

CONTACT

Developed by Professor Marco Sassòli

Group I deals with questions 1, 2, 17, 19

Group II deals with questions 3-8

Group III deals with questions 9-13 and 18

Group IV deals with questions 14-16, 20 and 21

When a question asks which law applies, you should simply determine whether IHL applies at all and if yes whether IHL of international armed conflicts applies or IHL of non-international armed conflicts. As you are not yet necessarily familiar with IHL, the following rules of IHL may help you in your preparation:

1. Art. 2 common to the Geneva Conventions defines international armed conflicts, to which the four Geneva Conventions apply, as armed conflicts between two or more High Contracting Parties
2. Belligerent occupations are governed by IHL of international armed conflicts, even if they do not encounter armed resistance.
3. Art. 3 common applies to armed conflicts "not of an international character occurring in the territory of one of the High Contracting Parties" and obliges in such a conflict "each Party" to comply with some minimum rules.
4. Under IHL of international armed conflicts it is not unlawful for members of the armed forces (=combatants) of a party to kill opposing combatants, as long as the latter are not hors de combat, and combatants may not be punished for thus having killed enemy combatants.
5. Under IHL of international armed conflicts, everyone who is not a combatant is a civilian (but the US claims that persons who act like combatants but are not lawful members of the armed forces of a party to the conflict are unlawful combatants who may be attacked like combatants) and civilians may only be attacked if and for such time as they directly participate in hostilities.
6. Under IHL of international armed conflicts a combatant who has fallen into the power of the enemy is a prisoner of war. Prisoners of war include:
 1. Members of the armed forces of a party to the armed conflict, even if they profess allegiance to a government or authority not recognized by the detaining power
 2. Members of militias, volunteer corps or resistance movements belonging to a party, provided the group has a responsible command, wears a fixed distinctive sign, carries arms openly and complies with IHL.
7. A prisoners of war may be interned without any individual procedure until the end of active hostilities, but enjoys during his or her internment the detailed protections of Geneva Convention III. A prisoner of war may only be transferred to another State if that State is willing and able to respect Convention III.
8. Under IHL of international armed conflicts, an enemy civilian may not be forcibly transferred out of an occupied territory
9. The treaty IHL of non-international armed conflicts does not contain express provisions on issues 3-8.

A. Angola in 1985

Since its independence from Portugal in 1974, Angola was subject to a non-international armed conflict between the governmental forces of the former national liberation movement MPLA and an armed opposition group made up by the former national liberation movement UNITA. South Africa supported UNITA and South African troops carried out several raids from neighbouring Namibia into Angola. The governmental MPLA forces were supported by Cuban troops.

Question 1: What law applies to the bombardment of a UNITA position by a military aircraft of the governmental forces?

Question 2: What law applies to the bombardment of a governmental army position by a UNITA mortar attack?

Question 3: What law applies to the bombardment of a UNITA position by a Cuban military aircraft?

Question 4: What law applies to the bombardment of a governmental army position by a South African military aircraft?

Question 5: What law protects a UNITA member captured by governmental forces? May he be tried for having killed governmental soldiers?

Question 6: What law protects a government army soldier captured by UNITA forces? May he be tried for having killed UNITA fighters? What if UNITA hands him over to South Africa?

Question 7: What law protects a UNITA member captured by Cuban forces? May Cuba hand him over to the Angolan authorities (taking Art. 12 (2) of Geneva Convention III into account)?

Question 8: What law protects a government army soldier captured by South African forces? May he be tried for having killed

South African soldiers? May South Africa hand him over to UNITA (taking Art. 12 (2) of Geneva Convention III into account)?

B. Afghanistan in 2001

In 2001, the Taliban controlled 90% of the Afghan territory, including the capital Kabul. Their government was however recognized as the government of Afghanistan only by Pakistan and the United Arab Emirates. Most other States recognized the Northern Alliance as the government of Afghanistan, which controlled some 10% of the Afghan territory. The Taliban and the Northern Alliance were engaged in an ongoing armed conflict against each other. On 11 September 2001, hijacked airplanes were launched by Al-Qaeda activists against the World Trade Center in New York and the Pentagon in Washington D.C. The head of Al Qaeda, Oussama Bin Laden, was in the Taliban controlled areas of Afghanistan. Despite extradition requests by the U.S. and the UN Security Council, the Taliban did not extradite Bin Laden to the US. The US therefore launched on 7 October 2001 air strikes against Afghanistan and US ground forces supporting forces of the Northern Alliance succeeded to gain control over most of the Afghan territory, including Kabul. In 2002, a traditional Tribal assembly of Afghanistan elected Mr. Karzai as the president of Afghanistan, who continued fighting against the Taliban with the support of US and NATO forces.

Question 9: Does IHL apply to the attacks of 11 September 2001? If so, is it IHL of international or of non-international armed conflicts?

Question 10: What law applies to the bombardment of a Taliban position by a US military aircraft? What if the target was an Al-Qaeda position?

Question 11: What law protects a Taliban fighter captured in November 2001 by forces of the Northern Alliance? What if the Northern Alliance hands him over to the US?

Question 12: What law protects a Taliban fighter captured in November 2001 by US forces? May the US hand him over to the Northern Alliance (taking Art. 12 (2) of Geneva Convention III into account)? May he be punished by the US for having killed US soldiers (taking into account that a combatant may not be punished for having killed another combatant while fighting an international armed conflict)?

Question 13: What law protects a Taliban fighter captured in 2003 by Canadian forces? May Canada hand him over to the Afghan government (taking Art. 12 (2) of Geneva Convention III into account)? May he be punished by Canada for having killed Canadian soldiers (taking into account that a combatant may not be punished for having killed another combatant while fighting an international armed conflict)?

Question 14: What law protects an Al Qaeda fighter captured in November 2001 by forces of the Northern Alliance? What if the Northern Alliance hands him over to the US? May he be punished by the US for having killed US soldiers (taking into account that a combatant may not be punished for having killed another combatant while fighting an international armed conflict)? For having participated in the 11 September 2001 attacks?

C. Iraq in 2003 and 2004

In 2003, the US and some allies attack Iraq and gain rapidly control over Iraq, completely defeating Iraqi governmental forces. Mainly Sunni Iraqis, joined by foreign fighters, some of them belonging to Al Qaeda, continue however fighting against the US occupation by attacks against US forces and against Iraqi civilians who are either Shiites or considered to collaborate with the US. Sometimes entire towns, such as Fallujah, fall under rebel control and US forces use air attacks and artillery to regain control over them. With US support, an Iraqi Interim government was formed. On 8 June 2004, the UN Security Council unanimously adopts Security Council Resolution 1546 (2004), which, 'looking forward to the end of the occupation and the assumption of full responsibility and authority by a fully sovereign and independent Interim Government of Iraq by 30 June 2004', explicitly welcomes that 'by 30 June 2004, the occupation will end.' After 30 June, the fighting in Iraq, between several rebel forces on the one hand, and US forces officially supporting Iraqi forces upon the request of the Iraqi government continue.

Question 15: What law protects an Iraqi resistance fighter captured on 26 June 2004 by the US? By the Iraqi interim government? Does your answer depend on whether the Iraqi resistance fighter was a terrorist? On whether he belonged to the former Iraqi government forces? On whether he complied with the laws of war? On whether he was an Iraqi or a Jordanian national? May the US hand him over to the Iraqi interim government? Deport him to Guantánamo (taking Art. 49(1) of Geneva Convention IV into account)?

Question 16: What law protects an Iraqi resistance fighter captured on 2 July 2004 by the US? By the Iraqi interim government? May the US hand him over to the Iraqi interim government? Deport him to Guantánamo (taking Art. 49(1) of Geneva Convention IV into account)?

D. Lebanon in 2006

On 12 July 2006, Hezbollah, which defines itself as an Islamic Resistance Movement of Lebanon, but also participates in the Lebanese government, captured on the border between Lebanon and Israel 2 Israeli soldiers, killed three and wounded two.

Simultaneously, Hezbollah launched several rockets on Israeli forces in Israel. Israel reacted with heavy aerial bombardments of Hezbollah positions, bridges airports and infrastructure in Lebanon and later occupied parts of Southern Lebanon. Hezbollah launched hundreds of rockets on Israeli towns and villages. On 14 August 2006, following UN Security Council Resolution 1701, a cease-fire between Hezbollah and Israel entered into force.

Question 17: What law applies to the bombardment of a Hezbollah position by an Israeli military aircraft?

Question 18: What law applies to the bombardment, by an Israeli military aircraft of an important bridge on the road between Beyrouth and South Lebanon, which serves both civilians to flee and Hezbollah military supplies?

Question 19: What law applies to the bombardment, by an Israeli military aircraft of the electrical power generating station of Beyrouth?

Question 20: What law applies to the bombardment of an Israeli army position by a Hezbollah missile?

Question 21: What law applies to the bombardment of Haifa by Hezbollah missiles?

Question 22: What law protects the two Israeli soldiers captured by Hezbollah? Does this capture constitute a taking of hostages?

Question 23: What law protects a Hezbollah fighter captured by the Israel Defence Forces (IDF)? May he be tried for having killed IDF members (taking into account that a combatant may not be punished for having killed another combatant while fighting an international armed conflict)?

Question 24: What law protects a Lebanese civilian arrested by IDF in a Southern Lebanese village they occupy? May he be transferred to Israel (taking Art. 49(1) of Geneva Convention IV into account)?

E. Northern Iraq in 2008

Since more than 20 years, the Turkish army is fighting in Eastern Turkey against the Kurdish armed group PKK, which is considered as terrorist by the US, the EU and by Turkey. PKK is mainly based in Turkey, but has also bases in the Kurdish controlled areas of Northern Iraq. In February 2008, 10'000 Turkish soldiers invade Northern Iraq fighting against PKK forces. Iraq protests, but no Iraqi governmental forces intervene in the fighting. In March 2008, Turkey withdraws again from Northern Turkey.

Question 25: What law applies to the bombardment of a PKK position in Northern Iraq by a Turkish military aircraft?

Question 26: What law applies to the bombardment, by a Turkish military aircraft of an important bridge in Northern Iraq, which serves both local civilians and PKK members?

Question 27: What law protects a Turkish soldier captured in Northern Iraq by PKK? Does this capture constitute a taking of hostages?

Question 28: What law protects a PKK fighter captured in Northern Iraq by Turkish troops? May he be tried for having killed Turkish soldiers (taking into account that a combatant may not be punished for having killed another combatant while fighting an international armed conflict)? May he be transferred to Turkey (taking Art. 49(1) of Geneva Convention IV into account)? Does it matter whether he is a terrorist?

Question 29: What law protects an Iraqi Kurd arrested by Turkish forces in a Northern Iraq? May he be transferred to Turkey (taking Art. 49(1) of Geneva Convention IV into account)? Does it matter whether he is arrested for supporting PKK terrorists?

F. Gaza in 2009

The Gaza Strip came during the Arab-Israeli War of 1967 under control of the IDF. In 2005, IDF withdrew unilaterally, but Israel keeps full control over who and what may enter Gaza. In 2007, Hamas took control of the Gaza strip against the representatives of the Palestinian authority dominated by Fatah. In 2008, Israeli territory adjacent to the Gaza Strip was regularly subject to rocket attacks coming from the Gaza strip. Between 27 December 2008 and 18 January 2009, Israel launched widespread air, missile and artillery attacks against targets in the Gaza Strip and invaded part of the territory.

Question 30: What law applies to the bombardment of a Hamas position by an Israeli military aircraft?

Question 31: May a Hamas member be attacked by Israel even while he does not commit any acts of hostility against Israel?

Question 32: What law applies to the bombardment of an Israeli town by a missile launched by Hamas?

Question 33: What law protects a Hamas fighter captured by the Israel Defence Forces (IDF)? May he be tried for having killed

IDF members (taking into account that a combatant may not be punished for having killed another combatant while fighting an international armed conflict)?

Question 34: What law protects a civilian arrested by IDF in the Gaza Strip?

© International Committee of the Red Cross