

Exam JUR5730 International Humanitarian Law/ Law of Armed Conflict

Autumn 2007

(All questions shall be answered under the assumption that the states involved in the scenario are parties to the UN Charter, the four Geneva Conventions as well as their two Additional Protocols, and to other treaties regulating means and methods of warfare.)

Norwegian armed forces participate in a multinational military operation in State A. State A has attacked the resistance/rebel movement (and to a certain extent the civilian population which is an ethnic minority in State A), in region B in the south of the country. The resistance movement claim independence from State A and want to declare its region (B) a sovereign state. The multinational military operation (Operation Freedom) has started a military campaign against State A in order to stop the government of State A from attacking the population in region B. The military operation is lead by the US and has several NATO member countries as participants. The operation does not have a Security Council mandate because the Russian and Chinese permanent members of the Security Council used their veto power to prevent such a mandate.

The Norwegian contingent has been assigned to patrol the internal border between State A and Region B. Their task is to prevent cross border movement. While out on patrol in a mountainous area, a group of Norwegian soldiers under command of sergeant Ole Vold is discovered and attacked by a group of government soldiers from State A. Following an exchange of fire, the State A soldiers retreat, leaving a wounded soldier behind. Sergeant Vold decides to leave the wounded soldier where he is because it will take them much longer to carry him with them, and they might get lost if it gets dark before they return to their campsite. Private Lars Holm argues that they cannot leave the soldier because he needs medical attention and that he might die during the night if left where he is. Sergeant Vold says that as long as they do not kill him they don't do anything wrong.

On their way back, the group of Norwegian soldiers gets lost and wanders almost straight into a State A camp. There is a brief exchange of fire before the Norwegians throw down their arms. Three of the group are taken prisoner. Two others, who are further behind, decide to lie down and pretend to be wounded. When State A soldiers come to examine them, they get shot at close range by the Norwegian soldiers, who then escape.

The Norwegian soldiers who have been taken prisoners are detained in small basement cells; they are handcuffed all the time, and blindfolded. They are also not allowed to sleep. On several occasions they are threatened that they will be shot. The State A military commander says that the third Geneva Convention is not applicable because the Norwegian soldiers are unlawful combatants as Operation Freedom has no UN mandate. In the same building as the Norwegian detainees, are three detainees from region B. They claimed they were civilians, but State A said they were fighters and unlawful combatants. They received the same treatment as the Norwegian soldiers.

Several NATO member states participating in Operation Freedom engage in a bombing campaign against areas in State A, including targets (the ministry of defence) in the capital of State A, as well as several bridges and power plants not situated in the city. The weapons that are used are air dropped cluster bombs which each contain several hundred small explosive bomblets. Being dropped from 40.000 feet they hit

many civilians inside the capital city, and as the dud rate is over 20%, the bomblets keep killing people in the following days and months.

Questions:

- 1) Discuss the legality (with reference to particularly the UN Charter) of Operation Freedom.
- 2) To what extent are the Geneva Conventions and their Additional Protocols applicable in this situation?
- 3) Discuss whether the Norwegian soldiers could leave the wounded enemy soldier behind. What relevant legal provisions are applicable in this case?
- 4) Discuss the Norwegian soldiers' method of escaping from the State A soldiers. Take into consideration the fact that they were afraid they might get killed or tortured if captured.
- 5) Discuss the claim that the Norwegian soldiers were unlawful combatants because Operation Freedom did not have a UN Security Council mandate.
- 6) Discuss the treatment of the Norwegian detainees. Which rules are applicable?
- 7) Discuss the treatment of the other detainees. Which rules are applicable?
- 8) Several non-governmental peace organisations accuse the NATO states participating in the bombing campaign of violating rules of international humanitarian law. The participating states claim that the use of cluster weapons is not prohibited under any international rules. Discuss the bombing campaign with reference to these claims.

All questions shall be answered. You are allowed to answer in English or Norwegian.