

Exam for JUR1530 and JUR5530 - Refugee and Asylum Law

Spring 2009

Please answer the question, making reference to your readings, cases, and guidelines. Good Luck!

Abdulkadil is 16 years old and was born in Somalia. At the age of 13 he was kidnapped and forced to serve a warlord in Mogadishu. The warlord told him that his entire family had been killed. Abdulkadil engaged in fierce battles as a soldier, but after two years he ran away to the coast in the Puntland region of Somalia. He kept his gun with him for protection, but he never used it. He found work with a fisherman. The fisherman was worried because the fish in the Gulf of Aden was growing scarce. Many blamed the illegal fishing operations and dumping by foreign companies. Abdulkadil was forced to go hungry for some time. One night the fisherman told him that they had an opportunity to become rich beyond their dreams. The fisherman had been approached by a group seeking to raid a Norwegian flag ship tanker scheduled to sail through the Gulf of Aden within the next couple of days. The plan was to hold the crew hostage for a 2 million USD ransom. "You will be rich, you will have your own house, a car, and a beautiful wife!" insisted the fisherman. "Bring your gun and we will board the ship at night! We will not hurt anyone, the companies always pay the ransom and we will set them free! . . . They give us no choice, they take our fish!" Abdulkadil was worried that they could suffer harm or hurt someone else, but the fisherman assured him that this was a routine, relatively safe action. Indeed, most of the pirates in Puntland seemed to have adopted a comfortable lifestyle and he had not seen any suffering serious injuries from their actions. Abdulkadil went to the mosque to pray. The iman spoke of the evils of piracy, warning that those who engage in such action would be punished by Allah. Abdulkadil was worried, but his hunger proved overwhelming.

The next night, they met Abshir, the leader of the pirate gang who said that he had tracked the ship via a GPS machine. They used the fishing boat to approach the tanker in international waters and boarded it, threatening to fire an anti-tank weapon if they were not permitted aboard. Once on the ship, the gang rounded up the captain and the crew under threat of assassination. They forced the captain to contact the shipping company and inform them of the situation. Abdulkadil's job was to guard the crew, holding an AK-47. The shipping company contacted EU Frontex, which sent a patrol boat that had picked up irregular migrants at sea to follow the tanker. The shipping company also contacted a private corporation to commence negotiations with the pirates. Two days passed as Abshir haggled over demands to lower the ransom amount. Abulkadil grew tired and concerned over the well-being of the crew. He brought them water and told them not to worry. One of the crew members addressed him "Why are you doing this? You seem so young! Don't you see that these criminals are manipulating you? Let us go and we will ask our government to help you!" At that moment, French special forces sent by a joint EU-NATO operation boarded the ship. Abulkadil immediately dropped the AK-47 and held his hands up. Abshir fired his gun and French special forces fired back, killing both Abshir and the fisherman on the spot. The captain of the ship and the crew were unharmed. They thanked the French special forces profusely and contacted the shipping company to announce the news. Abulkadil began crying and turned to the captain, exclaiming "I am so sorry. Please, I am afraid! Don't send me back to Puntland, they will kill me! I renounce piracy!"

Please, I need asylum in Norway! Can you send me there!" The French special forces inform the captain that they cannot take Abulkadil with them because their operation will not permit detention. They mention that some states have turned pirates over to Kenya's new counter-terror proceedings, noting that pirates are hostis humani generis (enemies of humanity) acting in violation of jus cogens. In the alternative, the captain of the EU Frontex boat states that they can deliver Abulkadil to a base in Libya for processing along with the irregular migrants they have on board. Libya has not ratified the 1951 Convention on the Status of Refugees and its Protocol; both Norway and Kenya have done so.

You are a legal advisor in the Norwegian Ministry of Foreign Affairs. You have been asked to prepare a memo discussing options as to what to do with Abulkadil. The Minister of Foreign Affairs wants you to address the legal consequences (in particular human rights law/refugee law) of the following:

- A) What is Abulkadil's status according to the 1951 Convention on the Status of Refugees? Is he entitled to protection under international law?
- B) What if they instruct the captain to return Abulkadil to Somalia?
- C) What if they deliver Abulkadil for prosecution in Kenya?
- D) What if they release Abulkadil in the fishing boat in international waters?
- E) What if they turn Abulkadil over to the EU Frontex boat for delivery to the base in Libya for migration processing?
- F) Should they transfer Abulkadil back to Norway for processing of the asylum claim?

Please consult the following instruments:

- 1) 1951 Convention on the Status of Refugees: <http://www1.umn.edu/humanrts/instree/v1crs.htm>
- 2) ICCPR: <http://www1.umn.edu/humanrts/instree/b3ccpr.htm>
- 3) Excerpt from the Law of the Sea Convention: