

MASTER LEVEL, JUS 5730

Respond to all **three** questions below. Choose one of the optional answers and provide arguments as to why you think that is the correct answer. For purposes of these questions, the parties concerned are party to all IHL treaties.

Question 1

How would you explain the Martens Clause to legal military advisers (Article 1(2) of Additional Protocol 1)?

- A. It is an article in a number of LOAC treaties reflecting a longstanding customary international law principle that the principles of humanity and the dictates of public conscience regulate all situations of armed hostilities.
- B. It is only a statement of aspiration and is not considered to have any binding effect on military operations.
- C. It is an old provision of the LOAC that has no contemporary relevance.

Question 2

Operation Eagle Claw was the 1980 U.S. military mission launched to rescue the U.S. Embassy personnel held hostage by Iran. The mission began when US military forces secretly entered Iranian territory and established a tactical airfield in Iran at a location designated 'Desert One.' U.S. Special Forces will execute the hostage rescue portion of Operation Eagle Claw. In order to infiltrate into Tehran, they will wear Iranian Army uniforms and travel in vehicles painted with Iranian Army markings. However, prior to initiating their assault against Iranian forces controlling the U.S. Embassy and the nearby Iranian Security Force barracks, they will remove the Iranian uniforms and expose their U.S. Army tunics. What will be the legal consequence of these tactics if they are captured?

- A. If they are captured prior to removing the Iranian uniforms, they will be properly denied POW status and treated as spies.
- B. By wearing Iranian uniforms and using Iranian markings during the infiltration, they forfeit any claim to POW status and may be treated as common criminals.
- C. They will be POWs no matter when they are captured, but may properly be tried as war criminals for perfidious conduct even if they remove Iranian uniforms prior to initiating the attack.
- D. They will be POWs no matter when they are captured and may not be tried as war criminals.

Question 3

You are the legal advisor to the U.S. Commander responsible for the POW facility established for captured Panamanian Defense Force (PDF) soldiers during Operation Just Cause. Your commander is informed by a U.S. doctor at the facility that one PDF soldier suffered permanent blindness as the result of the attack. He told the doctor treating him that he was in the PDF headquarters observing U.S. forces through binoculars, when he saw an intense light and then lost his sight. Further investigation indicates that the laser range finder in a U.S. tank was responsible for his injury while U.S. forces were using the tank to attack the enemy headquarters. Your Commander asks you whether this incident requires her to initiate a war crimes investigation. You reply?

- A. No, because there is no indication that U.S. forces violated the LOAC.
- B. Yes, because it appears U.S. forces used a weapon that violates a particular treaty obligation.
- C. Yes, because it appears U.S. forces violated the principle of unnecessary suffering and superfluous injury.
- D. No, unless the U.S. soldier operating the laser range finder knew the enemy was using binoculars.