

## MASTER LEVEL, JUS 5730

Respond to **all three** questions below. Each question counts for a third of the total grade.

### Question 1

When is a civilian considered as taking a direct part in hostilities? What are the main legal consequences of such participation?

### Question 2

On 7 October 2023, the Hamas militant group based in the Gaza strip launched a series of indiscriminate attacks resulting in about 1,400 Israelis killed and since then in over 5,5 thousand wounded. In response, Israel's military has conducted several attacks on the Gaza strip, besides subjecting its 2,3 million population for over a month to a near blockade of electricity, food and water, and medicines. After a month of hostilities, more than 10,000 Palestinians have been killed and more than 25 thousand have been wounded. On 26 October 2023, convened in an emergency session, the UN General Assembly adopted a resolution condemning the killing of Israeli and Palestinian civilians and asking for a humanitarian truce leading to a ceasefire. Among its military operations, the Israeli military conducted an attack on the Jabalia refugee camp in Gaza on 31 October 2023. Satellite imagery showed that an area of at least 2,500 square meters was "completely flattened" in the aerial strikes. The Gaza's Health Ministry estimated the number of casualties at about 200 persons killed and about 800 wounded. The Israeli army spokesperson confirmed that Israeli fighter jets attacked the refugee camp, and stated that the attack killed a Hamas commander who led the 7 October attacks, some Hamas fighters, and destroyed Hamas tunnels. Despite growing calls by the international community for a humanitarian truce or a ceasefire, that has yet to materialize more than a month after the start of hostilities. In analyzing this scenario based on the facts given here, please respond to the following three questions:

1. Are refugee camps such as the Jabalia camp considered legitimate military targets?
2. Discuss the principles of distinction, proportionality, and necessity and apply these principles to the bombing of the Jabalia refugee camp.
3. In the event of serious violations of IHL by Hamas and the Israeli armed forces, what steps can the international community take to seek individual criminal responsibility under IHL? What would be the main war crimes under the Statute of the International Criminal Court?

**Note:** For purposes of this scenario, the warring parties are bound by all relevant international humanitarian law treaties and the Statute of the International Criminal Court.

### Question 3

In the course of a fierce battle behind enemy lines between your small military unit and enemy forces you manage to surround them. Three enemy soldiers, including a top military commander, drop their weapons and declare that they are surrendering. Another soldier who is badly wounded also surrenders.

You have reliable information that this unit in particular was directly responsible for carrying out a massacre on civilians only a few days ago. You are, however, deep into enemy lines and know that other enemy units that have listened to the exchange of fire are quickly approaching. You radio your military commander, who says, “You need to get your unit safely back to our lines now! We do not have time or resources to deal with prisoners. Get rid of them.”

How do you understand this order? What are your next steps, as commander of this unit, and how do you justify them under international humanitarian law? Is there place for individual criminal responsibility for anyone involved in this scenario, under the Statute of the International Criminal Court?

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