

JUS5730/JUR1730 – International Humanitarian Law

Respond to **all** questions below. Question 1 counts for $\frac{1}{4}$ of the overall grade, while question 2 counts for $\frac{3}{4}$.

1.

Analyse the presumption of civilian status in Additional Protocol I to the Geneva Conventions, Article 50.1, second sentence. Discuss, *inter alia*, the general principles and considerations that lead up to the presumption, and whether such a presumption exists in armed conflicts outside of the scope of application of Additional Protocol I.

2.

Arcadia had been governed by an unpopular and brutal dictator for many years. The eastern region of Arcadia, which lay the furthest away from the capitol Quatropoli, was the only region in the country that enjoyed some regional autonomy. The region had, *inter alia*, a regional council, which consisted of the heads of all the major tribes and communities in the region, and it had its own police force. The central government had little influence in practice. The dictator wanted to increase his power in the region, and one day he launched extensive military operations that had as their express purpose to kill or capture all members of the regional council and to dissolve the regional police units. In the course of fighting between Arcadian armed forces and local forces several hundred civilians were killed, but all members of the regional council managed to escape. From an unknown location, the regional council decided to declare independence from Arcadia, and to form a new, independent state under the name East-Arcadia. The new state was not recognised by any other state, except for the neighboring state Utopia, who recognised the independence of East-Arcadia on the same day as the declaration of independence was proclaimed, and who immediately sent 10 military advisers to help strengthen the defence of the new country. The declaration of independence led the central Arcadian government to increase their military operations in East-Arcadia, and Arcadia also launched attacks against targets inside Utopia to prevent Utopia from assisting East-Arcadia.

- a) Qualify the situation before and after East-Arcadia's declaration of independence. To what extent are the Geneva Conventions and their Additional Protocols applicable in this situation?

Utopia responded to the attacks by launching their own military attacks against Arcadia. In one operation, Utopia sent two military aircrafts towards the second largest Arcadian city, Samazi. Their mission was to attack a bridge on the outskirts of the city, which Arcadian forces used to transport troops eastwards, as the destruction of this bridge was considered to be of imperative importance for Utopian and East-Arcadian chances of withstanding the Arcadian attacks. When the planes approached the bridge, the pilots saw two armored trucks approaching the bridge from the west, while one truck with a red cross on a white background painted on the roof was on the bridge, heading slowly westwards. They also saw that a number of individuals, around 40, in civilian clothing were standing on the bridge, and they assumed that most of the civilians would be killed if they bombed the bridge. The pilots contacted their headquarters, who responded that the bridge was a legitimate military target of imperative importance, and that it had to be destroyed. They were told that the civilians shouldn't be there in the first place, and that the civilians had to be viewed as voluntary human shields that couldn't de-legitimise the target. They were also told that Arcadia probably painted red crosses on military trucks to spare them from attack, and that the pilots shouldn't worry about the cross. The two pilots then bombed the bridge without further warning, killing all civilians on the bridge and destroying the truck with the red cross. The two military trucks west of the bridge were not harmed.

- b) Discuss the bombing of the bridge.

After the bombing, the planes continued towards Semazi to make observations of the area. Suddenly they encountered anti-aircraft fire from an unspotted ground location, and both planes were critically damaged. After realising that the planes would go down, both pilots decided to eject to save their lives, and they parachuted. They were in Utopian uniforms and carried light handguns, but were otherwise unarmed. They landed about 500 meters apart. One pilot heard a vehicle approaching, and he decided to surrender. When the vehicle came into sight, he had one hand on his handgun, and the other hand was on his back. Without any warning, a soldier in the vehicle shot and killed the pilot.

- c) Discuss the shooting of the pilot.

The second pilot managed to escape, and he hid in a cave some kilometres away. The Arcadian commander decided that he couldn't spare personnel to locate the pilot, and he ordered instead two soldiers to hire some local shepherds to look for the pilot and to inform the soldiers if they found him. The shepherds were unarmed and wore their ordinary, civilian clothing. When one of the shepherds approached the cave where the pilot was hiding, the pilot shot and killed him from his hiding-place.

- d) Discuss the shooting of the shepherd.

All questions shall be responded to on the assumption that both Arcadia and Utopia are Contracting Parties to the four Geneva Conventions and their Additional Protocols.