

PREPARATION FOR LECTURE # 11

Below you'll find the exams from autumn 2007 and autumn 2008. These two exams will form the basis for the discussion at lecture # 11 on 14 November 2011, where the focus will be on the structure, method and substance of exam papers.

You are kindly requested to discuss the exams in study groups in order to be prepared for the lecture. Study groups should consist of 2-5 students. If you have no pre-existing study group, you will be allocated to one at the lecture on 31 October. Active student participation in the discussion will be expected and required.

The exam from 2008 will be discussed first, and the exam from 2007 will be discussed only to the extent that time allows. You should note that the exams differ in the sense that the exam from 2007 specifies the relevant legal questions, whereas the exam from 2008 asks you to identify these questions on your own. If you are without previous experience with the latter type of exams, you are particularly encouraged to focus primarily on this exam.

Please note that the exam from 2007 was a 6 hour exam, whereas the exam from 2008 was a 4 hour exam. JUS5730/JUR1730 have a 4 hour exam this semester.

Oslo, 28 October 2011
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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.

Autumn 2008

(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.)

The Republic of A, B and C has dissolved and all three federal States have declared independence. An ethnic minority X that lives in State A wants to claim independence for its geographical area, which borders on State B. State B, which would like to see State A weakened, supports the X rebels with food, petrol and other equipment. They also provide them with military equipment including weapons.

Soon, violent clashes break out between the X rebels and State A military forces. State A engages in a bombing campaign against one of the X strongholds, a small village in a very mountainous area. Many civilians get killed as there have been no prior warnings so the village was not evacuated. Following this bombing campaign, State B decides to send some military advisers and a small contingent of troops to help the X rebels in their fight for independence. It is now impossible for State A to send military or law enforcement personnel to the area without being attacked.

Some weeks later, State A tries to take control over the area through deployment of ground troops, as the bombing campaigns have not resulted in the surrender of the X rebels. A patrol of A soldiers are driving an armed vehicle with an artillery gun attached to its roof towards the front line. Suddenly they see a civilian truck on a crossing road. They can see that it carries guns and ammunition, and they assume that this is a truck on its way to deliver this to X rebels. An old man is driving the truck, and next to him in the front seat is a child. The officer in charge decides that this is a legitimate military target and they fire at the driver of the truck with the artillery gun. Both of the persons in the truck die instantly.

It is a long drive, and everybody is exhausted. An accompanying medic, carrying a red cross on his arm, offers to take his turn of the roof, manning the gun. The officer in charge accepts the offer, and the medic takes up his position of the roof of the vehicle. Suddenly the vehicle is ambushed by a group of X rebels, and all of the personnel is captured and taken away to a camp in the mountains. The State A patrol is detained in small tents; 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. After a week of this treatment, an army officer belonging to State B arrives in the camp. She tells the X rebels in charge of the camp that those State A detainees that are entitled to Prisoner of War status cannot be subject to this kind of treatment.

Identify and discuss the legal questions arising from this text.