

The 13th Red Cross International Humanitarian Law Moot (2015)
(An Inter-University Competition for Asia-Pacific Region)

REQUESTED CLARIFICATIONS

Important note: The clarifications below are meant to clarify factual questions that may arise from the moot problem. They do not constitute an endorsement or rebuttal of legal propositions that may appear in the clarification requests.

Part B - FACTS

Question 1 Pursuant to para 1, on top of Panema, Minos and other small states, whether the Republic of Midlands belong to the Federated Union. This might affect territorial dispute matters thus potentially affecting the issue of 'international armed conflicts'.

Clarification : No.

Question 2 In paragraph 2, do common heritage of peoples of both States include the archeological site, the museum and the artefacts?

Clarification : Yes.

Question 3 We refer to Page 3 Paragraph 1 Line 3 of the Facts.
“These smaller states, with others, form the Federated Union...”
Do the smaller states refer to Midlands, Panema and Minos?

Reasons for clarification

To establish if the three states involved are part of the Federated Union.

Clarification : Panema, Minos, and other unnamed States, are members of the Federated Union. Midlands is not a member.

Question 4 We refer to Page 4 Paragraph 6 Line 1 of the Facts.
Are the States in conflict (Midlands and Panema) parties to the UN Charter?

Reasons for clarification

This is to determine whether or not Midland’s invasion into Panema was unlawful.

Clarification : Midlands, Panema and Minos are parties to the UN Charter.

Question 5 We refer to page 5 Paragraph 11 Line 1 of the Facts.
“Accounts started to appear on social media ...”
What social media does this refer to and who are the persons who posted these accounts?

Reasons for clarification

To determine the credibility and weight that should be accorded to these accounts.

Clarification : Social media includes twitter, facebook, youtube ... It may be assumed that information/reports were posted by private individuals.

Question 6 We refer to Page 5 Paragraph 11 Line 5 of the Facts.
“On one occasion a hidden mobile phone was used to record and upload ...”
Was the recording a video recording or an audio recording?

Reasons for clarification

This is to determine the credibility and weight of the recording.

Clarification : Both.

Question 7 On Page No. 5, para 11, first sentence, ‘...rape of women and children, even young boys, be members of the militia in their homes’. We wanted to make sure whether it should be ‘by’ instead of ‘be’ in the above quoted sentence.

Clarification : Clerical error: ‘be’ should be read ‘by’.

Question 8 We refer to Page 7 Paragraph 17 Line 9 of the Facts.
“... but investigations revealed that most of the historical artefacts had been destroyed.”

Who conducted the investigation?

Reasons for clarification

To determine the credibility and weight that should be accorded to this investigation.

Clarification : Mooters will need to determine the answer from the available facts.

Question 9 **On the two representations to people displaced from suburbs of New Troy.** I.e.: “Many reported being told that “they were moved to ensure their security and were to be accommodated in a safer area for the time being” [First representation], others heard “you should have fled east, that is where you belong” [Second representation] “ (Facts para 10):

- **First representation.** The reported speech is enclosed in quotation marks (“told that “they were...their...””) (a) Is this a grammatical mistake, or (b) is that quotation taken from news sources or investigation reports? If (b) is answered affirmatively, what source, and is that same as that for the Second representation?

i. **Significance.** Bears on the weight attached thereto.

- **Second representation.** (Assuming “fled east” means into Panama) Who made the representations, the non-civilian members of Midlands (be they MAF or the militia) or otherwise?

Significance. If the suggestion is made by the MAF/militia, it might be interpreted (together with Facts para 11) to mean, for instance, “you should have gone to Panama before when you could; now you are stuck here, don’t blame us for punishing you (by forcible transfer, confinement etc.)” which might run contrary to the motive as expressed by the First representation. But, **alternatively**, if it just means some displaced people “heard” *someone* say that, it has no relevance at all.

Clarification : Mooters will need to determine the answer from the available facts.

Question 10 In paragraph 11, when the information of a hidden mobile phone was reported?

Clarification : Mooters will need to determine the answer from the available facts.

- Question 11** On "be members of the militia in their homes" (para 11)
- Should it be read as "by members of the militia in their homes"?
- Significance.** To avoid confusion when citing the facts.

Clarification : Clerical error: 'be' should be read 'by'.

- Question 12** **On the "accounts"** (Facts para 11,13)
- Are these accounts accompanied by audio/video recordings or photographic images? Or are they merely written accounts on social media?
 - **Significance.** The prosecution has to support each charge with sufficient evidence. This would be related in assessing the veracity of allegations against General Smith concerning the war crimes of sexual violence under 7(1) g of the Rome statute committed by the members of the militia.
 - "rape....[by] members of the militia in their homes": apart from the typo be/by, please clarify whether the possessive "their" refers to the rapists or the victims (**Purpose:** to avoid confusion when citing this report)

Clarification : See clarification 5. Otherwise, mooters will need to determine the answer from the available facts.
"their" in "rape....[by] members of the militia in their homes" refers to the victims' home.

- Question 13** The camp commander, when interviewed by Thisman, mentioned that a 'few incidents' had taken place in the past. Did these 'few incidents' occur in Camp W1? Or were they incidents that occurred outside before the women were detained, eg the rapes mentioned in [11]?
Did any of these 'few incidents' include rape?

Reasons for clarification

Legal implications

To establish whether rapes have taken place inside Camp W1 as there is no concrete evidence of this. Only 'diverse forms of coercion' including 'food for sexual favours' are mentioned in [13].

Clarification : The answer is adequately explained in the moot problem.

- Question 14** **On coercion including food exchange for sexual favors.** (Facts para 13)
- Does this imply that the women in Camp W1 are denied access to food (in such quantities necessary to their survival) but for their assent to provide sexual favours?
 - This would be related in considering whether the factual circumstances support the charge under Art 7(1)g, namely whether the perpetrator committed an act of sexual nature against another caused "by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent."

Clarification : Mooters will need to determine the answer from the available facts.

Question 15 Was the present case referred to the Prosecutor by the Security Council under Article 13(b) of the ICC Statute?

Reasons for clarification

To establish if the International Criminal Court has jurisdiction to hear the case at hand.

Clarification : See paragraph 24 of the Moot Problem.

Question 16 Was the offering of brides to Midlands men in [13] with the consent of these women? That is, were the women given a choice of staying in the camp or leaving to marry the Midlands men?
Were the group of women interviewed later in [13] the same women who were offered as brides?

Reasons for clarification

Legal implications

If the women left consensually, there is no war crime of unlawful deportation with regards to this act.

Clarification : Mooters will need to determine the answer from the available facts.

Question 17 On “intern”. Assuming the word “intern” (Facts para 14) is used in the same context as GC IV (articles 41-43, 68, 78, 79 et seq),

● **Minimal details about the Internment Camps**, such as:

- i. Was there any episodes of military endangerment to either of the three camps;
- ii. Were the camps marked with the letters “IC”; how was the hygiene and medical attention;
- iii. whether there were canteens;
- iv. whether there were protective measures;
- v. whether there was any food and clothing at all (or are they completely or partially conditioned upon provision of, e.g. sexual favours)
- vi. Whether there was discipline, internee committees;
- vii. Whether there were *any* allowances given to the internees;
- viii. Were family members in the same camp separated.

Significance. Without such information it is extremely difficult to evaluate whether the internment complies with the conditions imposed by GC IV Part IV.

Clarification : The word ‘interned’ [para 13] is used in its everyday English meaning, simply meaning “deprived of their liberty”.

- Question 18** **On forced marriage.** What were the circumstances surrounding the women interviewed at the town local news channel? For example,
- (a) what are the identity of those women? (i) Do they just claim themselves to be New Troy dwellers, or (ii) should we take it as a matter of fact that they were indeed identified as such (regardless of whether what else they said was true)
 - (b) When was the interview taken place? (At time of war, or when the matter was more tranquil)
 - (c) What was the status (state-owned/independent, etc), creditworthiness etc. of the town local news channel?

Significance: without such information it is extremely difficult to meaningfully evaluate the weight of that piece of evidence.

Clarification : Mooters will need to determine the answer from the available facts.

- Question 19** **On Old Troy prisoners.** Can it be assumed that, in Facts para 15
- (a) that “members of the PAF” are all male? If not (i.e. if female members existed), were the female members sent to Camp Z, or are they covered by the word “women” in that same sentence?
 - i. **Significance.** If Camp Z housed both male and female prisoners, it is possibly against the GC IV. If instead female PAF members were mixed with female civilians, it could breach the GC IV too.
 - (b) that the “women” are **not** placed under Camp X, but instead generally under the militia’s guard?

Significance. It relates to whether the regulations on Internment Camps (GC IV) apply at all.

Clarification : Mooters will need to determine the answer from the available facts.

- Question 20** Pursuant to para 16, whether Panama had already enacted national laws to protect artifacts. This links to whether the Committee decides to request to grant enhanced protection to the site and the museum.

Clarification : Mooters will need to determine the answer from the available facts.

- Question 21** After paragraph 16, did the UNESCO Director General accept the request of Panama?

Clarification : Mooters will need to determine the answer from the available facts. See also clarification to question 24.

- Question 22** In paragraph 16, was the museum included on the “World Heritage List” by the World Heritage Committee? And if it was included, was the protective UNESCO emblem visible at the museum?

Clarification : Mooters will need to determine the answer from the available information. See also clarification to question 25.

- Question 23** In paragraph 16, could you distinguish the museum from other buildings?

Clarification : Mooters will need to determine the answer from the available facts.

Question 24 In Paragraph 16, when will the next session of the Committee for the Protection of the Cultural Property in the Event of Armed Conflict be held? If it have already held, how did the Committee conclude the answer for Panema's request?

Clarification : The Committee's ordinary meetings take place once a year. The "next session" has not taken place yet.

Question 25 In paragraph 15 to 17, did archeological site show its status of World Heritage by such as protective UNESCO emblem?

Clarification : There is no "UNESCO protective emblem" under the World Heritage Convention.

Question 26 In paragraph 17, what was the historical artefacts?

Clarification : The answer is adequately explained in the moot problem.

Question 27 In paragraph 17, have Panema artillery dug into the raised ground around the museum been used?

Clarification : Mooters will need to determine the answer from the available facts.

Question 28 In paragraph 17, how did the Midlands army seized the archaeological site?

Clarification : Mooters will need to determine the answer from the available facts.

Question 29 Is there any evidence which indicates that the museum and the site used for military purpose?

Clarification : Mooters will need to determine the answer from the available facts.

Question 30 Who carried out the investigations in [17] that revealed most of the artefacts were destroyed? Was the investigation by Major Adams or by a third party? In [22], he said he announced they were destroyed.

Reasons for clarification

Legal implications

- Affects credibility of the evidence

Affects Witness P's credibility. In [22], he says that he 'made [an] announcement about them being destroyed', which suggests he was responsible for carrying out the investigations. If the investigations had been carried out by a third party, he is being inconsistent.

Clarification : Mooters will need to determine the answer from the available facts.

Question 31 Pursuant to para 20, whether Thisman's report was circulated among the UN General Assembly as well. This might relate to the credibility of Thisman's report and admissibility of the case.

Clarification : Mooters will need to determine the answer from the available facts.

Question 32 We refer to Page 8 Paragraph 20 of the Facts.

What does this particular paragraph mean?

Reasons for clarification

This is due to the fact that the paragraph is unclear.

Clarification : The answer is adequately explained in the moot problem.

- Question 33** **On Witness P.** in Facts para 22
- What was the nature of the “willful disobedience” for which Major Adam was demoted? Was it morally debatable, e.g. a “conscientious defiance” not to undertake certain orders, or was it something which Major Adam ought to be punished?
- Significance.** The demotion can be seen in opposite lights depending on the actual circumstances. (Affecting admissibility and/or credibility) of P’s evidence
- Clarification :** The answer is adequately explained in the moot problem.
- Question 34** On Page No. 8, para 25 (1), first charge against General Smith, he has been charged under Article 28 (b). We wanted to make sure whether his responsibility would not be falling under Article 28 (a).
- Clarification :** Clerical error: “28(b)” should read “28(a)”.
- Question 35** We refer to page 8 Paragraph 25(2) Line 1 of the Facts.
 “In respect of the transfer and displacement of the civilian population ...”
 Is this with regard to the unlawful deportation and transfer of the civilian population only or does it also include the unlawful confinement of the civilian population?
- Reasons for clarification**
 To determine if the unlawful confinement of the civilian population has to be elaborated on under this charge.
- Clarification :** Mooters will need to determine the answer from the available facts.
- Question 36** We refer to page 9 Paragraph 25(3) Line 1 of the Facts.
 “In respect of the destruction, seizing and looting of cultural property...”
 Is this only with regard to cultural property or does it include civilian objects as well?
- Reasons for clarification**
 To determine if the destruction of civilian objects is to also be considered under this charge.
- Clarification :** Mooters will need to determine the answer from the available facts.
- Question 37** For the Count 1, General Smith has the mode of liability under Article 28(b) of Rome Statute. This Article covers the CIVILIAN SUPERIOR. However, General Smith is not a civilian superior by all means; in fact, as given in lines 1-2, para. 6 of the Moot Problem, General Smith is the officer in charge of the Midlands Armed Forces, which clearly shows that he's a military commander. Thus, as prosecuted, he must be responsible for his crime in Count 1 as a MILITARY SUPERIOR under Art. 28(a) of the Rome Statute not Art. 28(b).
- Clarification :** Clerical error: “28(b)” should read “28(a)”.
- Question 38** How was the case between Midlands and Panema brought before the ICC?
 Was it for self-referral of the State or the self-prosecution of the Prosecutor...?
- Clarification :** See paragraph 24 of the Moot Problem.

- Question 39** Does General Smith have control and authority over the militia's actions?
Reasons for clarification
 To determine whether General Smith has the military power and authority over the conducts of the militia.
- Clarification :** Mooters will need to determine the answer from the available facts.
- Question 40** On the level of popular support of Lowlanders in relation to Midlands' occupation of Lowlands. Have Lowlanders generally been receptive to and supportive of Midlands' occupation?
Reasons for clarification
 This largely determines whether Lowlands remained part of the territory of Panema during the invasion of Panema by Midlands and therefore, determines whether the ICC has jurisdiction over the situation and General Smith.
- Clarification :** Mooters will need to determine the answer from the available facts.
- Question 41** On Defence's knowledge of Witness P's particulars: Should the Defence presume that they do not know Witness P's (1) identity/name and (2) record of disciplinary action and demotion? Further, do they know that the evidence tendered to Panema authorities (in Moot Problem [22]) was given by Witness P under the promise of non-prosecution and early release, etc.?
Reasons for clarification
 This is vital for formulating the requisite grounds for Defence's claim of prejudice to right to fair and impartial trial. Particularly, since Major Adams was granted anonymity, it does not seem right that the Defence could have access to all the facts given in the Moot Problem for their use.
- Clarification :** The Defence knows all the information/facts contained in paragraph 22, except the identity/name of Witness P.
- Question 42** On "military administrative zones": Whether Lowlands was considered one such zone, and if so whether there was any MAF and/or militia members grouped therein: In Moot Problem [7], since "Militia members are grouped into local units corresponding to the military administrative zones.", it would appear somewhat strange, given its territorial claim to Lowlands, it is not considered a military administrative zone and no military or militia members assigned.
Reasons for clarification
 The answer to this question affects character of the relationship between Smith and the militia. The Moot Problem [7] says "The commanding officer reports to the President when deployed within the territory of Midlands and to the most senior army officer above the rank of Colonel when deployed beyond the territory of Midlands." So, given Midlands' territorial claim to Lowlands, it would seem that the militia report directly to the President, but not General Smith (who, according to Moot Problem [6], is the OIC of the MAF and hence the most senior officer). But if this question is answered in the affirmative, this might be challenged, to the effect that the Midlands militia considered themselves abroad while in Lowlands.
- Clarification :** There is no indication that Lowlands would be an administrative zone under Midlands' law.

Question 43

On the relationship between Colonel Brown and General Smith:

- Given that Colonel Brown ranked below General Smith in the MAF system and therefore was under the latter's command during the period when the Midlands militia was deployed in Panema, has Colonel Brown been generally compliant with General Smith's orders by carrying out the investigations about the alleged rapes and by punishing the militia members involved?
- Have there been any episodes of disobedience to General Smith's orders on the part of Colonel Brown?

Reasons for clarification

This piece of information helps ascertain whether General Smith is criminally liable under the first charge as it helps determine whether General Smith has, in fact, failed to take all necessary and reasonable measures within his power to prevent or repress the commission of crimes against humanity under Art. 7(1)(g) by members of the militia.

Clarification : Mooters will need to determine the answer from the available facts.

Question 44

On intensity of conflicts in and around New Troy: What was the level of violence and intensity of fighting in and around New Troy at the time of and after the various transfer operations?

Reasons for clarification

Affects the legality of the forcible transfer and confinement. If the transferred internees were not returned to their lands even when hostilities ceased, it might be in breach of the GC IV (arts 49, 78 for instance).

Clarification : Mooters will need to determine the answer from the available facts.

Question 45

On ownership of archaeological site and museum: Notwithstanding Panema's claim that the archaeological site and the museum were situated on Paneman soil, did Panema claim the same as her state property, or was any of the site, the museum or certain artefacts private property.

Reasons for clarification

Removal of another state's property might amount to seizure but that of private property amounts to appropriation. Only seizure is relevant to the charge.

Clarification : The museum and the archeological site are public property.

Question 46

On Paneman artillery near the museum: Was the artillery installed (wholly or partly) to protect the museum?

Reasons for clarification

Relates to the military necessity of Panema's setting artillery there.

Clarification : Mooters will need to determine the answer from the available facts.

Annex: Map

Question 47 **On border delineation (Annex).** Does the solid line between Midlands and LOWLANDS on Map 1 represent the antebellum Midlands-Panema border line, viz the ragged (marked with “+”) line in Map 2?

Significance. This clarification in effect asks, whether it was clear that the entire area of Lowlands was situated within Panema, i.e. benefiting from or marked by the fence-and-trench (Facts para 5). This would affect, for example, the protected person status of the displaced people in Lowlands. If the answer to this Question is Yes, then it can be assumed that all the displaced people can be considered as belonging to Panema.

Clarification : The +++ line in Map 2 represents the international border.

Question 48 Was Lowlands a territory of Panema pre-invasion, as suggested in Map 2?

Reasons for clarification

Whether Lowlands belongs to Panema or Midlands has legal implications

- If Lowlands belongs to Midlands, ICC has no jurisdiction over acts committed on that territory. Since Midlands did not sign the ICC Statute
- Command responsibility. If Lowlands is outside Midlands, then the Midlands militia reports to General Smith, according to [7]

Ambiguous facts

It is stated only that Lowlands is under the control of Panema but not that it belongs to Panema, at [3]

Clarification : See clarification to question 47 above.

[END]