

Syria, Syrian rebels treat captured Filipino soldiers as ‘guests’

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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: Syrian rebels treat captured Filipino soldiers as ‘guests’ – military spokesman, Nikko Dizon Philippine Daily Inquirer, March 7th, 2013, available at <http://globalnation.inquirer.net/67477/syrian-rebels-treat-captured-filipino-soldiers-as-guests-military-spokesman>]

[1] MANILA, Philippines—The Armed Forces of the Philippines said Thursday that Filipino soldiers belonging to the United Nations peacekeeping force who were seized by Syrian rebels were not considered prisoners by their captors but “guests who are being treated well.”

[2] “They are being treated as guests, not as prisoners,” Colonel Arnulfo Burgos, Jr., AFP spokesperson, said at a press conference at Camp Aguinaldo.

[3] Burgos said the highest-ranking officer among the 21 soldiers being held — an Army major — had spoken to the commander of the UN Disengagement Observer Forces (UNDOF) and said that “they are being treated well.”

[4] The UNDOF commander is negotiating with the Syrian rebels, Burgos said. Burgos said that the rebels reportedly wanted a repositioning of the Syrian government troops in exchange for the release of the 21 UN peacekeepers.

[5] Burgos said that sketchy reports reaching Manila showed that the Filipinos were seized at noon (around 6 p.m. in Manila) on Wednesday as they were transporting supplies.

[6] Burgos said the UN peacekeepers had actually passed a first checkpoint of the Syrian rebels and were held briefly but were released right away.

[7] “But on the second time that they were stopped by the rebels, they were no longer released. The keys of their vehicles are with the Syrian rebels,” Burgos said.

[8] Burgos said all the 21 Filipino soldiers have been identified but the AFP would not release their names as their families have yet to be informed.

DISCUSSION

I. Applicable law

1. How would you classify the situation in Syria in 2013 (see related case study “The armed conflict in Syria”)? What was the mandate of the UNDOF? If there was an armed conflict in Syria, were the Filipino peacekeepers bound and protected by IHL?

2. May peacekeeping forces be parties to an armed conflict? When could IHL of international armed conflicts bind to these forces? When could IHL of non-international armed bind them? Does your answer depend on the mandate, the consent of the host state or the existence of hostilities between the peacekeeping forces and armed forces or armed groups?

3. Is the UN a party to the Geneva Conventions and Protocols? May the UN conceivably be a party to an international armed conflict in the sense of Article 2 common to the Conventions? To a non-international armed conflict? If so, which rules apply? All the rules of IHL? Only customary IHL?

4. For the purpose of the applicability of IHL, may the UN peacekeeping forces be considered as armed forces of the contributing states (which are Parties to the Conventions), and can any hostile act be considered as an armed conflict between those states and the opposing party? Would that alter their status upon capture and detention?

5. Assuming that IHL applies to the UN peacekeepers, does IHL apply to the situation described in the case?

II. Classification and treatment of the persons

6. What is the status of a peacekeeper under the ICC Statute? Under IHL? Is it conceivable that they are civilians under the ICC Statute but not under IHL? In which circumstances does the status of peacekeepers change? When may they be targeted? Are these rules applicable in a non-international armed conflict? (See Case studies, Convention of the Safety of UN Personnel, Arts 2 and 7; The International Criminal Court, Part A., The Statute, Arts 8(2)(b)(iii) and 8(2)(e)(iii)).

7. What rules are applicable to the capture and detention of UN peacekeepers? Are they prisoners of war? Is it a violation of IHL to detain them? A violation of other rules of international law? When does it constitute hostage taking? Are the Filipino peacekeepers hostages in our case? (See Case study, Convention on the Safety of UN Personnel)

8. In what respect would the status of the peacekeepers impact upon their treatment in our case? Do you agree with the article that the reported treatment that they receive would not make them “prisoners”? What makes a person a prisoner? What is the difference between a prisoner and a guest?

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