

## ECHR Grand Chamber: Case of Al-Jedda v. the United Kingdom

Case prepared in 2013 by Ms. Danielle Breitenbücher, Master student at the Faculties of Law of the Universities of Geneva and Basel (Switzerland), under the supervision of Professor Marco Sassòli and Ms. Gaetane Cornet, research assistant, at the University of Geneva.

**N.B. As per the [disclaimer](#), neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents.** Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: Al-Jedda v. the United Kingdom, European Court of Human Rights, Grand Chamber, Application no. 27021/08, Judgement, Strasbourg, 7 July 2011; references omitted; available on <http://hudoc.echr.coe.int/sites/eng>]

[...]

### THE FACTS

#### I. THE CIRCUMSTANCES OF THE CASE

8. The facts of the case may be summarised as follows.

##### A. The applicant, his arrest and internment

9. The applicant was born in Iraq in 1957. He played for the Iraqi basketball team until, following his refusal to join the Ba'ath Party, he left Iraq in 1978 and lived in the United Arab Emirates and Pakistan. He moved to the United Kingdom in 1992, where he made a claim for asylum and was granted indefinite leave to remain. He was granted British nationality in June 2000.

10. In September 2004 the applicant and his four eldest children travelled from London to Iraq, via Dubai. He was arrested and questioned in Dubai by United Arab Emirates intelligence officers, who released him after 12 hours, permitting him and his children to continue their journey to Iraq, where they arrived on 28 September 2004. On 10 October 2004 United States soldiers, apparently acting on information provided by the British intelligence services, arrested the applicant at his sister's house in Baghdad. He was taken to Basrah in a British military aircraft and then to the Sha'aibah Divisional Temporary Detention Facility in Basrah City, a detention centre run by British forces. He was held in internment there until 30 December 2007.

11. The applicant was held on the basis that his internment was necessary for imperative reasons of security in Iraq. He was believed by the British authorities to have been personally responsible for recruiting terrorists outside Iraq with a view to the commission of atrocities there; for facilitating the travel into Iraq of an identified terrorist explosives expert; for conspiring with that explosives expert to conduct attacks with improvised explosive devices against coalition forces in the areas around Fallujah and Baghdad; and for conspiring with the explosives expert and members of an Islamist terrorist cell in the Gulf to smuggle high tech detonation equipment into Iraq for use in attacks against coalition forces. No criminal charges were brought against him.  
[...]

14. On 14 December 2007 the Secretary of State signed an order depriving the applicant of British citizenship, on the ground that it was conducive to the public good. The Secretary of State claimed, inter alia, that the applicant had connections with violent Islamist groups, in Iraq and elsewhere, and had been responsible for recruiting terrorists outside Iraq and facilitating their travel and the smuggling of bomb parts into Iraq.

15. The applicant was released from internment on 30 December 2007 and travelled to Turkey. [...]

### THE LAW

#### I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

59. The applicant complained that he was held in internment by United Kingdom armed forces in Iraq between 10 October 2004 and 30 December 2007, in breach of Article 5 § 1 of the Convention. He did not pursue before the Court his complaint under Article 5 § 4 of the Convention, concerning the lack of judicial review of the detention, since proceedings on this issue were still pending before the domestic courts at the time the application was lodged.

60. The Government contended that the internment was attributable to the United Nations and not to the United Kingdom, and that the applicant was not, therefore, within United Kingdom jurisdiction under Article 1 of the Convention. Further and in the alternative they submitted that the internment was carried out pursuant to United Nations Security Council Resolution 1546, which created an obligation on the United Kingdom to detain the applicant which, pursuant to Article 103 of the United Nations Charter, overrode obligations under the Convention.

### **A. Admissibility**

61. The Court considers that the question whether the applicant's detention fell within the jurisdiction of the respondent State is closely linked to the merits of his complaint. It therefore joins this preliminary question to the merits. [...]

### **B. The merits**

#### *1. Jurisdiction*

[...]

#### **(a) The parties' arguments**

##### *(i) The Government*

64. The Government denied that the detention of the applicant fell within the United Kingdom's jurisdiction. They submitted that he was detained at a time when United Kingdom forces were operating as part of a Multi-National Force authorised by the United Nations Security Council and subject to the ultimate authority of the United Nations. In detaining the

applicant, British troops were not exercising the sovereign authority of the United Kingdom but the international authority of the Multi-National Force, acting pursuant to the binding decision of the United Nations Security Council. [...]

#### **(b) The Court's assessment**

74. Article 1 of the Convention reads as follows:

"The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

As provided by this Article, the engagement undertaken by a Contracting State is confined to "securing" ("*reconnaître*" in the French text) the listed rights and freedoms to persons within its own "jurisdiction". "Jurisdiction" under Article 1 is a threshold criterion. The exercise of jurisdiction is a necessary condition for a Contracting State to be able to be held responsible for acts or omissions imputable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention. [...]

76. When examining whether the applicant's detention was attributable to the United Kingdom or, as the Government submit, the United Nations, it is necessary to examine the particular facts of the case. These include the terms of the United Nations Security Council Resolutions which formed the framework for the security regime in Iraq during the period in question. [...]

77. The Court takes as its starting point that, on 20 March 2003, the United Kingdom together with the United States of America and their coalition partners, through their armed forces, entered Iraq with the aim of displacing the Ba'ath regime then in power. At the time of the invasion, there was no United Nations Security Council resolution providing for the allocation of roles in Iraq in the event that the existing regime was displaced. Major combat operations were declared to be complete by 1 May 2003 and the United States and the United Kingdom became Occupying Powers within the meaning of Article 42 of the Hague Regulations. As explained in the letter dated 8 May 2003 sent jointly by the Permanent Representatives of the United Kingdom and the United States to the President of the United Nations Security Council, the United States and the United Kingdom, having displaced the previous regime, created the Coalition Provisional Authority "to exercise powers of government temporarily". [...]

78. The first Security Council resolution after the invasion was Resolution 1483, adopted on 22 May 2003. In the preamble, the Security Council noted the letter of 8 May 2003 from the Permanent Representatives of the United States and the United Kingdom and recognised that the United States and the United Kingdom were Occupying Powers in Iraq, under unified command (the Coalition Provisional Authority), and that specific authorities, responsibilities, and obligations applied to them under international humanitarian law. The Security Council noted further that other States that were not Occupying Powers were working or might in the future work under the Coalition Provisional Authority, and welcomed the willingness of Member States to contribute to stability and security in Iraq by contributing personnel, equipment, and other resources "under the Authority". Acting under Chapter VII of the United Nations Charter, the Security Council called upon the Occupying Powers, through the Coalition Provisional Authority, "to promote the welfare of the Iraqi people through the effective administration of the territory, including in particular working towards the restoration of conditions of security and stability ...". [...]

79. In Resolution 1511, adopted on 16 October 2003, the United Nations Security Council, again acting under Chapter VII, underscored the temporary nature of the exercise by the Coalition Provisional Authority of the authorities and responsibilities set out in Resolution 1483, which would cease as soon as an internationally recognised, representative Iraqi government could be sworn in. In paragraphs 13 and 14, the Security Council authorised “a multinational force under unified command to take all necessary measures to contribute to the maintenance of security and stability in Iraq” and urged Member States “to contribute assistance under this United Nations mandate, including military forces, to the multinational force referred to in paragraph 13”. [...]

80. The Court does not consider that, as a result of the authorisation contained in Resolution 1511, the acts of soldiers within the Multi-National Force became attributable to the United Nations or – more importantly, for the purposes of this case – ceased to be attributable to the troop-contributing nations. The Multi-National Force had been present in Iraq since the invasion and had been recognised already in Resolution 1483, which welcomed the willingness of Member States to contribute personnel. The unified command structure over the force, established from the start of the invasion by the United States and United Kingdom, was not changed as a result of Resolution 1511. Moreover, the United States and the United Kingdom, through the Coalition Provisional Authority which they had established at the start of the occupation, continued to exercise the powers of government in Iraq. Although the United States was requested to report periodically to the Security Council about the activities of the Multi-National Force, the United Nations did not, thereby, assume any degree of control over either the force or any other of the executive functions of the Coalition Provisional Authority. [...]

83. In the light of the foregoing, the Court agrees with the majority of the House of Lords that the United Nations' role as regards security in Iraq in 2004 was quite different from its role as regards security in Kosovo in 1999. The comparison is relevant, since in the decision in *Behrami and Saramati* [...] the Court concluded, *inter alia*, that Mr Saramati's detention was attributable to the United Nations and not to any of the respondent States. It is to be recalled that the international security presence in Kosovo was established by United Nations Security Council Resolution 1244 (10 June 1999) in which, “determined to resolve the grave humanitarian situation in Kosovo”, the Security Council “decide[d] on the deployment in Kosovo, under United Nations auspices, of international civil and security presences”. The Security Council therefore authorised “Member States and relevant international organizations to establish the international security presence in Kosovo” and directed that there should be “substantial North Atlantic Treaty Organization participation” in the force, which “must be deployed under unified command and control”. [...]

84. It would appear from the opinion of Lord Bingham in the first set of proceedings brought by the applicant that it was common ground between the parties before the House of Lords that the test to be applied in order to establish attribution was that set out by the International Law Commission, in Article 5 of its draft Articles on the Responsibility of International Organisations and in its commentary thereon, namely that the conduct of an organ of a State placed at the disposal of an international organisation should be attributable under international law to that organisation if the organisation exercises effective control over that conduct. For the reasons set out above, the Court considers that the United Nations Security Council had neither effective control nor ultimate authority and control over the acts and omissions of troops within the Multi-National Force and that the applicant's detention was not, therefore, attributable to the United Nations.

85. The internment took place within a detention facility in Basrah City, controlled exclusively by British forces, and the applicant was therefore within the authority and control of the United Kingdom throughout. The decision to hold the applicant in internment was made by the British officer in command of the detention facility. Although the decision to continue holding the applicant in internment was, at various points, reviewed by committees including Iraqi officials and non-United Kingdom representatives from the Multi-National Force, the Court does not consider that the existence of these reviews operated to prevent the detention from being attributable to the United Kingdom.

86. In conclusion, the Court agrees with the majority of the House of Lords that the internment of the applicant was attributable to the United Kingdom and that during his internment the applicant fell within the jurisdiction of the United Kingdom for the purposes of Article 1 of the Convention.

## 2. Alleged breach of Article 5 § 1 of the Convention

[...]

### (b) The Court's assessment

97. Article 5 § 1 of the Convention provides:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court; (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

98. The applicant was detained in a British military facility for over three years, between 10 October 2004 and 30 December 2007. His continuing internment was authorised and reviewed, initially by British senior military personnel and subsequently also by representatives of the Iraqi and United Kingdom Governments and by non-British military personnel, on the basis of intelligence material which was never disclosed to him. He was able to make written submissions to the reviewing authorities but there was no provision for an oral hearing. The internment was authorised "for imperative reasons of security". At no point during the internment was it intended to bring criminal charges against the applicant.

99. The Court emphasises at the outset that Article 5 enshrines a fundamental human right, namely the protection of the individual against arbitrary interference by the State with his or her right to liberty. The text of Article 5 makes it clear that the guarantees it contains apply to "everyone". Sub-paragraphs (a) to (f) of Article 5 § 1 contain an exhaustive list of permissible grounds on which persons may be deprived of their liberty. No deprivation of liberty will be compatible with Article 5 § 1 unless it falls within one of those grounds or unless it is provided for by a lawful derogation under Article 15 of the Convention, which allows for a State "in time of war or other public emergency threatening the life of the nation" to take measures derogating from its obligations under Article 5 "to the extent strictly required by the exigencies of the situation".

100. It has long been established that the list of grounds of permissible detention in Article 5 § 1 does not include internment or preventive detention where there is no intention to bring criminal charges within a reasonable time. The Government do not contend that the detention was justified under any of the exceptions set out in subparagraphs (a) to (f) of Article 5 § 1, nor did they purport to derogate under Article 15. Instead, they argue that there was no violation of Article 5 § 1 because the United Kingdom's duties under that provision were displaced by the obligations created by United Nations Security Council Resolution 1546. They contend that, as a result of the operation of Article 103 of the United Nations Charter, the obligations under the Security Council Resolution prevailed over those under the Convention.

101. Article 103 of the United Nations Charter provides that the obligations of the Members of the United Nations under the Charter shall prevail in the event of a conflict with obligations under any other international agreement. Before it can consider whether Article 103 had any application in the present case, the Court must determine whether there was a conflict between the United Kingdom's obligations under United Nations Security Council Resolution 1546 and its obligations under Article 5 § 1 of the Convention. In other words, the key question is whether Resolution 1546 placed the United Kingdom under an obligation to hold the applicant in internment.

102. In its approach to the interpretation of Resolution 1546, the Court has reference to the considerations set out in paragraph 76 above. In addition, the Court must have regard to the purposes for which the United Nations was created. As well as the purpose of maintaining international peace and security, set out in the first subparagraph of Article 1 of the United Nations Charter, the third subparagraph provides that the United Nations was established to "achieve international cooperation in ... promoting and encouraging respect for human rights and fundamental freedoms". Article 24(2) of the Charter requires the Security Council, in discharging its duties with respect to its primary responsibility for the maintenance of international peace and security, to "act in accordance with the Purposes and Principles of the United Nations". Against this background, the Court considers that, in interpreting its resolutions, there must be a presumption that the Security Council does not intend to impose any obligation on Member States to breach fundamental principles of human rights. In the event of any ambiguity in the terms of a Security Council Resolution, the Court must therefore choose the interpretation which is most in harmony with the requirements of the Convention and which avoids any conflict of obligations. In the light of the United Nations' important role in promoting and encouraging respect for human rights, it is to be expected that clear and explicit language would be used were the Security Council to intend States to take particular measures which would conflict with their obligations under international human rights law.

103. In this respect, the Court notes that Resolution 1546 was preceded by letters to the President of the Security Council from the Prime Minister of the Interim Government of Iraq and the United States Secretary of State. [...]

104. These letters were annexed to United Nations Security Council Resolution 1546. The Preamble to the Resolution looked forward to the end of the occupation and the assumption of full responsibility and authority by a fully sovereign Iraqi Government; recognised the request of the Iraqi Prime Minister in the annexed letter to retain the presence of the Multi-National Force; welcomed the willingness of the Multi-National Force to continue efforts to contribute to the maintenance of security and stability in Iraq and also noted “the commitment of all forces ... to act in accordance with international law, including obligations under international humanitarian law...”. In paragraph 9 of the Resolution the Security Council noted that the Multi-National Force remained in Iraq at the request of the incoming Government and reaffirmed the authorisation for the Multi-National Force first established under Resolution 1511, “having regard to letters annexed to this resolution”. In paragraph 10 it decided that the Multi-National Force:

“shall have the authority to take all necessary measures to contribute to the maintenance of security and stability in Iraq in accordance with the letters annexed to this resolution expressing, inter alia, the Iraqi request for the continued presence of the multinational force and setting out its tasks, including by preventing and deterring terrorism ...”

105. The Court does not consider that the language used in this Resolution indicates unambiguously that the Security Council intended to place Member States within the Multi-National Force under an obligation to use measures of indefinite internment without charge and without judicial guarantees, in breach of their undertakings under international human rights instruments including the Convention. Internment is not explicitly referred to in the Resolution. In paragraph 10 the Security Council decides that the Multi-National Force shall have authority “to take all necessary measures to contribute to the maintenance of security and stability in Iraq in accordance with the letters annexed”, which inter alia set out the Multi-National Force’s tasks. Internment is listed in Secretary of State Powell’s letter, as an example of the “broad range of tasks” which the Multi-National Force stood ready to undertake. In the Court’s view, the terminology of the Resolution appears to leave the choice of the means to achieve this end to the Member States within the Multi-National Force. Moreover, in the Preamble, the commitment of all forces to act in accordance with international law is noted. It is clear that the Convention forms part of international law, as the Court has frequently observed. In the absence of clear provision to the contrary, the presumption must be that the Security Council intended States within the Multi-National Force to contribute towards the maintenance of security in Iraq while complying with their obligations under international human rights law.

106. Furthermore, it is difficult to reconcile the argument that Resolution 1546 placed an obligation on Member States to use internment with the objections repeatedly made by the United Nations Secretary General and the United Nations Assistance Mission for Iraq to the use of internment by the Multi-National Force. Under paragraph 7 of Resolution 1546 both the Secretary General, through his Special Representative, and the United Nations Assistance Mission for Iraq were specifically mandated by the Security Council to “promote the protection of human rights ... in Iraq”. In his quarterly reports throughout the period of the applicant’s internment the Secretary General repeatedly described the extent to which security internment was being used by the Multi-National Force as a pressing human rights concern. The United Nations Assistance Mission for Iraq reported on the human rights situation every few months during the same period. It also repeatedly expressed concern at the large numbers being held in indefinite internment without judicial oversight.

107. The Court has considered whether, in the absence of express provision in Resolution 1546, there was any other legal basis for the applicant’s detention which could operate to disapply the requirements of Article 5 § 1. The Government have argued that the effect of the authorisations in paragraphs 9 and 10 of Resolution 1546 was that the Multi-National Force continued to exercise the “specific authorities, responsibilities and obligations” that had vested in the United States and the United Kingdom as Occupying Powers under international humanitarian law and that these “obligations” included the obligation to use internment where necessary to protect the inhabitants of the occupied territory against acts of violence. Some support for this submission can be derived from the findings of the domestic courts. The Court notes in this respect that paragraph 2 of the Resolution clearly stated that the occupation was to end by 30 June 2004. However, even assuming that the effect of Resolution 1546 was to maintain, after the transfer of authority from the Coalition Provisional Authority to the Interim Government of Iraq, the position under international humanitarian law which had previously applied, the Court does not find it established that international humanitarian law places an obligation on an Occupying Power to use indefinite internment without trial. Article 43 of the Hague Regulations requires an Occupying Power to take “all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country”. While the International Court of Justice in its judgment *Armed Activities on the Territory of the Congo* interpreted this obligation to include the duty to protect the inhabitants of the occupied territory from violence, including violence by third parties, it did not rule that this placed an obligation on the Occupying Power to use internment; indeed, it also found that Uganda, as an Occupying Power, was under a duty to secure respect for the applicable rules of international human rights law, including the provisions of the International Covenant for the Protection of Civil and Political Rights, to which it was a signatory. In the Court’s view it would appear from the provisions of the Fourth Geneva Convention that under international humanitarian law internment is to be viewed not as an obligation on the Occupying Power but as a measure of last resort. [...]

109. In conclusion, therefore, the Court considers that United Nations Security Council Resolution 1546, in paragraph 10,

authorised the United Kingdom to take measures to contribute to the maintenance of security and stability in Iraq. However, neither Resolution 1546 nor any other United Nations Security Council Resolution explicitly or implicitly required the United Kingdom to place an individual whom its authorities considered to constitute a risk to the security of Iraq into indefinite detention without charge. In these circumstances, in the absence of a binding obligation to use internment, there was no conflict between the United Kingdom's obligations under the Charter of the United Nations and its obligations under Article 5 § 1 of the Convention.

110. In these circumstances, where the provisions of Article 5 § 1 were not displaced and none of the grounds for detention set out in sub-paragraphs (a) to (f) applied, the Court finds that the applicant's detention constituted a violation of Article 5 § 1. [...]

FOR THESE REASONS, THE COURT

1. *Joins* to the merits the questions whether the applicant's detention was attributable to the respondent State and whether he fell within the respondent State's jurisdiction unanimously;
2. *Declares* the application admissible unanimously;
3. *Holds* unanimously that the detention was attributable to the respondent State and that the applicant fell within the respondent State's jurisdiction;
4. *Holds* by sixteen votes to one that there has been a violation of Article 5 § 1 of the Convention;

[...]

## Discussion

### *I. Classification of the situation*

1. (Paras 77-80, 104 and 107)

- a. How would you classify the situation in Iraq until 1 May 2003? ([GC I-IV, Art. 2](#))
- b. How would you classify the situation in Iraq as from 1 May 2003?
- c. Did the occupation of Iraq end on 30 June 2004 when the authority was transferred from the Coalition Provisional Authority to the Interim Government of Iraq? What is the opinion of the Court? Which factors are decisive to determine the end of an occupation? May the UN Security Council absolve an occupying power of its IHL obligations although Convention IV would continue to apply according to the facts on the ground? ([GC IV, Arts 2, 6 and 47](#); [HR, Art. 42](#))
- d. What is the UK government's opinion on the applicability of IHL to persons interned after 30 June 2004? On what basis does it come to this conclusion? How would you interpret the relevant paragraphs of the UN Security Council Resolution 1546?

2. If the occupation ended on 30 June 2004, what law applies to the troops of the multinational force in Iraq after this date? If fighting erupts between those troops and Iraqi insurgents? Does the Court examine this question? Why does it nevertheless deal with the compatibility of the internment regime under Convention IV with the ECHR after 30 June 2004?

### *II. Jurisdiction of the ECHR*

3. (Paras 59-86)

- a. Is the UK obliged to secure the human rights guaranteed by the ECHR outside its own territory? Under which conditions? (ECHR, Art. 1)
- b. Did the acts of the British soldiers in Iraq fall under the jurisdiction of the UK? What is the argumentation of the British government? Why does the Court hold that the internment of the applicant is attributable to the UK and not to the UN? In what ways does the situation in the present case differ from the situation in Kosovo in 1999?
- c. If the Court had to apply IHL, would it still have to examine whether the applicant was under the jurisdiction of the UK?

### *III. Internment for imperative reasons of security*

4. (Paras 97-106)

- a. Which right guaranteed by the ECHR does the Court examine in the present case? Why does the Court think that the internment of the applicant was not compatible with Art. 5(1) ECHR?
- b. According to the Court, under which condition would Art. 5(1) ECHR not have been violated, even if the applicant's situation was not covered by the exhaustive list of permissible grounds on which persons may be deprived of their liberty?

Why does the Court examine UN Security Council resolution 1546? How does it interpret this resolution

5. In case the applicant was taken into UK custody during an armed conflict, does IHL apply in his situation? Under which conditions?

6. (Paras 8-15)

- a. Assuming there was an international armed conflict occurring when the applicant was arrested, how would you qualify him? Is he a combatant? A POW? ([GC III, Art. 4](#); [P I, Art. 43-44](#))
- b. Does IHL allow the detention of a prisoner of war without bringing criminal charges against him? How long can a POW be detained? ([GC III, Arts 5](#) and [118](#))

7. (Paras 8-15 and 107-110)

- a. If the applicant is not a combatant, what is his status under IHL? Is he a protected person under Convention IV? Does it make a difference that he has both Iraqi and the British citizenship? ([GC IV, Art. 4](#))
- b. If he were a protected person under Convention IV, on which basis can he be detained in an occupied territory? Is the Detaining Power allowed to detain him if no criminal charges are brought against him? Does the term “imperative reasons of security” refer to the security of the Detaining Power? To the security of the protected person? To the security of the civilian population? To all of these? ([GC IV, Arts 37, 42, 43, 76](#) and [78](#))
- c. Is Article 78 of Convention IV a sufficient legal basis to intern a civilian? Is the provision precise and detailed enough to comply with the principle of legality? If not, what steps is the Detaining Power required to take in order to comply with the principle of legality? ([GC IV, Art. 78](#))
- d. Why does the Court, when examining the situation in case of an international armed conflict, discuss if IHL places an “obligation on an Occupying Power to use indefinite internment without trial” or if internment is a “measure of last resort”? How does it assess the relationship between IHL and international human rights law? Do Art. 43 Hague Regulations or Article 78 of Convention IV contain an obligation to intern civilians? Following the reasoning of the Court, would Article 78 of Convention IV ever be applicable to a state party of the ECHR? Would Art. 5 of the ECHR always prevail? Is there a contradiction between Article 5 of the ECHR and Article 78 of Convention IV? According to the Court? In your opinion? How would you determine the *lex specialis* in the present case? Must Article 78 of Convention IV be understood as authorizing internment even if the requirements of international human rights law are not fulfilled?
- e. Would the reasoning of the Court in para. 107 also apply in case a POW is detained? Does Convention III oblige a state to intern POWs? ([GC III, Art. 21](#))
- f. (Para. 99) Could the UK have derogated from its obligations under Article 5 of the ECHR? Is the situation in Iraq a “war or other public emergency threatening the life of the nation” for the UK? (ECHR, Arts 5(1) and 15(1))

#### **IV. The possibility of review procedures**

8. (Paras 8-15 and 98)

- a. Were there reasons that could justify the internment of the applicant under IHL? Who decides if the reasons for internment are sufficient? ([GC IV, Art. 78](#))
- b. Does a civilian detained for imperative reasons of security have the right to have the legality of his detention reviewed? According to IHL? According to international human rights law, especially the ECHR? In an international armed conflict, which of these two bodies of law prevails? ([GC IV, Art. 78](#); ECHR, Art. 5(4))
- c. Must the procedure described by Article 78 of Convention IV be applied by an independent and impartial tribunal and respect the judicial guarantees foreseen by international human rights law? Did the review procedures described in the present case comply with the conditions set out by IHL? With the conditions set out by the ECHR? ([GC IV, Art. 78](#); ECHR, Art. 5(4))

9. When does a civilian detained for imperative reasons of security have to be released? ([GC IV, Arts 132-133](#); [P I, Art. 85\(4\)\(b\)](#))

#### **V. Internment during non-international armed conflicts**

10.

- a. In case the conflict became non-international on 30 June 2004, which rules would be applicable to the arrest and detention of the applicant?
- b. On which basis could the applicant have been interned under the law of non-international armed conflicts? Is it possible to intern someone for imperative reasons of security in a non-international armed conflict? Do common Article 3 to the Conventions or Protocol II provide any details on the grounds for detention in such conflicts? Does international human rights law exclusively govern this issue?
- c. What are the consequences of this decision for the states parties of the ECHR? In which cases could they intern civilians in the future when they get involved in an armed conflict?