

A. Amnesty International Report Calls on Palestinian Armed Groups to Stop Civilian Killings

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:** Amnesty International, “Amnesty International report calls on Palestinian armed groups to stop civilian killings” AI INDEX: MDE 15/104/2002, PRESS RELEASE, 11 July 2002 ; available on <http://www.amnesty.org>]

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Since the beginning of the *Al-Aqsa intifada* in September 2000 at least 350 civilians, most of them Israeli, have been killed in over 128 attacks by Palestinian armed groups and Palestinian individuals, Amnesty International documented in a report launched in Gaza.

The report “*Without distinction: attacks on civilians by Palestinian armed groups*” is the seventh major report on the human rights situation in the region published by the organization since the beginning of the intifada.

“*Whatever the cause for which people are fighting, there can never be a justification for direct attacks on civilians,*” said Amnesty International.

The victims of these attacks ranged from children as young as five months to elderly people. The oldest was Chanah Rogan, aged 90. She was killed in the bombing of a hotel at the celebration of Passover on 27 March 2002 in Netanya. Most victims were killed by suicide bomb attacks within Israel claiming 184 victims of the 350 civilians killed.

Palestinian armed groups offer a variety of reasons for targeting Israeli civilians from retaliating against Israeli killing of Palestinian civilians to fighting an occupying power. Other justifications claim that Israeli settlers are not civilians or that striking at civilians is the only way to make an impact on a powerful adversary.

Under international law there is no justification for attacking civilians. Targeting civilians is contrary to fundamental principles of humanity enshrined in international law which should apply in all circumstances at all times. Amnesty International unreservedly condemns attacks on civilians, whatever reason the perpetrators give to their action.

“Civilians should never be the focus of attacks, not in the name of security and not in the name of liberty. We call on the leadership of all Palestinian armed groups to cease attacking civilians, immediately and unconditionally,” Amnesty International stressed.

The organization urges the Palestinian Authority to arrest and bring to justice those who order, plan or carry out attacks on civilians. The Palestinian Authority and Israel have a duty to take measures to prevent attacks on civilians. Such measures must always be in accordance with international human rights standards.

Amnesty International also calls on Israel to ensure that all its actions against armed groups and individuals suspected of involvement in attacks against civilians comply with international human rights and humanitarian law standards. Amnesty International calls on the international community to assist the Palestinian Authority to improve the effectiveness of its criminal justice system and its compliance with international human rights standards, in particular by offering international experts to advise on and monitor investigations into attacks against civilians and legal proceedings against those alleged to be responsible.

A growing number of Palestinians believe that targeting civilians is morally wrong. Amnesty International welcomes Palestinian and other voices who publicly condemn attacks on civilians and urges Palestinians and people around the world to appeal to armed groups to end attacks on civilians.

Background:

Amnesty International has for many years documented and condemned violations of international human rights and humanitarian law by Israel directed against the Palestinian population of the Occupied Territories. They include unlawful killings, extra-judicial executions, torture and ill-treatment, arbitrary detention and collective punishments such as punitive closures of areas and destruction of homes.

Palestinian armed groups and Palestinian individuals who may not have been acting on behalf of a group are estimated to have killed more than 350 civilians since the 29 September 2000. Among the victims were over 60 children and 64 of the people killed were older than 60 years of age.

Of the 128 lethal attacks against civilians studied by Amnesty International in this report 25 were committed by people who had strapped explosives to themselves and died in the attacks. On six other occasions civilians were killed by explosives that were planted, thrown or fired. Other incidents involved shootings and stabbing.

The great majority of attacks took place in the Occupied Territories. While there were far fewer attacks within Israel, they claimed 210 victims of the 350 civilians killed.

Armed groups reportedly claimed responsibility for about half of the lethal attacks on civilians of the 128 attacks surveyed by Amnesty International. The main groups involved were *Izz al-Din al-Qassam Brigades (Hamas)*, *Al-Aqsa Martyrs Brigade*, *Palestinian Islamic Jihad* and the *Popular Front for the Liberation of Palestine (PLPF)*.

The UN General Assembly has recognized the legitimacy of the struggle of peoples against foreign occupation in the exercise of their right to self-determination and independence. However, international law requires all parties involved in a conflict to always distinguish between civilians and people actively taking part in the hostilities. They must make every effort to protect civilians from harm.

B. Amnesty International, Without Distinction

[Source: Amnesty International, ISRAEL AND THE OCCUPIED TERRITORIES AND THE PALESTINIAN AUTHORITY *Without distinction – attacks on civilians by Palestinian armed groups*. AI INDEX: MDE 02/003/2002, 11 July 2002. Footnotes are not reproduced; available on <http://www.amnesty.org>]

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Attacks on civilians as a violation of basic principles of international humanitarian law

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Civilians and combatants

[...] Palestinian armed groups and their supporters have suggested that the prohibition on attacking civilians does not apply to settlers in the Occupied Territories because the settlements are illegal under international humanitarian law; because settlements may have military functions; and because many settlers are armed.

Many settlements do indeed have military functions. Settlements account for one third of the total area of the Gaza Strip. Each of these settlements holds military bases and are heavily militarily defended. Although the militarization of settlements is strongest in Gaza, some of the settlements in the West Bank also have military functions. The IDF [Israeli Defence Forces] may use them as staging posts for their operations or to detain people in their custody. A large number of settlers are armed and settlers have sometimes attacked

Palestinians and destroyed Palestinian houses and other property. However, settlers as such are civilians, unless they are serving in the Israeli armed forces.

Fatah considers attacks against settlers within the Occupied Territories to be legitimate. *Fatah* Secretary General Marwan Barghouti has stated to Amnesty International delegates that *Fatah* considers that no Israelis in the West Bank and Gaza are civilians because “*it is all an occupied country*” and Palestinians are fighting for their independence. He has also stated publicly that while he and the *Fatah* movement oppose attacking civilians inside Israel, “*our future neighbour, I reserve the right to protect myself and resist the Israeli occupation of my country and to fight for my freedom.*”

Israeli settlements in the Occupied Territories are unlawful under the provisions of international humanitarian law. The Fourth Geneva Convention prohibits the transfer of civilians from the occupying power's territory into the occupied territory (Article 49 (6)). However, the unlawful status of Israeli settlements does not affect the civilian status of settlers. Settlers, like any other civilians, cannot be targeted and only lose their protection from attack if and for such time as they take a direct part in hostilities (Article 51 (3) Protocol 1). Similarly, Palestinian residents of the West Bank and Gaza are civilians benefiting from the protection of the Fourth Geneva Convention unless and for such time as they take direct part in hostilities. [...]

Discussion

1. How do you qualify the conflict with which this case is concerned? Is it an international armed conflict? Are there hostilities between two High Contracting Parties? If not, why would the IHL of international armed conflict be applicable? Because it is a war of national liberation within the meaning of Art. 1(4) of Protocol I? Even though Israel is not party to the Protocol? Because of the Israeli occupation of territories? Is it important, in order to answer this question, to know whether the territory belongs or belonged to Jordan, Egypt or “Palestine”? (GC I-IV, Art. 2; P I, Art. 1)
2.
 - a. Are suicide attacks organized by Palestinian armed groups acts of terrorism? How would you define an “act of terrorism”? Does a clear definition exist in international law? In IHL? In your country's domestic law?
 - b. Is terrorism prohibited by IHL? If acts of terrorism were not specifically prohibited, would they still be banned by more general provisions of IHL? Which ones? (GC IV, Art. 33(1); P I, Arts 48 and 51; P II, Arts 4(2)(d) and 13(2); CIHL, Rules 1, 2 and 11-12)
 - c. Can such acts be justified by a “just cause”, such as the struggle against a foreign occupier? Can they be justified as reprisals? Are reprisals acceptable in IHL? In reaction to violations of IHL such as “unlawful killings, extra-judicial executions, torture and ill-treatment, arbitrary detention and collective punishments”? (GC I-IV, Arts 46/47/13(3)/33 respectively; P I, Arts 20, 51(6) and 52(1); CIHL, Rules 145-147)
3.
 - a. Who can be held responsible at the international level for these suicide attacks? Only those in charge of the armed groups that organize them? Do such groups have international responsibility, just as States do? [See International Law Commission, Articles on State Responsibility [Part A., Art. 10 and its commentary]] Could the Palestinian Authority be held responsible for attacks carried out from the autonomous territories? Even when it condemns the attacks? Does it have a

responsibility to “arrest” and “bring to justice those who order, plan or carry out attacks”? Is this an obligation laid down by IHL? Is the Palestinian Authority bound by IHL? On what grounds? Because the Palestine Liberation Organization declared on 21 June 1989 that it would accede to the Geneva Conventions? Does Israel have a responsibility to arrest and bring these persons to justice? Can it do so? Even if that involves police or military operations in autonomous Palestinian territory? (GC IV, Arts 29, 146 and 148; P I, Arts 85(1) and 91; CIHL, Rules 149-150)

- b. Are suicide attacks as a means of warfare prohibited by IHL? Even if committed against a legitimate military objective? Will your answer differ depending on whether the attacker carries arms openly or has a distinctive sign? Can the instigators and organizers of a suicide attack also be held responsible for the death of its perpetrator? Do you think they ought to be? (P I, Arts 37(1) (c), 43, 44 and 51; CIHL, Rules 11-12 and 106)
- 4. a. Are Israeli settlements in the occupied territories military objectives? Are they if they are defended by a military base? If many settlers are armed? What is the definition of a military objective? (P I, Arts 48 and 52; CIHL, Rules 1, 6-10)
- b. Is an armed civilian a combatant? Is an armed civilian a legitimate target? In what circumstances? Are settlers always civilians “unless they serve in the Israeli armed forces”? Even those organized in self-defence militias? Even those who carry out attacks against Palestinians or destroy their homes? (GC III, Art. 4; P I, Arts 43, 44, 50 and 51(3); CIHL, Rules 3-6)
- c. Is an unarmed settler a civilian? Even if he belongs to a self-defence militia of his settlement? Does he forfeit the protection offered by IHL, because the settlements are illegal under international law (GC IV, Art. 49(6); CIHL, Rule 130)? Does that violation justify violations of IHL committed against the settlers? (P I, Art. 50; CIHL, Rules 1, 5-6)