne, Fork Yow Leong and Teerapat Asavasungsidhi<sup>1</sup>*

### **1. Introduction**

The Hong Kong Red Cross and the International Committee of the Red Cross (ICRC) have held an International Humanitarian Law Moot Court Competition for 13 years. It is a regional competition which nowadays hosts students from Vietnam, China, Hong Kong, Taiwan, Thailand, Laos, Cambodia, Malaysia, Singapore, Korea, Japan, Australia, New Zealand and Indonesia. In teams of two (with a researcher) the students act as if they are in the International Criminal Court, arguing whether or not an individual in a fictional case should be prosecuted for war crimes, crimes against humanity and genocide – from the side of the Prosecutor and the Defence. The competition enables students and their coaches to gain a better understanding of International Humanitarian Law (IHL) and International Criminal Law and of the workings of the International Criminal Court. They also start to understand the nature of international justice.

The ICRC organizes a number of student events in cooperation with National Red Cross and Red Crescent Societies and universities around the world. In Asia, almost all countries have a national IHL Moot Court competition, the winners of which participate in the Hong Kong regional competition. At these occasions, the ICRC, as a humanitarian organization working in situations of armed conflict, can effectively contribute with its first-hand experience of IHL. Not only does a representative of the ICRC judge every round, but also we give seminars to the students to enhance their understanding of the IHL issues of the problem, as well as the humanitarian consequences of the scenario which they are addressing from a legal and court room perspective. The ICRC aims to stimulate the next generation of leaders to understand, promote and implement IHL.

This article looks at the Hong Kong Red Cross International Humanitarian Law Moot problem of 2015<sup>2</sup> and proposes some legal aspects arising from the problem for students to consider. The problem

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<sup>1</sup> Legal Advisors to the International Committee of the Red Cross in South East Asia. The views expressed in this article are those of the authors and do not necessarily represent the views of the International Committee of the Red Cross.

<sup>2</sup> The problem was written by Michael Crawley and Richard Desgagne for the Hong Kong Red Cross and International Committee of the Red Cross.

looks at the question of whether General Smith (a fictional General of 'Midlands' who was tasked with leading an invasion of 'Lowlands') is liable for three charges under the Rome Statute of the International Criminal Court (Rome Statute):

- (1) the crime against humanity of “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity” within the meaning of article 7(1)(g) and 28 (b) of the Rome Statute.
- (2) the war crime of “unlawful deportation or transfer or unlawful confinement” within the meaning of Article 8(2)(a)(vii) and 25(3)(b) of the Rome Statute.
- (3) the war crime of “destroying or seizing the enemy’s property unless such destruction or seizure be imperatively demanded by the necessities of war” within the meaning of Article 8(2)(b)(xiii) and 25(3)(a) of the Rome Statute.

While there are a number of issues which pose procedural questions and initial admissibility and jurisdictional issues, this article will not address those aspects – students reading the moot problem can seek to determine how they would address those questions to the International Criminal Court if they were to be undertaking this moot.<sup>3</sup> The problem also asks students as Prosecutor and Defence in the International Criminal Court to consider command responsibility.<sup>4</sup> As this is primarily an issue of International Criminal Law, this article will also not address this issue.

This article will look at the issue of classifying an armed conflict which is the first step in determining whether war crimes have been committed. It will then consider the issues under the charges: sexual violence in armed conflict, displacement, and protection of cultural property. It should be noted at this point that although the charges against General Smith in this particular moot problem address crimes against humanity of sexual violence, this article will address the IHL aspects of sexual violence in conflict. In so doing, this article aims to provide students and teachers of IHL and IHL Moot court competitions, with a better understanding of the underlying issues of IHL that they would otherwise address as if in a court room.

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<sup>3</sup> Students are encouraged to read Chapter 15, Introduction to International Humanitarian Law & IHL Moot in Asia-Pacific Region: [http://www.redcross.org.hk/rcmovement/IHL\\_moot.pdf](http://www.redcross.org.hk/rcmovement/IHL_moot.pdf)

<sup>4</sup> See Jamie Allan Williamson, ‘Some considerations on command responsibility and criminal liability’ (2008) 90 *International Review of the Red Cross*.

## 2. Establishing an armed conflict

IHL only applies in armed conflicts. It follows that violations of IHL, or war crimes, can only occur during armed conflicts. Article 1(2) of Additional Protocol II to the Geneva Conventions, 1977, provides that IHL "... shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts."<sup>5</sup>

Therefore, if an individual is charged with war crimes, under article 8 of the Rome Statute, the first step the International Criminal Court will need to address is whether there was an armed conflict during the period of time that the person is alleged to have committed the crimes. The International Criminal Tribunal for the Former Yugoslavia (ICTY) has defined an armed conflict as: "whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State."<sup>6</sup>

The Rome Statute, following the rules of IHL and the division highlighted by the ICTY, divides the war crimes into two forms of war crimes – those committed during international armed conflict,<sup>7</sup> and those committed during non-international armed conflict.<sup>8</sup>

An international armed conflict is a conflict occurring "between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them".<sup>9</sup> A "High Contracting Party" means a party to the four Geneva Conventions of 1949 – that is a state. As all states in the world are now a party to the Geneva Conventions, the standard definition of an international armed conflict is that it occurs when there is a resort to force between two or more states. Occupation is also considered to be a form of international armed conflict to which IHL applies.

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<sup>5</sup> Also reflected in *Rome Statute of the International Criminal Court*, 17 July 1998, article 8 (2)(d) and (f).

<sup>6</sup> *Prosecutor v Tadic* Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Appeals Chamber, International Criminal Tribunal for the Former Yugoslavia (ICTY), IT-94-1-A, 2 October 1995, para70.

<sup>7</sup> *Rome Statute of the International Criminal Court*, 17 July 1998, article 8 (2)(a) and (b).

<sup>8</sup> *Rome Statute of the International Criminal Court*, 17 July 1998, article 8 (2) (c) and (e).

<sup>9</sup> Geneva Convention (I) on Wounded and Sick in Armed Forces in the Field; Geneva Convention (II) on the Wounded, Sick and Shipwrecked of Armed Forces at Sea; Geneva Convention (III) on Prisoners of War; Geneva Convention (IV) on Civilians, 12 August 1949, common article 2.

A non-international armed conflict is a conflict “not of an international character occurring in the territory of one of the High Contracting Parties”.<sup>10</sup> It is generally accepted that the fighting on the territory of this one state must reach a certain level of intensity and be protracted.<sup>11</sup> The parties to the conflict must also be reasonably well organised and represent an identifiable group.<sup>12</sup>

In the case of *Haradinaj*, the ICTY held that factors indicative of a non-international armed conflict include:

the number, duration and intensity of individual confrontations; the type of weapons and other military equipment used; the number and calibre of munitions fired; the number of persons and type of forces partaking in the fighting; the number of casualties; the extent of material destruction; and the number of civilians fleeing combat zones.<sup>13</sup>

Article 1(1) of Additional Protocol II to the Geneva Conventions 1977 applies to non-international armed conflicts which are defined as

tak[ing] place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

Additional Protocol II to the Geneva Conventions therefore goes beyond common article 3 to the Geneva Conventions to include the requirement for the non-state actors to have “control over a part of its territory” and the abilities to conduct military operations under a responsible command and to apply IHL. Therefore, Additional Protocol II does not necessarily apply to all non-international armed conflicts. Similarly, it does not apply to a conflict where the state on whose territory the conflict takes place is not a party to the treaty.

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<sup>10</sup> Geneva Convention (I) on Wounded and Sick in Armed Forces in the Field; Geneva Convention (II) on the Wounded, Sick and Shipwrecked of Armed Forces at Sea; Geneva Convention (III) on Prisoners of War; Geneva Convention (IV) on Civilians, 12 August 1949, common article 3.

<sup>11</sup> *Prosecutor v Tadic* Judgment of the Trial Chamber, International Criminal Tribunal for the Former Yugoslavia, IT-94-1-T, 7 May 1997, para 562.

<sup>12</sup> *Prosecutor v Haradinaj et al* Judgment of the Trial Chamber, ICTY, IT-04-84-T, 3 April 2008, para 60; see also *Rome Statute of the International Criminal Court*, 17 July 1998, article 8(2)(f).

<sup>13</sup> *Prosecutor v Haradinaj et al* Judgment of the Trial Chamber, ICTY, IT-04-84-T, 3 April 2008, para 49.

In the Hong Kong moot problem from 2015, General Smith was charged with war crimes under article 8 (2)(a) and (b): war crimes committed during international armed conflict. Therefore, students addressing this problem as the Prosecutor would need to demonstrate that there was an international armed conflict on going at the time the General was alleged to have committed the crimes. The Defence could either accept this classification, or if they wished to challenge it, they would need to demonstrate that either there was no armed conflict occurring or that the conflict was a non-international armed conflict. The Prosecution would need to prove that “substantial grounds to believe”<sup>14</sup> that an international armed conflict occurred for each of the two war crimes charges (there is no need to prove whether an armed conflict occurs to prove genocide or crimes against humanity). In this case, the territory of Lowlands has been in dispute, with border clashes between Panema and Midlands. Midlands invaded Lowlands and experienced pockets of resistance from the population, and Panema also fought against Midlands’ invasion of Lowlands. There are some elements within the problem facts which could be read as implying a non-international armed conflict, and periods during which the fighting had ended for a time. Mooters would need to grapple with the timing issues, but generally it would be accepted that there is an international armed conflict for the purposes of the charges against General Smith, with two states fighting against each other in a protracted way.

### **3. Sexual violence in armed conflict**

Sexual violence in conflict is not a new phenomenon, but we have seen increasing instances of sexual violence in conflicts over the last ten years or more.<sup>15</sup> The moot problem was written with sexual violence as a crime against humanity for the students to grapple with the legal aspects, but it serves to also highlight the humanitarian consequences of sexual violence in conflict. Sexual violence is an act of a sexual nature imposed by force, threat of force or coercion. Sexual violence in conflict may be used as a means of creating fear, as a form of reprisal or torture, as a method of warfare, as a result of a breakdown in societal structures or for ethnic cleansing. It can be widespread, but remains invisible in many contexts which is one of the reasons why it is only becoming apparent in **many**

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<sup>14</sup> The evidence test in the *Prosecutor v. Lubanga*, Case No. ICC-01/04-01/06, Decision Concerning Pre-Trial Chamber I's Decision of 10 February 2006 and the Incorporation of Documents into the Record of the Case against Mr. Thomas Lubanga Dyilo, 24 February 2006, para. 63.

<sup>15</sup> Sarah Shteir, *Conflict-related sexual and gender based violence*, Civil-Military Occasional Paper 1/2014, Australian Civil-Military Centre, <https://www.acmc.gov.au/wp-content/uploads/2014/09/Conflict-Related-Sexual-and-Gender-Based-Violence.pdf> p 9.

contexts now how widespread it actually is. It is important to note that sexual violence is often related to other violations of IHL in conflict. Therefore, sometimes it is overlooked, or hard to report.<sup>16</sup>

Under IHL, rape and other forms of sexual violence are prohibited. In an international armed conflict, article 27 of Geneva Convention IV provides:

Protected persons [civilians] are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

Article 75 (2)(b) of Additional Protocol I to the Geneva Conventions, 1977, provides: “outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault” are prohibited. Under article 76 women have special protection.

In a non-international armed conflict, common article 3(1)(c) of the Geneva Conventions also prohibits “outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault”. It is also a rule of customary international law that rape and all forms of sexual violence are prohibited in both international and non-international armed conflicts.<sup>17</sup>

The ICRC, as a humanitarian organisation, takes a multi-disciplinary approach to sexual violence. It provides medical, psychological and economic support to victims of sexual violence. It gathers reports of sexual violence in conflict and reminds parties to a conflict who might have committed such violations of the IHL principles. We also make recommendations to encourage the parties to take necessary measures to identify and sanction the perpetrators, to prevent further violations and to protect the populations.

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<sup>16</sup> Sarah Shteir, *Conflict-related sexual and gender based violence*, Civil-Military Occasional Paper 1/2014, Australian Civil-Military Centre, <https://www.acmc.gov.au/wp-content/uploads/2014/09/Conflict-Related-Sexual-and-Gender-Based-Violence.pdf> p 5.

<sup>17</sup> Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law* (Vol 1 2005), Rule 93.

The ICRC President Maurer has said:

We use the law and we address vulnerabilities and patterns of violence. In prisons and Ministries, with opposition fighters and community leaders, we talk to the perpetrators of sexual violence in conflict in order to change their behaviour. Everyday we see sexual violence in the places where we are striving to make a difference. We witness the effects of this silent crime on individuals, families and communities. <sup>18</sup>

Despite reminding the parties to conflicts around the globe of their IHL obligations, specifically on sexual violence, such violations continue to occur. In such cases it is then incumbent on the government on whose territory the crimes took place to prosecute and punish the perpetrators. Ideally, this should be at the domestic level, but where the crimes are of sufficient gravity, or have been referred to the International Criminal Court, international justice can be invoked.

The Rome Statute goes beyond previous international criminal statutes in establishing jurisdiction over more crimes of sexual violence than seen before. Article 54(1)(b) of the Rome Statute provides that:

The Prosecutor shall ... [t]ake appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, respect the interests and personal circumstances of victims and witnesses, including age, [and] gender ... and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children.

Three crimes have been specifically directed to sexual violence:

Committing rape, sexual slavery, enforced prostitution, forced pregnancy... enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions<sup>19</sup> (international armed conflict war crime)

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<sup>18</sup> 'ICRC president calls for action on sexual violence in conflict', Statement to the Global Summit on Ending Sexual Violence in Conflict on 12 June 2014:

<https://www.icrc.org/eng/resources/documents/statement/2014/06-12-sexual-violence-statement-maurer.htm>

<sup>19</sup> *Rome Statute of the International Criminal Court*, 17 July 1998, article 8(2)(b) (xxii).

Committing rape, sexual slavery, enforced prostitution, forced pregnancy, ... enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions<sup>20</sup> (non-international armed conflict war crime)

Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity [when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack]<sup>21</sup> (crime against humanity)

“Forced pregnancy” is defined by article 7(2)(f) as “the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.” Sexual violence has also been recognised as an element of genocide,<sup>22</sup> when ‘committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group’.<sup>23</sup> The ICTY also has recognised rape as a form of torture.<sup>24</sup>

In the moot problem in Hong Kong in 2015, the fictional General was charged with a crime against humanity. He could equally have been charged with war crimes. The way the students approach the problem will depend on those legal definitions of crime against humanity and whether the facts of the particular problem fit the legal definition. This exercise reflects the reality of the difficulty of fitting certain patterns and evidence of sexual violence into the existing legal definitions. However, today, we have more laws against sexual violence than ever before, so it is now a matter of helping people to understand those laws and how it is never appropriate to commit sexual violence.

#### **4. Displacement**

In the 2015 Hong Kong IHL moot problem, the fictional General Smith was charged with the war crime of unlawful deportation or transfer or unlawful confinement under Article 8(2)(a)(vii) of the Rome Statute. The issue of displacement has come to the fore in the last years with the conflicts in Syria

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<sup>20</sup> *Rome Statute of the International Criminal Court*, 17 July 1998, article 8(2)(e)(vi).

<sup>21</sup> *Rome Statute of the International Criminal Court*, 17 July 1998, article 7(1)(g).

<sup>22</sup> ‘Sexual Violence in Conflict: Report of the UN Secretary-General’, A/67/792-S/2013/149, 14 March 2013.

<sup>23</sup> *Rome Statute of the International Criminal Court*, 17 July 1998, article 6.

<sup>24</sup> *The Prosecutor v. Delalic et al. (‘Celebici’)*, Case No. IT-96-21-T, 16 November 1998.

and Iraq forcing entire communities to flee their homes and find shelter within their state's borders, but away from home.<sup>25</sup> The United Nations Guiding Principles on Internal Displacement provide the following definition of who are internally displaced persons – “persons or groups who have been forced or obliged to flee or leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border.”<sup>26</sup> Displacement can mean that families are separated from each other, they cannot access food, water, medicines, they cannot find shelter and they are at greater risk of further violence.<sup>27</sup>

When it comes to IHL, there is a strong emphasis on preventing displacement during a conflict although once again the difference between international and non-international armed conflict applies. The relevant provisions relating to displacement of civilian population in an international armed conflict are articles 45 and 49 of Geneva Convention IV. Article 49 in particular prohibits individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to any other country, regardless of motive. In an international armed conflict, civilians can only be evacuated of a given area if the security of the population or imperative military reasons so demand.<sup>28</sup>

In a non-international armed conflict, the relevant provision for the displacement of civilian population is provided in Article 17 of Additional Protocol II 1977 relating to the prohibition of forced movement of civilians. The displacement of civilian population is also prohibited under customary international

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<sup>25</sup> See, eg, Elizabeth Ferris and Melanie Teff, ‘The overlooked humanitarian crisis in Iraq: The need to address disparities’ 28 April 2015, Brookings LSE Project on Internal Displacement: <http://www.brookings.edu/blogs/markaz/posts/2015/04/28-iraq-displaced-refugee-humanitarian-islamic-state-violence>.

<sup>26</sup> UNOCHA, ‘Guiding Principles on Internal Displacement’ (2004) <http://www.unhcr.org/43ce1cff2.html> Principle 2.

<sup>27</sup> See, eg, ICRC, ‘South Sudan: Humanitarian situation in some areas a cause for concern’ 19 June 2013: <https://www.icrc.org/eng/resources/documents/update/2013/06-19-south-sudan-jonglei-humanitarian-situation.htm>; ICRC, ‘Iraq: Escaping unprecedented levels of horror’, 28 August 2014: <https://www.icrc.org/en/document/iraq-escaping-unprecedented-levels-horror>.

<sup>28</sup> *Geneva Convention (IV) on Civilians*, 12 August 1949, article 49.

humanitarian. The relevant provisions relating to displacement are provided in Rule 129 which applies to both international and non-international armed conflicts.<sup>29</sup>

The crimes which are charged in the 2015 moot problem relate to this prohibition on transferring civilians – when the prevention aspect has been disregarded and civilians have been forced to flee by one party to the conflict, rather than voluntarily to escape the fighting. Both deportation and forcible transfer relate to the involuntary and unlawful evacuation of individuals from the territory in which they reside. Deportation presumes transfer beyond State borders, whereas forcible transfer relates to displacement within a State or across borders. Article 7(2)(d) of the Rome Statute provides the definition of deportation or forcible transfer of population as a crime against humanity as a “forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.” Although part of the definition of a crime against humanity, this definition is useful in looking at the issue of displacement as a war crime under article 8. The Rome Statute does not require proof of crossing an international border, but only that the civilian population was displaced.

In looking at this issue of displacement from an international criminal law point of view, students should have a greater understanding of how displacement in conflict occurs, who are mostly affected by displacement, and also how parties to a conflict can be held responsible for displacement of the civilian population. Thus students should be able to better understand the issues which affect a large number of civilians in real-life conflicts which are happening around the globe.

## **5. Cultural Property**

When a conflict occurs, one of the ways that a party to a conflict might attempt to control a population, or destroy its values and traditions is to physically destroy symbols and objects of the enemy’s culture. Recently, we have seen examples of the Taliban destroying Buddas in Afghanistan and museums and historical sites being looted in Iraq during conflict. Destruction of such cultural property is prohibited under IHL in both international and non-international armed conflict. Additional Protocol I to the Geneva Conventions provides that it is prohibited to

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<sup>29</sup> Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law* (Vol 1 2005), Rule 129.

- (a) to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples;
- (b) to use such objects in support of the military effort;
- (c) to make such objects the object of reprisals.<sup>30</sup>

Similarly, Additional Protocol II provides: 'it is prohibited to commit any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort.'<sup>31</sup> Finally, cultural property is also protected as a civilian object.<sup>32</sup>

The protection of cultural property is of such significance to the world that specific protection has been given under the Hague Convention of 1954 which is regulated by UNESCO. The Hague Convention defines cultural property as 'any movable or immovable property of great importance to the cultural heritage of all people, such as monuments of architecture or history, archaeological sites, works of art, books or any building whose main and effective purpose is to contain cultural property'.<sup>33</sup> The 1954 Convention provides a system of 'special protection'.<sup>34</sup> A Protocol dealing with cultural property during times of occupation was adopted at the same time as the 1954 Convention. Although the 1954 Convention strengthens protection for cultural property, its provisions have not always been adequately implemented. To address this problem, a second Protocol to the 1954 Convention was adopted on 26 March 1999 which includes a regime of enhanced or special protection.

While the Hague Convention and its two Protocols set out the requirements for protection of cultural property in armed conflict, the 2015 moot problem asked students to consider whether the fictional General was responsible for the war crime of "destroying or seizing the enemy's property unless such

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<sup>30</sup> *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts*, 8 June 1977, article 53.

<sup>31</sup> *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts*, 8 June 1977, article 16.

<sup>32</sup> *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts*, 8 June 1977, article 52(2).

<sup>33</sup> *Hague Convention for the Protection of Cultural Property 1954*, 14 May 1954, article 1.

<sup>34</sup> *Hague Convention for the Protection of Cultural Property 1954*, 14 May 1954, article 8.

destruction or seizure be imperatively demanded by the necessities of war” under the Rome Statute.<sup>35</sup> Included in this assessment is whether the property is protected under existing international law, such as the Hague Convention and Additional Protocols to the Geneva Conventions.<sup>36</sup> Students should learn through the moot problem that adherence to the protection of cultural property is essential to preserving objects precious to all humanity.

## 6. Conclusion

The goal of this article is to highlight four important aspects of IHL: the first question of whether an armed conflict exists followed by three issues of IHL arising from the Hong Kong IHL Moot Competition problem of 2015: sexual violence in armed conflict, displacement, and protection of cultural property. It does not seek to answer the charges posed in the problem, and does not seek to provide all of the right answers. There are no right answers to moot problems. Indeed this is one of the interesting aspects of moot court competitions – that every time you hear students arguing the problem, they address different legal issues and interpret the facts differently. Rather this article provides an overview of the key issues of IHL arising from the problem scenario in an attempt to encourage students to consider some aspects of IHL in more depth, to explore further readings on these topics, to start to have an understanding of how to approach an international criminal problem. This should enable students to feel more comfortable to approach a fictional moot scenario in the university environment, and indeed, to understand how a court will look at IHL aspects of actual criminal proceedings before the International Criminal Court. Ultimately, it should assist students to feel better able to grapple with issues of IHL and also to understand some of the humanitarian consequences of war.

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<sup>35</sup> *Rome Statute of the International Criminal Court*, 17 July 1998, article 8(2)(b)(xiii).

<sup>36</sup> International Criminal Court, *Elements of Crimes* (2011): <http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>