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Public International Law I

Introduction and Special Session: Terrorist Attacks by Hamas against Israel and Israeli Civilians and Israeli Reactions Thereto

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§ 1 Introduction

Public International Law is the law that deals mainly with the conduct of states and international organizations

Since 1945 also individuals became important → human rights

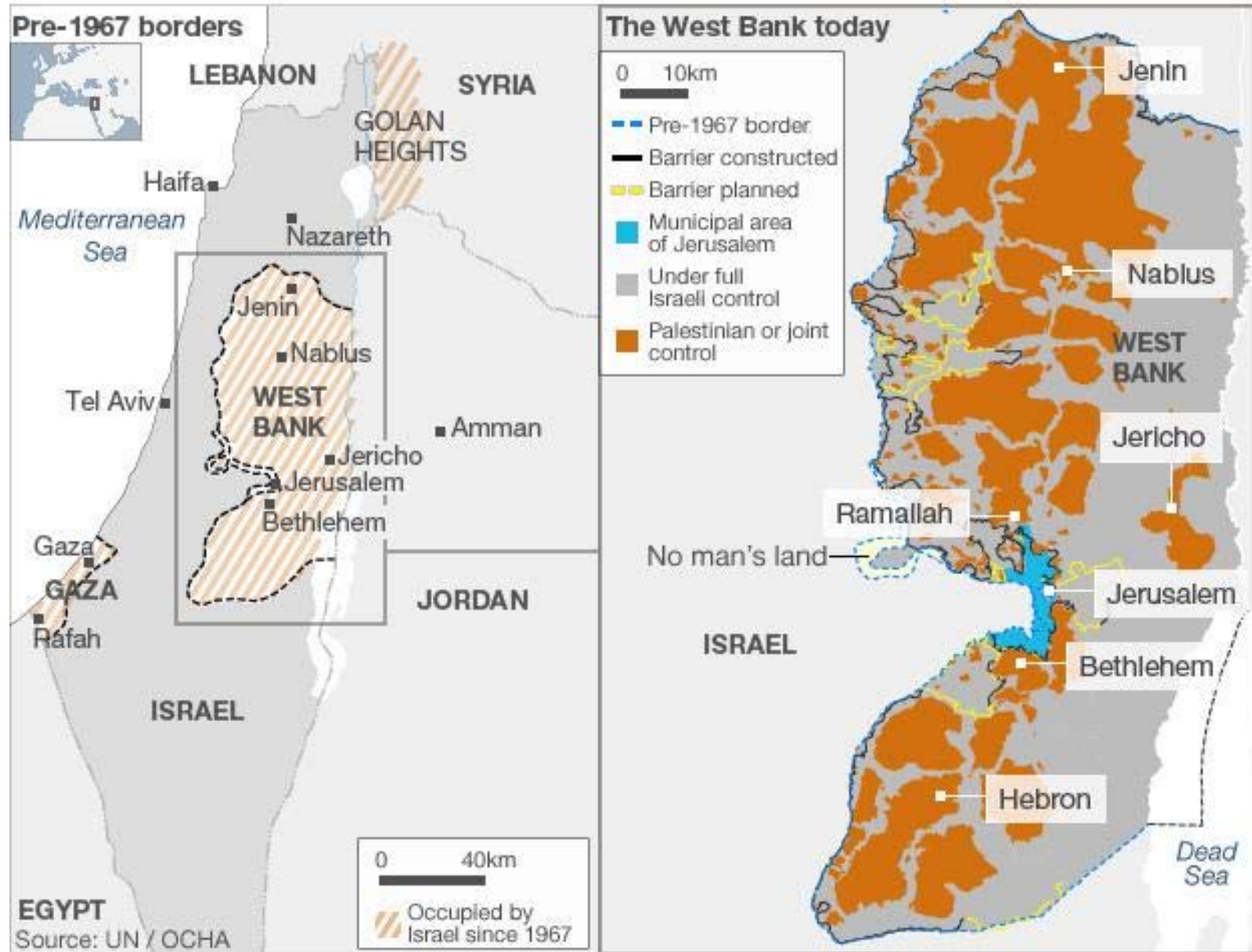
humanitarian law protects individuals (but also the state interest to wage war)

since the 1990s, terrorism also plays a role in International Law

§ 2 Subjects of international law

- = bearer of rights and duties under international law
- especially **States**
 - territory, population, government, capacity to enter relations with other subjects, recognition?)
 - is Palestine a State?
- **also** International Organizations like the UN
 - the two-state solution: UN General Assembly Resolution 181

Israel's pre-1967 borders and occupied territories



§ 3 Sources of international law

- However: **General Assembly Resolutions** are **not legally binding**,
different from
- **treaties and**
- **customary law**: practice/consuetudo and *opinio iuris* (cf. *Art. 38 ICJ-Statute*)

§ 4 International law and national law

- International law needs to be **implemented** on the national level
- e.g. by **prohibiting terrorist groups & their supporting groups**, prosecuting their supporters etc.

§ 5 Sovereign equality, jurisdiction and immunity

- Principle of sovereign equality is the fundamental principle of public international law (Art. 2 (1) UNC)
- From it follows inter alia that one must **not intervene in domestic affairs** with coercive measures or **use force**
- Jurisdiction: who may exercise public authority?
- Immunities: **Hamas leaders possess no immunity in criminal proceedings**; head of states etc. do

§ 6 Enforcement of public international law I: State responsibility

- Articles on State responsibility
 - Primary norms: norm of international law that has been violated
 - Secondary norm: norms of state responsibility
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- Rules on attribution
 - State that violates primary norms has to stop violation and pay damages
 - state whose rights have been violated may use coercive measures short of use of force

§ 7 Enforcement of public international law II: Peaceful settlement of disputes

- diplomatic methods: Chapter VI UNC
 - happening right now in order to contain conflict
- legal methods: e.g. via the **ICJ**
 - “court à la carte” but Advisory Opinions (AO)
 - e.g. the 2004 “The Wall” AO
 - new AO has been requested by the General Assembly on “Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem”

§ 8 The prohibition of the use of force and its exceptions

- main purpose of international law and of the UN
- Prohibition of (military) force: Article 2 (4) UNC
- its exceptions: chapter VII UNC (SC-resolution or self-defense)
- self-defense against terrorists?

Further Issues that form part of other lectures

International Humanitarian Law: Principle of Distinction etc.

International Criminal Law: Genocide, War Crimes etc....

International Human Rights Law: Right to Life etc.

International Humanitarian Law

Balances **military necessity** and **humanity**

Only **military targets** may be directly targeted

Civilians/**Civilian objects** must never be a target

use of **human shields** is **illegal**

Principle of Distinction → one always has to distinguish between civilians/civilian objects and military targets; (Art. 48 AP I; see also Art. 51(1) and (2) AP I; Art. 13(1) and (2) AP II)

International Humanitarian Law

Principle of Proportionality → **no excessive damage to civilians**/civilian objects in relation to the concrete and direct military advantage anticipated by targeting military targets (Article 51(5) (b) API)

Duty to take precautions in attacks (Article 57 (2)c AP I) → e.g. to warn the population

Specific issues:

Call to Evacuate Northern Gaza? Warning (Article 57(2)(c) AP I)?
Or illegal forced displacement (Art. 49 GC IV)?

Closing of the borders? → illegal siege? (Art. 54 AP I?)

hostage taking → illegal

International Criminal Law

Genocide: Hamas attacks show “**intent to destroy, in whole or in part**” a national group (Israelis), a goal explicitly declared by Hamas, thus most probably constitute an international crime of genocide

War Crimes → Hamas: *prohibition on killing civilians (ICC Statute, articles 8(2)(c)(i), 8(2)(e)(i)), the taking of hostages (8(2)(c)(iii)), rape and other forms of sexual violence (8(2)(e)(vi)), torture (8(2)(c)(i)), and outrages upon personal dignity (8(2)(c)(ii)).*

Israel: siege of Gaza? = “*intentionally using starvation of civilians as a method of warfare*”, ([Article 8\(2\)\(b\) xxv](#))?

Crimes Against Humanity („widespread or systematic attack directed against a civilian population”) **Hamas:** murder (7(1)(a)), extermination (mass murder) (7(1)(b)), imprisonment (7(1)(e)), torture (7(1)(f)), and sexual violence (7(1)(g))

International Human Rights Law

applies alongside International Humanitarian Law

Exact relationship between the two legal regimes unclear

Right to life, prohibition of torture etc. → all violated by Hamas during the massacre on October 7,...

While human rights might be suspended during times of emergency this does not apply to all human rights (such as the prohibition of torture)

Most important International Law Blogs

Ejiltalk.org

Voelkerrechtsblog.org

Verfassungsblog.de

Justsecurity.org