

# Case study fhe, inc assignment

Law



Based on the case provided, provide ISRC on the following matters: (a) the existence of any armed conflicts; (b) the legal status of relevant actors; and (c) any breaches of international humanitarian law (and human rights law). Assume the applicability of all relevant treaties that you have covered in this course. Relevant Legal Background 1 . Types of International Conflicts and Relevant Legal Background It is not clear from the information given whether all the concerned states in this conflict are parties to the Geneva Convention or not. However for the purpose of this assignment I will assume all states are a party to the Convention.

International humanitarian law distinguishes two types of armed conflicts. These are: international armed conflicts, between two or more opposing States, and non- international armed conflicts, between governmental forces and nongovernmental armed groups, or between such groups only. ILL treaty law also establishes a distinction between non-international armed conflicts in the meaning of common Article 3 of the Geneva Conventions of 1949 and non-international armed conflicts falling within the definition provided in Art of Additional Protocol II. International Armed Conflict (IAC) Common Article 2 to the Geneva Conventions of 1949 states that: “ In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance”.

According to this provision, Sacs are those which oppose “ High Contracting Parties”, meaning States. An IAC occurs when one or more States have recourse to armed force against another State, regardless of the reasons or the Intensity of this confrontation. Relevant rules of ILL may be applicable even in the absence of open hostilities. Moreover, no formal declaration of war or recognition of the situation is required. The Existence of an IAC, and as a consequence, the possibility to apply International Humanitarian Law to this situation, depends on what actually happens on the ground.

The International Criminal Tribunal for the former Yugoslavia (ICTY) proposed a general definition of International armed conflict. In the Tadić case, the Tribunal stated that “ an armed conflict exists whenever there is a resort to armed force between States”. This definition has been adopted by other international bodies since then. 2. Non-international Armed Conflict (NIAC)

There are two main legal sources which must be examined in order to determine what a NIAC is under International humanitarian law.

These are: a) common Article 3 to the Geneva Conventions of 1949; b) Article 1 of Additional Protocol II: ) Non-international Armed Conflicts within the Meaning of Common Article 3. Common Article 3 applies to “ armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties”. These include armed conflicts in which one or more non-governmental armed groups are involved. Depending on the situation, hostilities may occur between governmental armed forces and non-governmental armed groups or between such groups only.

As the four Geneva Conventions have universally been ratified now, the requirement that the armed conflict must occur “ in the territory of one of the High Contracting Parties” as lost its importance in practice. Indeed, any armed conflict between governmental armed forces and armed groups or between such groups cannot but take place on the territory of one of the Parties to the Convention. In order to distinguish an armed conflict, in the meaning of common Article 3, from less serious forms of violence, such as internal disturbances and tensions, riots or acts of banditry, the situation must reach a certain threshold of confrontation.

It has been generally accepted that the lower threshold found in Article 1(2) of API, which excludes internal disturbances and tensions from the definition of NIACIN, also applies to common Article 3. Two criteria are usually used in this regard: First, the hostilities must reach a minimum level of intensity. This may be the case, for example, when the hostilities are of a collective character or when the government is obliged to use military force against the insurgents, instead of mere police forces. Second, non-governmental groups involved in the conflict must be considered as “ parties to the conflict”, meaning that they possess organized armed forces. This means for example that these forces have to be under a certain command structure and have the capacity to sustain military operations. It is also important to recognize that additional protocol II supplements common article 3. This means that the restrictive application( e.g- territorial control) is relevant for its application only, but does not extend to the law of NIACIN in general. ( ICC article 8, Para 2.

Existence of Armed Conflict in this Case Now the key criteria for armed conflict have been identified we shall proceed to Tyler ten special consults 1 . Armed conflict #1 In tans case. Armed Conflict between Banshees and Astoria government The attack of the Banshees on Astoria government is Non International armed conflict because it fulfils all the criteria outlined in the section above. The Banshee squad is armed with machetes; spears shot guns, identifying them selves by wearing emblem, under a command and increased its attack on the streets of Astoria against the Concord's.

More importantly the squad has a representative (Dry Banshee) who supports them and claims to be fighting to liberate them from Concords. The situation is much intensified forcing the Astoria government to pass a marital law and orders hat the squad to be shot on sight. These all show the seriousness of the attack. The seriousness of the organized conflict was further highlighted by the fact that Security Council passes a resolution condemning the violence and called on all parties to respect international law.

As the CITY noticed in (Lima 2005) case," the seriousness of attacks and whether there has been an increase in armed clashes, the spread of clashes over the territory, any increase in the number of government forces.... , as well as whether the conflict has attracted the attention of the United Nations Security Council, and whether any resolutions on the matter have been passed. The reason for their organized attack on the government and on the Concords was simply because the Banshees (the majority) resented the fact that many Concords dominate the senior positions in Astoria government.

The reason for categorizing this as Non- International armed conflict is because the Banshees didn't raise a question of self- determination or liberation (at least not at the beginning). However it is disputable whether the fact that they didn't raise the question of self-determination automatically makes this non-international but it is armed conflict regardless Therefore I there is no doubt that the conflict between the Astoria government and the Banshee group constitutes a Non International Armed Conflict under international law. 2.

Armed conflict #2 - IAC The attack by the state of Dost against the government of Astoria is constitutes international armed conflict. Dost didn't declare war but declaration of war doesn't amount to anything but action does. Dost has attacked Astoria militarily and that is what matters. Regardless of the duration of the fighting or the reason for the fighting NY military assault against independence state constitutes international armed conflict. It is important to recognize that the Banshees also later claimed that their fight is for self-determination which may class that conflict as International Armed Conflict.. . Armed conflict #3 - Pre-emptive attack of Enterprise over Banshee I en pre-emptively -Attack Trot Enterprise gallant Demesne squads In case Dost is a sovereign state and unaware of the anticipated attack from remnants of Banshee in Dost. Even though pre-emptive attack is been controversial, the anticipated attack was not imminent and was not supported by Dost. . The legal Status of relevant actors Who are actors in the given case? 3. " Neighborhood protection Squad" members As I mentioned above the conflict between the squad and the government of Astoria is a non-international armed conflict.

The squad members gathered together and launched an attack against the government. Civilians who directly engage in armed conflict are called unlawful combatants. (Protocol I art 51(3)). In non-international armed conflict is the absence of the combatant's privilege. In international armed conflict, lawful combatants are entitled to engage in acts which would otherwise be regarded as criminal, so long as those acts do not violate the law of armed conflict. In addition, upon capture, they are entitled to prisoner-of-war treatment. This privilege exists only in international armed conflict.

Thus, non-state combatants in a non-international armed conflict may be prosecuted for all hostile acts, including violations of ordinary domestic law, irrespective of whether they have violated any norms of international law. In addition, they cannot be entitled to prisoner of war status, since such status does not exist in the law of non-international armed conflict. Captured and prosecuted for domestic terrorism (in special trial) Others detained without charge and held as political prisoners - despite their claim as POP. Unlawful combatants cannot be entitled to prisoners of war status.

But common Article 3 and other international laws lists the following minimum conditions to be applied by parties involved in a non international conflict. Requires humane treatment of persons taking no active part in the hostilities, I. E. , including detainees since removed from combat, without discrimination based on ethnicity, religion, gender or wealth prohibits violence to life and person, such as murder, mutilation, torture and cruel treatment prohibits " outrages upon personal dignity" including " humiliating and degrading treatment" requires that punitive sentences and executions (I. E. Criminal punishments) be pronounced only by a " regularly constituted <https://assignbuster.com/case-study-fhe-inc-assignment/>

court” that “ afford[s] all the Judicial guarantees recognized as indispensable by civilized peoples” Sentences may only be pronounced by a court offering the essential guarantees of independence and impartiality the accused to be informed without delay of en particulars AT ten offence allege against ml, exclusion AT collective responsibility and of conviction for an act or omission which did not constitute an offence at the time it was committed, presumption of innocence, Judgment passed in the presence of the accused, no coercion to obtain confessions, information of the right of appeal. In addition to the fundamental guarantees and to those granted to the wounded and sick, persons detained or interned for reasons related to the armed conflict must be accorded all guarantees with respect to medical care, food, hygiene, safety, relief, he practice of their religion and working conditions. [P. II, 5] All persons who do not take a direct part in hostilities will be treated humanely in all circumstances and will benefit from the fundamental guarantees without any discrimination whatsoever. Whether or not they have been deprived of their liberty, it is specified that their person, honor, convictions and religious practices must be respected. The following acts against any person, whether committed by civilian or military agents, and for any reason whatever, are prohibited. [P.

The content of ouch guarantee is set out in the protocol I art 75 and in human rights law 1966 CIVIC art 14. In non international law armed conflict parties to the conflict have no the status of combatant or POP . There for , national authorities remain free to treat fighters as criminals under domestic law . How ever the basic protections of common article 3 of the Gas should apply. In Astoria case the national authorities denied Banshees fighters the



right to open and fair trials, closed to public and admit hearsay. Not only that some of the detainees are denied Justice that a right to go to court and held by Astoria government as political prisoners. These clearly show to what extent the Astoria Government violated the rules of common article 3. / Concord members Concord members are simply civilians and one of the principles of protocol II is to ensure that in the event of non international conflict, both sides should conduct them selves and their forces in a manner consistent with the minimum requirement of ordinary armed conflict at least as regards the treatment of civilians. How ever the Banshees squad are failed to protect civilians. Concord civilians were killed and detained by the squad members. The attack against the civilians was leading to displace around 60, 000 civilians. 4. Any breaches of International Humanitarian law 1. The responsibility to protect civilians One of the principles of protocol II is to ensure that in the event of non international conflict, both sides should conduct them selves and their forces in a manner consistent Walt n ten Mullen requirement AT orally armed conflict at least as regards the treatment of civilians.

From this legal stand the banshee squad were failed by punishing the concord population and the refusal of civilians appeal to Dost to restore order and these was against the principles of protocol II. 2. Using Sonic Boomer - Proportionality and Necessity Sonic boomers may not be prohibited weapons, but in Dost it is manly used to attack civilians and would not be amount to military objective. The Dost fighters were rapidly advanced deep in to the Astoria territory . Dost knows the Astoria fighters interspersed among civilians, then it only gives little contribution to the Dost military

advantage but according protocol I article 52(2) the attack is not limited strictly to its military advantage.

Dost attacked a large water supply dam by claiming that to cut means of support and military resource. PI article 57 (1) clearly says in the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects and further more article 27(2) (A) (iii) says refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated. There for Dost have failed to take necessary precautions to minimize civilian death and civilian objects.

Clearly Dost were pushing hard towards Astoria and wasn't necessary to attack the dam and 6, 000 civilians were killed and 60% of food and livestock are destroyed. Not only that no advance warning was given by Astoria for the attack (P I art 52(2)(c). There for the attack on the dam by Dost is excessive to military advantage anticipated and failed the Distinction principle of the International humanitarian law. In the same situation Astoria retaliates by launching air raids on Dost . Astoria attacks a a major bridge carries a large number of civilian traffic and used for military purpose as well (availability of road). The bridged used by a large number of civilians and it was the only way to go to the main hospital , the strike kills 14 civilians even took place after midnight .