

Previous

ISRAEL AND THE OCCUPIED TERRITORIES AND THE PALESTINIAN AUTHORITY

Without distinction - attacks on civilians by Palestinian armed groups

1. Introduction

- 27 May 2002: Sinai Keinan, aged 18 months, and her grandmother Ruth Peled, 56, were killed when a suicide bomber blew himself up at the entrance to the Bravissimo café in Petah Tikva, Israel. Fifty other people were injured, many of them children. The Al-Aqsa Martyrs Brigade claimed responsibility.
- 27 April 2002: three armed men attacked residents of Adora, an Israeli settlement in the West Bank. In the bedroom of one house a gunman killed five-year old Danielle Shefi as she hid under a bed and wounded her mother Shiri, her brothers Uriel, aged four and Eliad, aged two. Elsewhere in the settlement, they also killed three adults. Izz-al-Din al-Qassam Brigades (the military wing of *Hamas*) claimed responsibility for what it described as an "heroic and daring operation."⁽¹⁾
- 29 March 2002: Tuvya Viesner, 79, from Tel Aviv and Michael Orlanski, 70, from Petah Tikva were stabbed to death while visiting relatives at the Israeli settlement of Netzarim in Gaza. Al-Quds Brigades, the military wing of Palestinian Islamic *Jihad*, claimed responsibility for what they described as an "heroic and courageous assault."
- 27 March 2002: Twenty nine people - 27 of them civilians - were killed and 140 injured when an attacker exploded a bomb attached to himself in the dining room of a hotel in Netanya during a meal to celebrate the Jewish festival of Passover. Nineteen of the dead were aged over 70. The oldest, Chanah Rogan, was 90. *Izz-al-Din al-Qassam* Brigades claimed responsibility.
- 27 January 2002: Pinhas Tokatli, aged 81, was killed and more than one hundred people were injured when Wafa Idris exploded a bomb attached to herself in Jaffa Street, Jerusalem, an area of shops and restaurants. Wafa Idris was the first female Palestinian "suicide bomber". Al-Aqsa Martyrs Brigades claimed responsibility.
- 4 November 2001: Menashe Regev, 14 and Shoshana Ben-Yishai, 16, were killed by a gunman who shot at an Israeli bus in Jerusalem. Palestinian Islamic *Jihad* claimed responsibility.

These are just six of more than 130 attacks since 29 September 2000 in which civilians were killed by members of Palestinian armed groups and by Palestinian individuals who may not have been acting on behalf of a group. ⁽²⁾ In many attacks, perpetrators deliberately targeted people like five year-old Danielle Shefi and 79 year-old Tuvya Viesner, knowing without any doubt that their victims were not members of the Israeli armed forces. Other perpetrators attacked large groups of people in a busy street, a bus, a café, a hotel or a market, knowing that many if not most of the victims would be civilians.

Amnesty International condemns unreservedly direct attacks on civilians as well as indiscriminate attacks, whatever the cause for which the perpetrators are fighting, whatever justification they give for their actions. The organization has repeatedly condemned attacks on civilians in reports and statements and in meetings and other communications with armed groups that have attacked civilians in Israel and the Occupied Territories and in countries around the world. ⁽³⁾ Targeting civilians and being reckless as to their fate are contrary to fundamental principles of humanity which should apply in all circumstances at all times. These principles are reflected in international treaty law and in customary law. (See section 5)

Historical background

Between the First and Second World Wars, the British authorities ruled Palestine under a League of Nations mandate. On 14 May 1948, the British mandate ended and the State of Israel was proclaimed. A war between Israel and Arab armies followed during which more than 700,000 Palestinians fled or were expelled and became refugees.

Two parts of mandate Palestine remained outside Israel: the Gaza Strip, which came under Egyptian administration and the eastern part adjacent to the Jordan River. The latter was annexed by the Hashemite Kingdom of Jordan and became known as the West Bank. Following a war between Israel and Egypt, Syria and Jordan in 1967, Israel occupied the West Bank (including East Jerusalem) and the Gaza Strip, as well as Syria's Golan Heights and the Sinai Peninsula, which was later returned to Egypt.

East Jerusalem was formally annexed by Israel and is subject to Israeli law and administration. Since 1967, Israel has established numerous colonies - referred to as "settlements" - in the West Bank and Gaza Strip in violation of international humanitarian law. There are now more than 300,000 settlers living throughout the West Bank, including East Jerusalem. Settlers are subject to Israeli criminal law (Palestinians are subject to Israeli military orders and pre-1967 criminal law), pay Israeli taxes and receive Israeli benefits and services. Settlement security is provided by the Israeli Defense Forces (IDF) and armed settlers. All settlements in Gaza and an increasing number in the West Bank have IDF bases or facilities on them.

The United Nations Security Council has repeatedly called on Israel to withdraw from the territories occupied since 1967 and to dismantle and cease the establishment of settlements in the Occupied Territories. (4)

The West Bank and the Gaza Strip are territories subject to the 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War which applies to situations of occupation. This position is supported by the International Committee of the Red Cross (ICRC) and by numerous resolutions of the United Nations Security Council. The Israeli government maintains that it does not regard the Fourth Geneva Convention as legally applying to the West Bank and Gaza Strip, although it has affirmed that Israel would respect in practice its "humanitarian provisions", without clearly specifying what provisions it regards as "humanitarian". The Fourth Geneva Convention prescribes rules for an occupying power in relation to the inhabitants, who are described as "protected persons." Among other things, the rules prohibit the occupying power from wilfully killing, ill-treating or deporting protected people. It also prohibits it from transferring its own civilian population into the territory.

In 1993, Israel and the Palestine Liberation Organization (PLO) signed a Declaration of Principles (the "Oslo Agreement") which envisaged a period during which Israel would gradually withdraw its forces and transfer some functions in parts of the West Bank and Gaza to an elected Palestinian self-government authority. Negotiations on a permanent settlement were to be concluded by May 1999.

The Palestinian Authority was established in 1994 and was given certain responsibilities in designated areas of the Occupied Territories. In the West Bank, three zones were defined. In Area A, in which 98 per cent of the Palestinian population in the West Bank lives, the Palestinian Authority was given responsibility for civil affairs and internal security while Israel was responsible for external security. In Area B, the Palestinian Authority was given responsibility for civil affairs while Israel was given overriding responsibility for security. In Area C, Israel was given responsibility for both security control and civil affairs.

Israel and the Palestinian Authority have been unable to conclude a permanent peace agreement because of disagreements over key issues such as the respective territories of Israel and the proposed state of Palestine; the right to return of Palestinian refugees; the future of Jerusalem; and the future of Israeli settlements within the Occupied Territories. Alongside the collapse of the political process there has been a major increase in the incidence of violence, particularly since the start of the Al-Aqsa *intifada* (uprising) on 29 September 2000. In the seven years between the Oslo Agreement and the beginning of the Al-Aqsa *intifada*, approximately 385 Palestinians were killed by Israeli security forces and 262 Israelis (both civilians and security forces personnel) were killed by Palestinian armed groups, individuals and security forces. Over 1400 Palestinians and nearly 500 Israelis - including more than 350 civilians - have been killed in less than two years since the Al-Aqsa *intifada* began.

The first attack by a Palestinian armed group on a civilian target - a commuter bus - by a perpetrator who exploded a bomb attached to himself was in 1994. By September 2000 there were 14 other attacks by "suicide bombers" which caused civilian deaths. Since then, to 21 June 2002, there were 27 lethal suicide bomb attacks on civilians. There were reports of many other occasions when people who set out to kill failed: they wounded or missed their victims; they blew themselves up or were killed or arrested before they could attack.

The current situation

Among Palestinians and supporters of their cause, there is considerable support for armed resistance by Palestinians, aimed at ending the occupation of the territory occupied by Israel in 1967. Commonly, advocates express support for the use of violence by Palestinians against Israel in general terms, drawing no distinction between attacks against military objectives and against civilians. In Palestinian media and in public displays, there has been considerable praise for those who have been killed in the course of attacking Israelis even if the attacks were targeted against civilians. "Suicide bombers" are commonly referred to as "martyrs" and their actions as "martyrdom operations". Armed groups appear to find it relatively easy to recruit people prepared to kill themselves while committing attacks.

Palestinian armed groups and their supporters offer a variety of reasons for targeting Israeli civilians - that they are engaged in a war against an occupying power and that religion and international law permit the use of any means in

resistance to occupation; that they are retaliating against Israel killing members of armed groups and Palestinians generally; that striking at civilians is the only way they can make an impact upon a powerful adversary; that Israelis generally or settlers in particular are not civilians.

The United Nations General Assembly has recognized the legitimacy of the struggle of peoples against colonial and alien domination or foreign occupation in the exercise of their right to self-determination and independence. (5) However, as detailed in section 5, international law requires the use of force to be in accordance with certain basic principles that apply in all situations. In particular, the parties involved in a conflict must always distinguish between civilians and people actively taking part in the hostilities and must make every effort to protect civilians from harm.

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. (6) They include unlawful killings; torture and ill-treatment; arbitrary detention; unfair trials; collective punishments such as punitive closures of areas and destruction of homes; extensive and wanton destruction of property; deportations; and discriminatory treatment as compared to Israeli settlers. Most of these violations are grave breaches of the Fourth Geneva Convention and are therefore war crimes. Many have also been committed in a widespread and systematic manner, and in pursuit of government policy; such violations meet the definition of crimes against humanity under international law.

However, no violations by the Israeli government, no matter their scale or gravity, justify the killing of Sinai Keinan, Danielle Shefi, Chanah Rogan or any other civilians. The obligation to protect civilians is absolute and cannot be set aside because Israel has failed to respect its obligations. The attacks against civilians by Palestinian armed groups are widespread, systematic and in pursuit of an explicit policy to attack civilians. They therefore constitute crimes against humanity under international law. They may also constitute war crimes, depending on the legal characterisation of the hostilities and interpretation of the status of Palestinian armed groups and fighters under international humanitarian law. (see section 5)

Many Palestinians who support armed resistance, as well as those who support non-violent action, believe that targeting civilians is morally and/or strategically wrong. A number have been outspokenly critical. But the critics have in general not been as open or prominent in public as advocates for armed attacks who support, condone or do not criticize attacks on civilians. (7) As Palestinian political leader Dr Hanan 'Ashrawi has noted, Palestinians "have remained silent or whispered in the privacy of closed-door discussions" about the morality and effectiveness of such attacks by armed groups, among other issues:

[w]hy and when did we allow a few from our midst to interpret Israeli military attacks on innocent Palestinian lives as license to do the same to their civilians? Where are those voices and forces that should have stood up for the sanctity of innocent lives (ours and theirs), instead of allowing the horror of our own suffering to silence us?(8)

In 1998, the ICRC surveyed public attitudes about the rules of armed conflict in 17 countries, including a number where there were current wars or recently ended wars. One of the sites studied was Israel and the Occupied Territories, and the findings of the study were bleak:

A half-century of seemingly unremitting conflict in the Middle East has brought down the normative and behavioural barriers that are supposed to protect civilians and prisoners in war. Perhaps as no other place in the world, the conflict between Israelis and Palestinians, as well as the Arab states, has engaged entire societies and left the distinction between combatants and civilians in tatters. The consequences are evident in the depth of mobilization in both societies, the scale of disruption and injury, the permissive attitudes towards the treatment of prisoners, and in the heightened willingness of all parties to put civilians at risk.

The principle of separation between combatants and civilians during wartime has been all but demolished by 50 years of total engagement in conflict ... More so than in any other country studied by the ICRC, Israelis and Palestinians countenance attacks on civilians during wartime. (9)

The research found that one of the key factors in the erosion of constraints by both Israelis and Palestinians was the perception that the other party did not respect limits - people on both sides took the view that if the other side broke the rules, retaliation was permissible.

The lesson of the ICRC's study is one that Amnesty International has drawn from in its work in the region and other conflict areas around the world: the cycle of violence can be contained and eventually broken only if all parties place respect for human rights at the heart of all efforts to achieve peace. A critical element of such respect is accountability: those who abuse human rights should be brought to justice.

"[Suicide bombings have] disfigured and debased the Palestinian struggle. All liberation movements in history have affirmed that their struggle is about life not about death. Why should ours be an exception? The sooner we educate our Zionist enemies and show that our resistance offers co-existence and peace, the less likely will they be able to kill us at will, and never refer to us except as terrorists."

Professor Edward Said, May 2002.

Terminology

Attacks against civilians - on the basis of international humanitarian law, in this report the term is used to describe:

- attacks in which the direct object of the attack is the civilian population generally or individual civilians;
- indiscriminate attacks - these include attacks that fail to distinguish between civilians/civilian objects and military objectives; and attacks which though directed at a military target cause disproportionate harm to civilians or civilian objects. Military objectives are combatants (members of the armed forces of a party to a conflict) as well as objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

"Terrorism" - this term is commonly used to describe violent acts by armed groups, particularly those in which civilians are targeted. Amnesty International does not use the term because it does not have an internationally agreed definition and in practice is used to describe quite different forms of conduct. States and commentators describe acts or political motivations that they oppose as "terrorist", while rejecting the use of the term when it relates to activities or causes they support. This is commonly put as "one person's terrorist is another person's freedom fighter". The United Nations Special Rapporteur on terrorism has noted that "the controversial issue of terrorism has...been approached from such different perspectives and in such different contexts that it has been impossible for the international community to arrive at a generally acceptable definition to this very day. (10) Recent attempts at the United Nations to finalize a comprehensive international convention on "terrorism" stalled in part because of disagreements between governments about the definition.

2. An overview of attacks on civilians



Aviad Lasa © Amnesty International

"At 4pm I went to eat something at the café. I only spent 15 minutes on the meal, and I went to the desk. I remember a potato fell on to the floor and I bent and then there was the explosion. I fell on my back. I regained consciousness after five minutes. I saw that I was burned all over my body and face. I looked to my right and left and saw many people lying on the ground. I can't remember being evacuated by the medical teams. For two weeks I was in intensive care. Such acts are not human acts, they have no fear of God." (Aviad Lasa, victim of a suicide bombing at the Netanya fruit and vegetable market, Israel on 19 May 2002. Three civilians were killed and 50 injured. Note of interview with Amnesty International.)

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 29 September 2000.(11) The figure excludes the killing of around 30 Palestinians by Palestinian armed groups, individuals and Palestinian Authority forces because they were suspected of "collaborating" with Israeli authorities.

The great majority of civilians were killed in direct or indiscriminate attacks on civilians and civilian objects (defined above): the perpetrator targeted someone who they knew was not a member of the armed forces, or attacked a group of people among whom there were clearly many civilians. Amnesty International examined reports of incidents in which civilians were killed between 29 September 2000 and 31 May 2002 and estimates that 128 of these involved attacks on civilians and civilian objects. (12) Three hundred and thirty eight civilians were killed in the attacks. An overview of these 128 attacks is provided below.

The victims

The youngest victim was Yehuda Shoham who was five months old when he was killed by a rock thrown through the windscreen of his family's car near the Israeli settlement of Shilo in the West Bank on 5 June 2001. Avia Malka was nine months old when she was killed by two men who shot and threw grenades at cars and pedestrians in Netanya on 9 March 2002. Shalhevet Pass was 10 months old when she was shot by a sniper on a hill opposite the entrance to Avraham Avinu Israeli settlement in Hebron on 26 March 2001. In total, 12 of the victims were aged nine or younger and 49 others were under 18.

Sixty four of the people killed were older than 60. The oldest was Chanah Rogan, aged 90, killed in the bombing of a hotel at the celebration of Passover on 27 March 2002. Of the civilians killed in the attacks, 123 were female and 225 were male. Among the victims were non-Jewish Israeli citizens and foreigners. They include:

- Suheil Adawi, 32, a Palestinian citizen of Israel. He was one of 15 people killed in a suicide bombing in the Matza restaurant in Haifa on 31 March 2002. Suheil Adawi worked as a waiter in the restaurant. The restaurant was run by members of his family, five of whom were wounded in the attack;
- Shahada Dadis, 30, a Palestinian resident of Beit Hanina in East Jerusalem. He was shot dead on 16 January 2002 while driving a rented commercial vehicle with Israeli license plates in the West Bank. Shahada Dadis was a salesman for a pharmaceutical company and was travelling to Jenin for his company;
- Father Georgios Tsibouktzakis, a Greek Orthodox monk from the St George Monastery near Wadi Qalt in the West Bank. He was shot dead from a passing car while driving on the Jerusalem-Jericho road on 12 June 2001. His car had Israeli license plates.

Eleven of the people killed were foreign workers or visitors. For example, Ling Chang Mai and Chai Siang Yang, workers from China, were among six civilians killed when a suicide bomber attacked people at a bus stop in Jerusalem on 12 April 2002.

The weapons

Twenty five of the attacks against civilians were committed by people who had strapped explosives to themselves and died in the attacks. Suicide bombings were particularly lethal, claiming 184 victims. On six other occasions, civilians were killed by explosives that were planted or thrown.

Eighty eight attacks involved shootings; six people were stabbed to death; one was beaten to death and one - Yehuda Shoham, whose killing is described above - was killed by a rock.

The location

The great majority of attacks on civilians (92) and most of the shootings (79) were in the Occupied Territories. While there were far fewer attacks within Israel (34), they claimed the majority of victims (210), reflecting the fact that 22 of the 25 highly lethal suicide bomb attacks occurred within Israel.

The perpetrators

Armed groups reportedly claimed responsibility for about half of the lethal attacks on civilians (65) of the 128 attacks surveyed by Amnesty International. Claims were commonly made in phone calls or faxed statements to the media and in messages posted on websites. Sometimes more than one group claimed an attack. The main groups involved were: *Izz al-Din al-Qassam Brigades (Hamas)* - 23; *Al-Aqsa Martyrs Brigade* - 23; *Palestinian Islamic Jihad* - 11; and the *Popular Front for the Liberation of Palestine (PFLP)* - five. The following section provides a profile of these groups.

We've been living here for over 10 years; we used to travel to work each morning and come back home, a 45 minutes drive. I worked near the airport, my wife was a nurse in the local infirmary. We always travelled freely, the road was relatively quiet. On that evening [6 August 2001] we went to buy things for the new school year in Petah Tikvah. We had five kids in the car, another at home. We were driving back at 9pm. I was driving at 80km an hour, the speed limit, listening to the radio, very relaxed. Shots were fired, it was so unexpected - I thought something had happened, then I felt wounded, I thought I must get the car stopped, I managed to get the car stopped on the road. My 15-year-old daughter was screaming, I tried calling the emergency services on the mobile. There were a lot of people, the car in front had

accelerated, perhaps to get away, perhaps they were the gunmen, a lot of people stopped to help. My wife was killed. We had a hitch-hiker in the car; he was wounded in his lungs. I was paralysed below the waist. My daughter was paralysed, she's started moving one leg, she may eventually walk with crutches. The other two children came out. I came out of hospital two weeks ago."

Steve Bloomberg, Givot Shomron Settlement, West Bank, interviewed by Amnesty International on 30 January 2002, nearly five months after the attack.

3. Palestinian armed groups

This section describes the main Palestinian armed groups that have claimed or been accused of responsibility for lethal attacks on Israeli civilians since 29 September 2000. As indicated in section 2, responsibility for some attacks has been made on behalf of other groups about which little is known. No one claimed responsibility on behalf of an armed group for many attacks; in some of these cases where perpetrators were caught or killed, it appears that they were acting on their own initiative.

The section sets out the views of various leaders or officials of the organizations to which armed groups belong and of groups themselves, as presented in personal and written communications with Amnesty International delegates, in documents published by the groups and as reported by the media. The views of members of particular groups sometimes differ.

Fatah - Tanzim - Al-Aqsa Martyrs Brigades. *Fatah*, headed by President Yasser Arafat, is a secular, nationalist organization which is the dominant political force of the PLO and thus of the Palestinian Authority. It has a military wing called *Tanzim*. The Al-Aqsa Martyrs Brigade was formed by *Fatah* members in late 2000 (13) but - as described below - there are conflicting views as to whether this group is controlled by *Fatah* leaders.

Members of *Fatah* have attacked Israeli soldiers and civilians in the Occupied Territories. All the lethal attacks on civilians claimed by or attributed to *Fatah* (excluding those claimed by or attributed to Al-Aqsa Martyrs Brigade) have involved shootings, including shooting at occupants of cars with Israeli number-plates travelling on roads in the West Bank. The occupants of the cars have included men, women and children, among them Palestinian citizens of Israel or residents of East Jerusalem. *Fatah* members may also have been involved in mortar attacks on settlements in Gaza and towns in southern Israel.

President Arafat has condemned attacks on civilians on a number of occasions but it is uncertain whether his statements apply to attacks on all civilians throughout Israel and the Occupied Territories or only to attacks on civilians within Israel. A number of statements seem to cover all civilians and President Arafat and other Palestinian Authority leaders have previously spoken out against attacks on settlers. (14) However, President Arafat on 20 May 2002 presided over a meeting of Palestinian leaders who issued a statement urging "our people and all our struggling forces to comply with its decision to refrain from carrying out any operation against Israeli civilians *inside Israel* [emphasis added] even if they were in reprisal for the crimes of the occupation against Palestinian civilians." (15) *Fatah* Secretary General Marwan Barghouti has stated to Amnesty International delegates that *Fatah* considers that Israelis in the West Bank and Gaza are not civilians because "it is all an occupied country". Similar statements have been reportedly made by other leaders, for example, the Palestinian Authority Minister of Social Affairs, Intisar al-Wazir, is cited as stating in a lecture at Sheikh Zayid Centre for Coordination in Abu Dhabi that "martyrdom operations" inside the Palestinian territories occupied in 1967 are "legitimate because they are meant to resist occupation". (16) *Fatah's* policy, as publicly displayed on its website, is that "only when Israeli soldiers and Israeli settlers have sustained heavy casualties will the Israeli government decide it cannot, after all, afford the price of continuing the oppression of the Palestinian people". (17)

Al-Aqsa Martyrs Brigade claimed its first civilian victim in February 2001 - Lior Attiah, aged 23, was shot dead near the village of Jalame on the West Bank. (18) Lior Attiah was from Afula and had gone to Jalame to pick up his car from a repair shop. Since the killing of Lior Attiah, Al-Aqsa Martyrs Brigade is reported to have claimed responsibility for more than 20 lethal shooting and bombing attacks against civilians in the Occupied Territories and in Israel, about the same as the number claimed by *Hamas*. Attacks claimed by the Al-Aqsa Martyrs Brigade include:

- the gunman who shot dead three yeshiva (religious school) students - Netanel Riachi, 17, Gilad Siglitz, 14, and Avraham Siton, 18 - at Itamar settlement on the West Bank, on 28 May 2002;
- the suicide bomber who killed Ruth Peled and her 18 month old grand-daughter Sinai Keinan in Petah Tikvah on 27 May 2002;
- the suicide bomber who detonated his bomb next to a group of women and their children waiting near a synagogue where their husbands/fathers were, in central Jerusalem on 2 March 2002. Ten people were killed, among them seven month-old Ya'acov Avraham and his mother Tzofia Yaarit; 18-month old Oriah Lian and her twelve year old brother, Lidor; Liran Nehmad, aged 3, her sister Shiraz aged seven and her parents Shlomo and Gafnit Nehmad; and Shaul Nehmad aged 15.

The Israeli government alleges that Al-Aqsa Martyrs Brigade is an integral part of *Fatah* and that President Arafat has been "personally involved in the planning and execution of terror attacks. He encouraged them ideologically, authorized them financially and personally headed the *Fatah* Al-Aqsa Brigades organization." (19)

President Arafat has denied the Israeli allegations. President Arafat has also reportedly denied that the Al-Aqsa Martyrs Brigade is involved in "terrorism" and has stated that financial assistance provided by the Palestinian Authority to its members was "merely providing help to people who lost their jobs because of the ongoing struggle." (20)

Israel also alleges that *Fatah* Secretary General Marwan Barghouti has direct authority over the Al-Aqsa Brigades. (21) Israeli authorities arrested Marwan Barghouti on 14 April 2002 and allege that he ordered numerous attacks against Israel, including suicide bombings. (22) At the time of writing he faced the possibility of being tried before a military court, whose proceedings Amnesty International considers do not comply with international fair trial standards. (See section 4.)

Al-Aqsa Martyrs Brigade members have given different accounts about their links with *Fatah*, some indicating that the group is an integral part of *Fatah* and obeys President Arafat's orders, while others state that the group acts on its own initiative. (23)

Hamas - Izz al-Din al-Qassam Brigades - " Hamas " is the Arabic acronym for *Harakat al-Muqawamah al-Islamiyya*, "The Islamic Resistance Movement." It was formed in 1987 by Sheikh Ahmed Yassin, who resides in Gaza. *Hamas* opposes recognition of Israel, stating in its mandate that "Israel will exist and will continue to exist until Islam will obliterate it" and that " *Jihad* for the Liberation of Palestine " is the duty of every Muslim. (24) However, Sheikh Ahmed Yassin is reported as stating in May 2002 that he has "in the past" offered a truce with Israel if it withdrew from the territory it occupied following the 1967 war. (25)

Hamas runs extensive educational, welfare and religious activities in the Occupied Territories and has engaged in peaceful political activity. It enjoys significant popular support. The military wing of *Hamas* is called the *Izz al-Din al-Qassam* Brigades.

Hamas claimed responsibility for the first suicide bomb attack on civilians in Israel, which killed five people on a bus in the Hadera bus station in 1994. It claimed responsibility for 23 attacks on civilians between 29 September 2000 and 31 May 2002. These include:

- a suicide bomber who attacked people in the Matza restaurant in Haifa on 31 March 2002 - 15 civilians were killed;
- the gunman who killed Yael Ohana, aged 11 and her mother Miri Ohana, 50, in their house in Moshav Hamra, an Israeli settlement on the West Bank, on 6 February 2002;
- the suicide bomber who attacked people waiting to enter the "Dolphinarium" night club in Tel Aviv on 1 June 2001 - 20 of the 21 victims were civilians and 10 were aged under 18: Maria Tagilchev, 14; Yael-Yulia Sklianek, Yevgeni Dorfman, Raisa Nimrovsky and Katherine astaniyada-Talkir, all aged 15; and Yulia Nelimov, Liana Sakiyan, Irina Nepomneschi and Anya Kazachkov, who were aged 16; and Marina Berkovizki aged 17.

Sheikh Ahmed Yassin and other *Hamas* representatives have given a number of justifications for killing Israeli civilians. Sheikh Ahmed Yassin told Amnesty International delegates in July 2001 that under international law "we may defend ourselves against aggression by all means." He also stated that *Hamas* was "against" the killing of civilians, particularly women and children, but that it occurred "by mistake or to implement an eye for an eye, a nose for a nose" i.e. that it was legitimate as a form of reprisal. In his view, when *Hamas* killed Israeli children Israel was responsible because by killing Palestinian children it provokes retaliation.

Sheikh Ahmed Yassin has told Amnesty International that *Hamas* is willing to stop attacks on Israeli civilians if Israel stops targeting Palestinian civilians. He has also reportedly suggested an internationally sponsored agreement similar to that between Israel and *Hizbullah*, in which the parties committed themselves not to attack civilians. (26) *Hamas* official 'Abd al-'Aziz al-Rantisi has also described attacks on civilians as reprisals, stating in May 2002 for example that "as long as Jews continue to slaughter Palestinians we will hit Haifa, Tel Aviv and Afula. If a Palestinian child is hit, we will hit back, this is the formula. (27)

Other *Hamas* officials are reported to have stated that "martyrdom operations" would continue because they are considered to be an effective and legitimate means of fighting the Israeli occupation. (28) For example, when the Palestinian Authority condemned a suicide bombing that killed civilians in Israel in March 2002, *Hamas* spokesperson Mahmoud Zahhar stated that the Palestinian Authority's condemnation did not represent Palestinian and Arab opinion and

would not dissuade *Hamas* from further actions. Mahmoud Zahhar claimed that according to Islamic scholars the attack was "the highest degree of martyrdom" and "nobody from the Palestinian side, especially from the resistance movement or even from the Arabic people can condemn martyrdom operations justified by our scholars.(29)

Palestinian Islamic Jihad (*Harakat al-Jihad al-Islami al-Filastini*) - founded in 1979-80 by Fathi Shqaqi, 'Abd al-'Aziz 'Odeh and Bashir Musa, Palestinian students in Egypt. The organization has a number of factions, of which the main one is that founded by Fathi Shqaqi, who was killed by unknown assailants in Malta in 1995. The stated aim of Palestinian Islamic Jihad is the creation of an Islamic Palestinian state and the destruction of Israel.

Since October 2001, Palestinian Islamic Jihad has claimed responsibility for a number of attacks on civilians, including:

- the suicide bomber who detonated a device on a bus in Afula central bus station on 5 March 2002, killing 85-year-old Maharatu Tanaga;
- the gunman who fired at a commuter bus in Jerusalem on 4 November 2001, killing 16 year-old Shoshana Ben-Yishai and 14-year-old Menashe Regev;
- the suicide bomber who attacked people in the Sbarro restaurant in West Jerusalem on 9 August 2001, killing 16 civilians including two year old Hemda Schijveschuurder and Avraham Schijveschuurder, aged four, and six other children aged between eight and 16. *Hamas* also claimed this attack.

When Egyptian President Hosni Mubarak, Saudi Arabian Crown Prince Abdullah and Syrian President Bashar al-Assad issued a statement in May 2002 rejecting "all forms of violence," Islamic Jihad leader Abdallah al-Shami reportedly responded that the organization would "stick to our resistance even if the whole world stands against it. (30)

Popular Front for the Liberation of Palestine (PFLP) - Abu 'Ali Mustafa Brigades - founded in 1967 by George Habash, is a group guided by "Marxist interpretation and dialectical materialism. (31) Like *Hamas* and Islamic Jihad, its formal position is that it does not accept the existence of Israel in principle, though PFLP members with whom Amnesty International has spoken state that they would be prepared to accept a settlement of the conflict that involved recognition of Israel. The military wing of the PFLP is called the Abu 'Ali Mustafa Brigades, named after its Secretary General who was killed by Israeli security forces who fired a missile into his office in Ramallah on 27 August 2001.

The first reported PFLP killing of a civilian in Israel since the start of the Al-Aqsa *intifada* was on 27 August 2001, after the killing of Abu 'Ali Mustafa and claimed by the PFLP to be in retaliation. (32) The victim was Meir Lixenberg, father of five children, who was shot while travelling in his car in the West Bank. On 17 October 2001, the PFLP assassinated Israeli Tourism Minister Rehavam Ze'evi and claimed that it had done so in retaliation for Israel killing Palestinians, including Abu 'Ali Mustafa.

The PFLP has claimed several other attacks, including:

- a suicide bombing in a pizzeria in Karnei Shomron, Israel on 16 February 2002, killing three civilians - Keren Shatzki, 14; Rachel Theler 16; and Nehemia Amar;
- a suicide bombing in a Netanya market on 19 May 2002 that killed three civilians - Yosef Haviv, 70, Victor Tatinov, 63 and Arkady Vieselman, 40. This attack was also claimed by *Hamas*. (33)

Following the killing of Rehavam Ze'evi, the Palestinian National Security Council banned the military wing of the PFLP within the Occupied Territories. Israel demanded that the Palestinian Authority arrest those responsible and hand them over to Israel for trial. Five PFLP members, including its Secretary General, Ahmed Sa'adat, were detained. They were subsequently held in President Arafat's compound along with him when he was put under siege by Israel in April 2002. On 24 April four of the men - Hamdi Qar'an, Bassel al-Asmar, Majdi al-Rimawi and 'Ahed Abu Ghalma - were convicted by a hastily convened Palestinian military "field court" of charges relating to the killing of Rehavam Ze'evi. The proceedings fell far short of international fair trial standards. Under a deal struck to end the siege, the men were detained in a Jericho prison with their detention monitored by officials from the US and UK. Ahmed Sa'adat was also transferred to the Jericho prison and has not been charged or tried. In June 2002, the Palestinian High Court in Gaza ordered his release on the grounds that there was no evidence against him. However, the Palestinian Cabinet decided to continue to detain him, stating that "not implementing the resolution (of the court) is due to the Israeli threats of assassinating Sa'adat as there was an overt announcement to that by Sharon's spokesman." (34) The Palestinian Authority should respect the court's decision and release Ahmed Sa'adat from detention unless he is charged and brought to trial on recognizable criminal charges within a reasonable period. Amnesty International has also called on Israel to publicly guarantee that Ahmad Sa'adat will not be subjected to any extrajudicial measures, including assassination.

There have been conflicting reports about the PFLP's reaction to recent efforts by President Arafat and leaders of Arab countries to curb attacks on civilians. According to one account, the PFLP joined *Hamas* and the Palestinian Islamic *Jihad* in dismissing the recent rejection of "all forms of violence" by President Mubarak, Crown Prince Abdullah and President al-Assad, stating that "our legitimate and just struggle will continue until peace is achieved in Palestine with the establishment of an independent and sovereign state." (35) However *Al-Hayat* has reported that a meeting of leaders of Palestinian organizations split over the issue of "martyrdom" operations – the representative of the PFLP and other "left-wing organizations" were said to have opposed further such attacks, while *Hamas* and Islamic *Jihad* representatives remained committed to "continue the resistance in all its forms." (36)

Material support for armed groups

The main weapons used by Palestinian armed groups and individuals to attack civilians are explosives and various types of guns, including handguns, rifles and semi-automatic weapons. (37) Mortars have been used to attack settlements in the Gaza Strip and towns in Israel.

Bombs used in suicide bomb attacks have reportedly been made within the Occupied Territories using readily available chemicals and other materials. Mortars are also reported to have been constructed locally.

Many guns have reportedly been acquired locally, for example, weapons stolen from Israeli army depots or purchased from illicit Israeli small arms traders. (38) Guns have also reportedly been obtained from members of Palestinian security services. The Oslo Agreements specifically expressed the need for a "strong police force" to preserve security and act against "terrorism." By 1996 at least 11 separate security services had been created in the Palestinian Authority and they currently have more than 40,000 armed members. When it was established, the Palestinian Authority was required to seize all illegal weapons but reports indicate that many weapons are possessed by members of armed groups and Palestinian individuals.(39)

Other armed groups in the region such as *Hizbullah* and the Popular Front for the Liberation of Palestine-General Command in Lebanon are also reported to be suppliers of weapons to Palestinian armed groups. (40) According to Israeli sources a large majority of these arms are transited through Jordan and Egypt before being smuggled into the Occupied Territories. (41) Jordanian and Egyptian authorities report intercepting weapons being smuggled to Palestinian armed groups and have prosecuted people in connection with such incidents. (42)

The Israeli and US governments allege that a number of governments - in particular Iran, Iraq, Libya and Syria - provide or permit the transfer of weapons and other material assistance to Palestinian armed groups. A number of Palestinian armed groups have offices in these countries but it is not clear whether the governments provide direct assistance to their military activities. In May 2002, Iraqi Vice President Yassin Ramadhan described suicide bomb attacks on Israelis as "heroic operations of martyrdom" and stated that Iraq supported the *intifada* "by all means."(44). The Iraqi government has not, however, specified the forms such support takes apart from providing money to the families of "martyrs", a term that includes people killed by Israeli forces under all circumstances as well as those killed while carrying out attacks on civilians.

The Iranian government has denied providing any assistance to groups involved in "terrorism" and states it provides only "moral" support for Palestinian armed groups, which it considers are involved in legitimate action for independence rather than "terrorism". According to Mohammad Ali Mousavi, Iranian ambassador to Canada, Iran has "morally supported groups who are fighting for their independence for their being out of occupations, like *Hizbullah*. Terrorism is a menace of this world. We are against terrorism. We differentiate between terrorist acts [and] those legitimate rights of people who had been or are under occupation." (45)

In January 2002, Israeli military personnel intercepted the *Karine A*, a ship in the Red Sea carrying 50 tons of weapons including rockets, mortars, mines, explosives, firearms and firearms ammunition. Israel alleges that the weapons were being smuggled from Iran to the Palestinian Authority, which is only entitled to possess a restricted range of weapons under the Israeli-Palestinian agreements. Amnesty International's concern is that such weapons might come into the possession of armed groups which have attacked civilians and significantly improve their capacity to do so. The mortars, for example, were reportedly superior to the locally-made mortars which are extremely inaccurate; the range of the rockets would have put major Israeli cities within range of the West Bank. President Arafat initially stated that the Palestinian Authority had not purchased the weapons and the allegations of official involvement would be investigated. Subsequently, President Arafat reportedly wrote to US Secretary of State Colin Powell accepting responsibility "as chairman of the Palestinian Authority, though not personal responsibility." (46) A senior Palestinian official, Fuad Shubaki, was detained in relation to the shipment but denies any connection. He remains detained without charge in Jericho Prison. The Iranian government denies involvement in the shipment.

The Israeli government alleges that it has found documents "that show direct Saudi aid to the Palestinian Islamic *Jihad* (PIJ) and *Hamas*." (47) The Saudi Arabian government denies supporting "terrorism." It states that it provides funds to support the activities of the Palestinian Authority and of medical, welfare and other agencies (48) as well as financial assistance to families of Palestinians killed or injured during the *Al-Aqsa intifada*. It rejects criticism that providing money to

families of suicide bombers encourages Palestinians to commit such attacks. (49)

4. Action by the Palestinian Authority and Israel against armed groups

Attacks on civilians by Palestinian armed groups and individuals violate both domestic law and international law. Amnesty International's position is that there must be no impunity for human rights abuses by armed groups and individuals. The Palestinian Authority and the Israeli government have a duty to take measures to prevent attacks on civilians and to bring to justice those who order, plan and carry out such attacks. Such measures must always be in accordance with international human rights standards and international humanitarian law. As described below, Amnesty International considers that both the Palestinian Authority and the Israeli government have acted in a manner that violates their human rights obligations.

The armed groups responsible for attacks on civilians organize their actions and recruit perpetrators primarily within areas of the Occupied Territories for which the Palestinian Authority has responsibility, as these are the areas within which the great majority of the Palestinians live. The Palestinian Authority claims that it "has exerted a 100 percent effort ... to prevent terrorist operations" and refers to having "arrested hundreds of individuals suspected of violating the ceasefire," banning paramilitary organizations and prohibiting financial transfer to them. (50)

The Palestinian Authority has from time to time detained people who are or are alleged to be members of *Hamas*, the PFLP and other organizations. Palestinian armed groups have complained that the Palestinian Authority's periodic waves of arrests of their members and other actions against them have undermined their struggle against Israel. (51) However, many detentions appear to be motivated by political considerations, intended to stifle dissent and respond to Israeli and international pressure to act against armed groups rather than by a genuine concern to bring perpetrators of serious crimes to justice. While hundreds of people have been detained, some for years, they have generally been held without charge or trial. (52)

Very few people have been prosecuted for the killing of civilians and these trials have been conducted by the State Security Court, whose procedures are in flagrant violation of international fair trial standards. (53) As described in section 3, on 25 April 2002 four men were convicted in relation to the assassination of former Israeli Tourism Minister Rehevam Ze'evi on 17 October 2001.

The Palestinian Authority complains that its capacity to prevent attacks and to deal with suspected perpetrators has been seriously weakened by Israeli attacks on its security forces and installations such as police stations and prisons. The U.S. State Department, which monitors the implementation of Palestinian-Israeli agreements, agrees that has been the case but has also criticized the consistency and effectiveness of Palestinian efforts to control violence. (54) In May 2002, United Nations Middle East envoy Terje Roed-Larsen reportedly stated that the Palestinian Authority had "failed in its duty to control terrorism" and suggested that the United Nations could take over the Palestinian Authority's security function if its forces were unable to fulfil the role. (55)

It is not possible to determine with certainty whether or to what extent the persistence of attacks by armed groups operating within areas for which the Palestinian Authority has responsibility for security is due to weaknesses in the structure and operations of the numerous Palestinian Authority security organizations; collusion or inaction by officials sympathetic to the armed groups; the high level of popular support for the groups; or Israeli actions. There is evidence that each of these factors is a significant element of the situation.

As described in section 3, the Israeli government believes that the Palestinian Authority actively assists or permits armed groups to operate. Israeli air and land forces have reportedly entered areas that are formally the responsibility of the Palestinian Authority reportedly in order to act against alleged "terrorists" and "terrorist infrastructure". Amnesty International considers that a number of the measures taken by the Israeli authorities in the course of these incursions have involved or led to serious and widespread violations of human rights. (56) For example, Israeli forces have:

- assassinated Palestinians alleged to be responsible for attacks on Israeli civilians and soldiers, in non-combat situations when the people could have been arrested - such killings constitute extra-judicial executions and violate the right to life;
- detained thousands of people without charge or trial - this practice violates the prohibition against arbitrary detention - and subjected many of them to cruel, inhuman or degrading treatment, for example in March and April 2002, detainees were tightly handcuffed, not permitted to go to the toilet and deprived of food and blankets for extended periods;
- demolished homes lived in by people who are believed to have committed attacks - many other people lived in these homes and the measure therefore violates the prohibition against collective punishment.

"I and my friend Avi went on the night of 7 May to go to a club to visit a friend who works there. We got to the club and we didn't see our friend. After two minutes, I went right, he went left and immediately there was a huge bang and blackness. I must have been five metres from the terrorist who must have followed me in...I saw people lying right and left...As I was lying there I just thought of my baby to come. They didn't tell me that Avi had died til later. They'll let me out [of hospital] and I'll go at once to the cemetery to Avi's grave. Now I just think of my baby to be born; this and my wife give me strength. She comes every day. And my family gives me a lot of support. I still have a lot of pain."

T, a victim of a suicide bombing of a billiard club in Rishon Lezion, near Tel Aviv, on 7 May 2002 in which 16 people were killed. Interview with Amnesty International.

5. Accountability for attacks against civilians under international law

"...attacks on innocent civilians are morally repugnant and contrary to international law."

United Nations Secretary General Kofi Annan, following suicide bombings against Israeli civilians, 20 May 2002.

On 11 September 2001, hijackers used civilian aircraft with passengers on board to attack populated buildings in the US. Shortly afterwards, 17 Palestinian groups issued a statement condemning "the assaults that targeted innocent civilians." (57) The signatories, who called themselves "Palestinian National and Islamic Forces", included armed groups that have claimed responsibility for attacks on civilians in Israel and the Occupied Territories. They saw no contradiction between their condemnation of the killing of civilians in the US and their policy of killing civilians in Israel because, in their view, there is a fundamental difference between what occurred in the US and the situation in Israel and the Occupied Territories:

As we reiterate our unfaltering condemnation of terrorism, we will not

tolerate branding our legitimate struggle against the occupation of our land, as such. We therefore call upon the whole world to differentiate between terrorism and the legitimate struggle against occupation sanctioned by the tenets of religion and international conventions.

The most common justification advanced by Palestinian armed groups for the killings described in this report is that there are no legal restrictions under international law on the methods that may be used by a party engaged in resistance to an occupying power. As Sheikh Ahmed Yassin, spiritual leader of *Hamas* has said to Amnesty International, "under all international declarations and laws, Palestinians are entitled to defend and liberate their land by all means and to redeem their integrity." (58) Other armed groups have made similar statements. For example, the PFLP has stated that under international law the Palestinian people are entitled to "engage in all types of struggle in order to rid itself of the occupation and to attain its national independence." (59)

Contrary to these assertions, attacks on civilians are not permitted under any internationally recognized standard of law, whether they are committed in the context of a struggle against military occupation or any other context. Not only are they considered murder under general principles of law in every national legal system, they are contrary to fundamental principles of humanity which are reflected in international humanitarian law. In the manner in which they are being committed in Israel and the Occupied Territories, they also amount to crimes against humanity. Amnesty International condemns such killings unreservedly and calls on armed groups to end them immediately.

This section examines why the arguments advanced by Palestinian armed groups and their supporters to justify the deliberate killing of civilians find no basis in international law.

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

The assertion that international law imposes no constraints on the means used to fight occupying powers runs counter to one of the most basic rules of international humanitarian law. In the words of the ICRC, the most authoritative interpreter of international humanitarian law, "whenever armed force is used the choice of means and methods is not unlimited." (60) International humanitarian law sets out standards of humane conduct applicable to both state forces and armed groups.

A fundamental principle of international humanitarian law is that parties involved in a conflict must at all times distinguish between civilians and combatants, and between civilian objects and military objectives. It is not permitted to target civilians, that is, people who are not members of the armed forces of either side. This principle, known as the principle of distinction, is codified in the four Geneva Conventions of 1949 and their two Additional Protocols of 1977. The principle of distinction is a fundamental rule of customary international humanitarian law, binding on all parties to armed conflicts, whether international or non-international. (61)

Amnesty International acknowledges that there is considerable debate as to whether the violence in Israel and the Occupied Territories has reached a scale and intensity whereby the rules of international humanitarian law on the conduct of hostilities in international armed conflicts apply, and if so to what extent. There is also a debate regarding the status that Palestinian armed groups and their fighters would have under international humanitarian law. (62)

However, regardless of the formal legal categorization of the situation in the Occupied Territories, Amnesty International believes that Palestinian armed groups remain bound by fundamental principles of humanity, which are reflected in the rules of international humanitarian law outlined below. In cases not expressly covered by the provisions of international humanitarian law treaties, both "civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of the public conscience." (63)

As affirmed by the ICRC with respect to the situation in Israel and the Occupied Territories:

...Palestinian armed groups operating within or outside the occupied territories are also bound by the principles of international humanitarian law. Apart from the Fourth Geneva Convention, which relates to the protection of the civilian population, there are other universally accepted rules and principles of international humanitarian law that deal with the conduct of military operations. They stipulate in particular that only military objectives may be attacked. Thus, indiscriminate attacks, such as bomb attacks by Palestinian individuals or armed groups against Israeli civilians, and acts intended to spread terror among the civilian population are absolutely and unconditionally prohibited. (64)

The protection of civilians under international humanitarian law

Detailed provisions regarding the protection of the civilian population are contained in Protocol I Additional to the Geneva Conventions, relating to the protection of victims of international armed conflicts. Protocol I is particularly pertinent to the argument of Palestinian armed groups that international law permits parties who are struggling against an occupying force to use "all means", because it applies to international armed conflicts including "armed conflicts in which people are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination" (Article 1 (4)). Indeed, the situation in Israeli and the Occupied Territories was very much in the mind of the drafters of this provision.

While neither Israel and the Palestinian Authority are parties to Additional Protocol 1, its provisions regarding the protection of the civilian population are regarded as norms of customary international law. (65) Protocol I confirms the rule that "the civilian population and individual citizens shall enjoy protection against dangers from military operations" (Article 51 (1)) and specifies rules to ensure such protection. The civilian population as such, as well as individual civilians, must not be the object of attack. Acts or threats of violence whose primary purpose is to spread terror among the civilian population are prohibited (Article 51 (2)).

The Preamble of the treaty reaffirms that its provisions "must be fully applied in all circumstances to all persons who are protected by those instruments, without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the conflict."

Palestinian armed groups have often claimed that they only target Israeli civilians because Israel has killed Palestinian civilians. (66) Such reprisal attacks against civilians are explicitly prohibited under international humanitarian law (see Article 51 (6) of Protocol I). Armed groups are not permitted to target civilians in response to violations of the rules committed by the enemy (Article 51(8)).

Palestinian armed groups have also suggested that they kill Israeli civilians because the groups are too militarily weak to defeat the Israeli armed forces and have no other effective means of fighting. (67) Neither Protocol I nor any other provision of international humanitarian law permit armed groups and individuals to strike at civilians on the grounds that the armed forces of the enemy are too powerful to defeat in combat.

Civilians and combatants

Others have suggested that the prohibition of the killing of civilians does not apply to the situation in Israel and the Occupied Territories because, as Sheikh Ahmed Yassin has said, "[a]re there any civilians in Israel? They are all soldiers, men and women, except those religious persons, who do not serve in the army, the rest are all soldiers. The only difference is that they wear civilian clothes when they are in Israel, and military clothes when they come to us."(68)

Such arguments are not only factually erroneous, they seek to blur the distinction between civilians and combatants by describing a whole society as "militarized". International humanitarian law defines a civilian as any person who is not a member of the armed forces of a party to the conflict (Article 50 (1) Protocol I). Members of the armed forces comprise all organized armed forces, groups and units which are under a command responsible to the party, including militia and volunteer corps forming part of such forces (Article 43, Protocol I).

Israelis between the ages of 17 and 56 can be mobilized to serve in the armed forces. Under international humanitarian law a person remains a civilian for as long as they are not incorporated into the armed forces. Reservists when not in

active duty are not members of the armed forces and can therefore not be classified as combatants.

The fact that some people within the population are not civilians does not deprive the population of its civilian character and thus of its protection from direct attack (Article 50 (2) and (3) Protocol I). The occasional presence of soldiers among passengers on ordinary commuter buses, diners in a café or shoppers in a market does not make such venues legitimate targets for attack.

In addition to prohibiting direct attacks on civilians, international humanitarian law prohibits indiscriminate attacks, including attacks which strike military objectives and civilians without distinction, as well as attacks directed at a military objective but which cause disproportionate harm to civilians (Article 51 (4) and (5) of Protocol I). There are also obligations on both sides to take precautions to protect civilians by removing civilians from the vicinity of military objectives and avoiding locating military objectives near densely populated areas (Article 58 of Protocol I).

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 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." (69)

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 I). (70) 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.

Attacks against civilians as crimes under international law

If the current situation is characterized as one to which the rules on the conduct of hostilities in international armed conflict apply, attacks on civilians would violate international humanitarian law and would constitute war crimes (see Article 85 (3) of Additional Protocol 1 and Article 8(2) of the Rome Statute of the International Criminal Court).

The deliberate killing of Israeli civilians by Palestinian armed groups amounts to crimes against humanity. As defined in the Rome Statute of the International Criminal Court, crimes against humanity are various acts committed as part of a "widespread or systematic attack directed against any civilian population", "pursuant to or in furtherance of a State or organization's policy to commit such attack". (71) The specified acts include murder, torture and "other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health." (72) Crimes against humanity do not require a link to an armed conflict - they can be committed either in peacetime or in wartime. The deliberate killings of Israeli civilians by Palestinian armed groups and individuals are both widespread and systematic, and are perpetrated as part of a publicly announced policy to target civilians. They therefore satisfy the definition of crimes against humanity included in the Rome Statute of the International Criminal Court, which is recognized as reflecting customary international law.

War crimes and crimes against humanity are among the most serious crimes under international law, and represent offences against humanity as a whole. Bringing the perpetrators of these crimes to justice is therefore the concern and the responsibility of the international community. This view is illustrated in the Preamble to the Rome Statute of the International Criminal Court, adopted in July 1998, which affirms that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation.

The prime obligation to bring to justice the perpetrators of attacks on civilians falls to the Palestinian and Israeli authorities. This obligation is set out in international human rights and humanitarian law standards which both authorities have agreed to abide by, either through formal ratification or, as in the case of the Palestinian Authority, through statements of consent to be bound by relevant international treaties. (73) However, as documented in the previous chapter and in other Amnesty International reports, the measures taken by both Israel and the Palestinian Authority to investigate, prosecute and punish

those believed to be responsible have not only been ineffective in curbing attacks on civilians, but have also resulted in a pattern of widespread human rights violations, including violations of the right to life, the right to a fair trial and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment.

The international community cannot stand on the sidelines and allow this cycle of violence and human rights abuses to continue. Amnesty International is calling on the international community to assume its responsibility to ensure that international human rights and humanitarian law standards are upheld by all parties.

States and inter-governmental organizations should provide the necessary technical cooperation and assistance to the Palestinian Authority to enable it to conduct effective investigations and trials in strict accordance with international human rights standards. Amnesty International also reiterates its call, echoed in the resolutions and recommendations of various United Nations bodies, for international observers with a human rights monitoring component to ensure compliance by all parties with their international obligations. (74) Such observers should include police experts able to advise Palestinian security forces and to monitor their investigations, as well as judicial experts to advise on and monitor the conduct of judicial proceedings.

All States should prevent the transfer of any military assistance to Palestinian armed groups and Israeli armed forces which can reasonably be assumed to contribute to unlawful attacks on civilians.

Attacks on civilians are serious crimes under international law. All States therefore have a duty to exercise criminal jurisdiction over those responsible. To fulfil this responsibility, Amnesty International believes that states should enact universal jurisdiction provisions to ensure that their national courts are able to investigate and prosecute anyone suspected of committing these crimes, regardless of where they were committed or the nationality of the perpetrator or victim. Such crimes are not subject to any statute of limitations and perpetrators cannot escape conviction by claiming they were acting under orders.

The Rome Statute of the International Criminal Court entered into force on 1 July 2002. The Court has jurisdiction over genocide, crimes against humanity, war crimes and the crime of aggression committed after that date. (75) The International Criminal Court is designed to be complementary to the national courts and will only investigate and prosecute individuals when the national courts are unable or unwilling to do so. States with universal jurisdiction legislation, however, may be able to bring to justice individuals accused of such crimes, no matter when and where they occurred, in their national courts.

6. Creating a platform for change

"We call upon the parties behind military operations targeting civilians in Israel to reconsider their policies and stop driving our young men to carry out these operations. Suicide bombings deepen the hatred and widen the gap between the Palestinian and Israeli people. Also, they destroy the possibilities of peaceful co-existence between them in two neighbouring countries."

From "Urgent Appeal to Stop Suicide Bombings," a petition signed by 58 Palestinian intellectuals and public figures, published in *Al Quds*, a Palestinian daily newspaper, 19 June 2002. Within a few days of its publication almost 1000 people are reported to have signed the petition. (76)

Palestinian armed groups and individuals have killed hundreds of civilians during the past two years. The bodies and minds of thousands more have been wounded in the attacks. But there are also some grounds for hope. The escalating violence has taken a heavy toll among ordinary Palestinians and Israelis and on both sides many believe there must be a better way. Following a recent visit to Israel and the Occupied Territories, Amnesty International Secretary General Irene Khan reported:

There are many Palestinians who are angry and want revenge. But there are also Palestinians, among the people I met in Gaza and Jerusalem, who condemn the killing of Israeli civilians. There are many Israelis who are afraid for their lives and see a military response as the only solution, but there are also those who think differently. One Israeli man, whose 16 year old daughter had been killed in a suicide bombing in 1997, said to me: "I could have made my grief a tool for hatred, but I have decided to make it a platform for change. We must stop this endless cycle of violence".

As illustrated by the "Urgent Appeal to Stop Suicide Bombings" at the beginning of this section, Palestinian and other voices can be heard condemning the killing of civilians. The speakers include political and religious leaders, intellectuals and human rights activists. Some of the speakers have been persistent critics; others are new. Amnesty International hopes that this report will assist their efforts.

Yet even as the report was being completed, new attacks on civilians were committed and the appalling toll of victims

continued to rise. *Hamas* has condemned those who signed the petition. (77) Much remains to be done, in words and actions, to dissuade and prevent those involved from committing further attacks.

Amnesty International reiterates its appeal to the armed groups to respect the fundamental principles of humanity enshrined in international law and cease attacking civilians, immediately and unconditionally. We urge more Palestinians and others around the world to join in this appeal.

We urge the Palestinian Authority to strengthen the effectiveness of its criminal justice system within the framework of international human rights standards, and we call upon the international community to assist the Palestinian Authority to do so.

We urge Israel to heed its human rights and humanitarian law obligations in the measures it takes to prevent and respond to attacks.

Amnesty International's recommendations to the parties in Israel and the Occupied Territories and beyond are as follows.

Palestinian armed groups

Amnesty International calls on the leadership of all Palestinian armed groups to:

- publicly condemn all attacks on civilians;

and

- instruct all those under their command or influence not to attack civilians under any circumstances and make clear that such attacks will not be tolerated.

Palestinian Authority

Amnesty International recommends that the Palestinian Authority should:

- call upon Palestinian armed groups and individuals to cease attacking Israeli civilians in the Occupied Territories as well as within Israel;
- ensure its criminal justice agencies work effectively and diligently to prevent attacks;
- ensure that all attacks against civilians are promptly and thoroughly investigated and that those who order, organize or assist such attacks are brought to justice;
- ensure that all measures taken against people suspected of involvement in attacks comply in every respect with international human rights standards, specifically that No one is held in prolonged detention without charge or trial, that trials are fair and that torture, ill-treatment or the death penalty are not used;
- initiate a public campaign, including through the media, aimed at promoting opposition to attacks against civilians with Palestinian society.

Israeli government

Amnesty International calls upon the Israeli government 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;

and

- bring to justice all those involved in attacks on civilians, in fair trials and without torture or ill-treatment.

Other governments

Amnesty International calls upon other governments to:

- unequivocally condemn all attacks against civilians and, where they have links with Palestinian armed groups, urge the groups to cease attacking civilians;
- prevent any military assistance to armed groups that contributes to attacks on civilians;
- 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 alleged perpetrators;
- bring to justice anyone suspected of involvement in attacks against civilians who may be found in their jurisdiction and cooperate with the Palestinian Authority and Israel in their efforts to bring to justice the perpetrators.

NOTES

(1) Palestine Information Centre Website, BBC, " Hamas military wing claims responsibility for West Bank settlement attack", 28 April 2002; the Popular Front for the Liberation of Palestine reportedly also claimed responsibility, "Adua attack kills four, wounds seven", *Ha'aretz* 28 April 2002.

(2) The sources of information in this report include Amnesty International interviews with victims and their families, and with leaders and members of armed groups; Israeli authorities; public statements by armed groups; non-governmental organizations such as B'Tselem - The Israeli Information Center for Human Rights in the Occupied Territories (www.btselem.org); and the media.

(3) See, for example, "Sri Lanka: Amnesty International condemns Vavuniya bombing", AI Index: ASA 37/003/2000; "Colombia - Return to Hope", AI Index: AMR 23/23/00; "Sierra Leone: Amnesty International condemns continuing RUF attacks on civilians", AI Index: AFR 51/037/2000; "Spain: ETA's new killing campaign must end", AI Index: EUR 41/007/2000; "Uganda: Breaking God's Commands - the destruction of childhood by the Lord's Resistance Army", AI Index: AFR 59/001/1997.

(4) See, for example, UN Security Council Resolution 242 (1967) of 22 November 1967; UN Security Council Resolution 465 (1980) of 1 March 1980.

(5) See, for example, United Nations General Assembly Resolution 44/29 of 4 December 1989 - the Preamble states that it reaffirms "the inalienable right to self-determination and independence of all people under colonial and racist regimes and other forms of alien domination and foreign occupation, and [upholds] the legitimacy of their struggle, in particular the struggle of national liberation movements..."; United Nations General Assembly Resolution 2675 [XXV] (1970) and Resolution 3314 [XXIX] (1974).

(6) See, for example, *Broken lives - a year of intifada*, AI Index: MDE 15/083/2001; *Racism and the administration of justice*, AI Index: ACT 40/020/2001; "Excessive use of lethal force", AI Index: MDE 15/41/00; "Demolition and dispossession: the destruction of Palestinian homes", AI Index: MDE 15/59/99.

(7) According to an unnamed *Hamas* member, "most" Gazans object to suicide bombings but do not say so openly because they would be perceived as blaming Palestinian armed groups for the policies of the Israeli government - Amira Hass, "Hamas activist: most Gazans now object to suicide bombings", *Ha'aretz*, 20 May 2002 - this article also reports on a conference at Bir Zeit University on the West Bank in May 2002 where Palestinian speakers spoke for and against suicide attacks. Human rights activist Bassam Eid says that "the majority of the Palestinian public does not condone acts of terrorism, such as suicide bombings [but] in the broader context of the Israeli occupation, they are unable to condemn these acts unequivocally." - "Intifada Loses its Way", 20 January 2002, www.phrmg.org (retrieved 5 June 2002).

(8) Hanan Ashrawi, "Challenging Questions", 11 December, 2001 - <http://www.miftah.org> (retrieved 10 June 2002).

(9) International Committee of the Red Cross, *People on war - Country report: Israel, the occupied territories and the autonomous territories*, 1999, Geneva, v.

(10) "Terrorism and human rights - progress report prepared by Ms Kalliopi K. Koufa, Special Rapporteur", Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Fifty-Third Session, E/CN.4/Sub.2/2001/31, 27 June 2001.

(11) The estimate and information about the attacks was obtained from various sources including Israeli authorities, groups that claimed responsibility for attacks, interviews with victims or their families, non-governmental organizations and the media. It is not possible to establish the exact number of people killed in the context of the conflict because in many cases no-one was caught or claimed responsibility. Cases have been attributed to the Israeli-Palestinian conflict where the circumstances strongly indicate this e.g. shooting at occupants of cars with Israeli license plates in the Occupied Territories.

(12) *Ibid*

(13) Usama Al-Najjar, described as the official spokesman of Al-Aqsa Martyrs Brigade, interviewed in *Al-Intiqad* (Lebanon)

17 August 2001, cited in The Middle East Media Research Institute, "Statements by Heads of Fateh Factions", Special Dispatch Series Number 260, 22 August 2002.

(14) See for example, President Arafat and Palestinian cabinet minister Ziad Abu Zayyad - Ross Dunn, "Arafat in threat to sack PLO officers", *The Age*, 22 September 2002; on 16 December 2001; President Arafat reportedly called for "a comprehensive cessation to all the armed activities" including "mortar attacks against settlements" - "Arafat orders an end to violence against Israel", *haaretzdaily.com*.

(15) BBC "Palestinian leadership urges militants against attacking inside Israel", 21 May 2002.

(16) *Al-Hayat*, 24 May 2002.

(17) "The Intifada of Independence", *www.fateh.net* (retrieved 20 May 2002).

(18) *ibid.*

(19) Israeli government Ministry of Foreign Affairs, "The involvement of Arafat, PA Senior Officials and Apparatuses in Terrorism against Israel, Corruption and Crime", *www.israel-mfa.gov.il/mfa/go.asp* (retrieved 3 May 2002).

(20) AFP, "Arafat says he's ready to accept Israeli Jewish state", 13 May 2002.

(21) *ibid.*

(22) *ibid.*

(23) For example, see the views of two reported Al-Aqsa Martyrs Brigade leaders interviewed in March 2002 - Ibrahim Abaya stated that the Al-Aqsa Brigades would follow any decision by President Arafat to "suspend all operations and have a cease fire"; Jihad Ja'ari stated that the Brigades abide by all President Arafat's decisions "except if the Israelis break the cease-fire. For example, by attempting to assassinate one of the leaders of the Brigade of the Aqsa Martyrs or our political leadership or the bombardment of the positions of Palestinian civilians, there will be appropriate response to that by the Brigade without having to check with the President" - interviews broadcast in US by PBS television on Frontline #2015, "Battle for the Holy Land" on 14 April 2002. Different views are also reported in Council on Foreign Relations, "Terrorism: Questions and Answers - Al-Aqsa Martyrs Brigade", *www.terrorismanswers.com/groups.alaqsa* (retrieved 3 June 2002); Al-Aqsa spokesman Usama Al-Najjar states that members "are warriors who are not subjected to any political decision and have no relation with the first rank of the PA. Although some of its members work in sensitive positions in the PA's civil ministries or its security apparatuses" - *Al-Intiqad* (Lebanon) reported in The Middle East Media Research Institute, "Statements by Heads of Fateh Factions", Special Dispatch Series - No. 260, 22 August 2001.

(24) "The Covenant of the Islamic Resistance Movement", 18 August 1988, *www.yale.edu/lawweb/avalon/mideast/hamas* (retrieved 1 May 2002).

(25) Geert Linnebank and Barry Moody, " Hamas leader rejects Palestinian elections", Reuters, 23 May 2002. *Hamas* spokesperson Ismail Abu Shanab also stated in April 2002 that *Hamas* would "cease all military activities" if Israel agreed to the Saudi plan - Robert Plotkin, " Hamas would accept Saudi peace plan, spokesman says group would stop attacks on Israelis if occupation ends", *San Francisco Chronicle*, 28 April 2002.

(26) Interview with the Palestinian Media Centre, reported by *al-Sharq al-Awsat*, 28 May 2002; the text of the cease-fire "understanding" between Israel and *Hizbullah* can be seen on the website of the Israeli Ministry of Foreign Affairs, *www.israel-mfa.gov.il*.

(27) "Nidal al-Mughrabi, "Palestinian militants say suicide attacks to go on", Reuters, 13 May 2002.

(28) For example, statements by Sheikh Hasan Yusuf and Musa Abu Marzq reported in *Al-Zaman*, London, 29 May 2002, reported by BBC.

(29) "AFP, "Authority doesn't speak for Palestinians on bombings: *Hamas*", 8 May 2002.

(30) " Nidal al-Mughrabi, "Palestinian militants say suicide attacks to go on", Reuters, 13 May 2002.

(31) " "An interview with the New Leader of the Popular Front for the Liberation of Palestine (PFLP) Ali Mustafa", 15 May 2000, *www.pflp-pal.org/opinion/interviews/general* (retrieved 3 May 2002).

(32) PFLP *Communiqué*, 23 October 2001.

(33) *Hamas* also claimed the bombing in Netanya

(34) Statement issued 3 June 2002.

(35) AFP, "PFLP vows to continue fight against Israel after Sharm el-Sheikh summit", 13 May 2002. (36) Ibrahim Humaydi, "Palestinian organizations' leaders split over martyrdom operations", *Al-Hayat*, 21 May 2002, reported by BBC, "London-based paper reports splits at meeting of Palestinian 'opposition groups'", 21 May 2002.

(37) Luft Gail, "Palestinian military performance and the 2000 Intifida", *Meta Journal*, December 2000 describes additional weapons such as anti-tank missiles which are generally used against military objectives.

(38) Suzanne Goldenberg, "Guns for sale - how stolen Israeli weapons arm Fatah's fighters", *The Guardian*, 16 December 2000; Derek Miller, "Small arms and light weapons in the Middle East", Background Paper, Small arms survey, Geneva, 2001; Robert Fisk, "In on the tide, the guns and rockets that fuel this fight", *The Independent*, 29 April 2002.

(39) For example, see Suzanne Goldenberg, "Guns for sale - how stolen Israeli weapons arm Fatah's fighters", *The Guardian*, 16 December 2000.

(40) On *Hizbullah* see for example, Christopher Hack, "Hezbollah plays for high stakes", *news.bb.co.uk/hi/English/world/middle_east.../1909296* (retrieved 9 May 2002) who reports that *Hizbullah* leader Sheikh Hassan Nasrallah has "admitted trying to smuggle weapons to the Palestinians via Jordan." On the Popular Front for the Liberation of Palestine-General Command see AFP, "PLP-GC says assassinated official sought to arm Palestinians", 22 May 2002.

(41) Rodan and Sullivan, "PA smuggles arms via Sinai tunnels", *Jerusalem Post*, 6 June 1998.

(42) For example, see "Jordan stops weapons headed to Palestinians," AP, 6 May 2002; Saad Hattar, "Court convicts 4 men for criminal possession of arms", *Jordan Times* 30 April 2002; AFP, "Four Palestinians allegedly planning attacks on Israel jailed in Amman", 29 April 2002.

(43) Israeli government Ministry of Foreign Affairs, "The Involvement of Arafat, PA Senior Officials and Apparatuses in

Terrorism against Israel, Corruption and Crime", www.mfa.gov.il/mfa/go.

(44) AFP, "Iraq hails Palestinian suicide bombers, vows support for intifada", 21 May 2002

(45) Reported in "How Iran entered the 'Axis," broadcast in "Frontline" television program, www.pbs.org/wgbh/pages/frontline/shows/tehran (retrieved 7 May 2002).

(46) BBC News, "Arafat takes blame for arms shipment", 14 February 2002.

(47) "The Involvement of Arafat, PA Senior Officials and Apparatuses in Terrorism against Israel, Corruption and Crime", www.mfa.gov.il/mfa/go. Chapter V paragraphs 26-29.

(48) "Finance Minister speaks out on aid to Palestinians", www.saudiembassy.net/press_release/statements/01-ST-0320-Palestine-aid.htm.

(49) Interview with Saudi Arabian Foreign Minister Prince Saud al-Faisal, Scott Macleod, "No apologies from this Saudi", *Time*, 12 May 2002.

(50) Palestine Liberation Organization, "The Palestinian Uprising Against Occupation", www.nad-plo.org/fact_sheets_faq/faq1 (retrieved 28 April 2002).

(51) See, for example, PFLP press releases of 17 December 2001 and 21 February 2002.

(52) Amnesty International, "Defying the Rule of Law: Political detainees held without charge or trial", AI Index: MDE 21/03/99.

(53) For example, see Amnesty International reports: "Trial at midnight: secret, summary, unfair trials in Gaza", AI Index: MDE 15/15/95; "Defying the Rule of Law: Political detainees held without charge or trial", AI Index: MDE 21/03/99 and *Broken lives – a year of intifada*, AI Index: MDE 15/083/2001; ADDAMEER Prisoner Support and Human Rights Association, "PA State Security Court Decision is Illegal and Unjust", www.addameer.org/press/02april27; ADDAMEER Prisoner Support and Human Rights Association, "The state of human rights in the areas of the Palestinian Authority", 1999, www.addameer.org/press/02april27.

(54) In its annual review "Patterns of Global Terrorism 2001", the U.S. State Department observes that "Israel's destruction of the PA's security infrastructure contributed to the ineffectiveness of the PA."

(55) AFP, "UN could take over Palestinian police role: Roed-Larsen", 15 May 2002.

(56) See, for example, "The heavy price of Israeli incursions", AI Index: MDE 15/042/2002; "Mass detention in cruel, inhuman and degrading conditions", AI Index: MDE 15/074/2002; "State Assassinations and Other Unlawful Killings", AI Index: MDE 15/005/2001.

(57) "A Statement Issued by the Palestinian National and Islamic Forces", 14 September 2001, www.pfip-pal.org/press/140901. The armed groups included the Popular Front for the Liberation of Palestine, the Islamic Resistance Movement - *Hamas* and the Islamic *Jihad* Movement. Among the other organizations were the General Union of Palestinian Women and the Palestinian Network for Non Governmental Organizations.

(58) "Letter sent by Sheikh Yassin to Amnesty International members in response to their letters protesting the targeting of civilians", 25 June 2001.

(59) Popular Front for the Liberation of Palestine press release, 3 November 2001.

(60) "Statement by the International Committee of the Red Cross, Geneva, 5 December 2001. This basic rule is explicitly reflected in a number of international humanitarian law treaties, including Article 22 of the Regulations annexed to Hague Convention IV Respecting the Laws and Customs of War on Land (1907) and Article 35 (1) of Protocol I to the Geneva Conventions (1977).

(61) *Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, Merits, Judgment of 27 June 1986, ICJ Rep.

(62) For an illustration of the range of opinions, see "Israel and the Palestinians: What Laws Were Broken?" Report of the Crimes of War Project expert analysis on the Israeli-Palestinian conflict (<http://www.crimesofwar.org/expert/me-intro.html>). For a discussion of some of the difficulties of defining "armed conflict", see the International Committee of the Red Cross Commentary on the Geneva Conventions of 12 August 1949, (Geneva, ICRC, 1952) and the decision of the International Criminal Tribunal for the former Yugoslavia (appeals Chamber) in *Prosecutor v. Dusko Tadic*: Decision of 2 October 1995 on the defence motion for interlocutory appeal on jurisdiction, at 70.

(63) This is known as the Martens clause - named after its drafter Fyodor Fyodorovich Martens - which was adopted as part of the Preamble of the Hague Convention II Respecting the Laws and Customs of War in 1899 and appears in numerous international humanitarian law treaties since then. The version quoted is from Article 1(2) of the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I).

(64) Statement by the International Committee of the Red Cross, Geneva, 5 December 2001.

(65) Customary international law comprises international rules derived from state practice where there exists a conviction in the international community that such practice is required as a matter of law. The chief sources of international law include international treaties, customary law and general principles of law (Article 38 of the Statute of the International Court of Justice).

(66) For example, see Nidal al-Mughrabi, "Palestinian militants say suicide attacks to go on", Reuters, 13 May 2002, reports *Hamas* official 'Abd al-'Aziz al-Rantisi stating that "As long as Jews continue to slaughter Palestinians we will hit Haifa, Tel Aviv and Afula."

(67) For example, see interview with Jihad Ja'ari, Al Aqsa Brigades leader: "In the beginning the National Liberation Movement (Fatah) did not use the martyrdom/*ishtishaadeyye* (suicide bomber) operations. But in our study of the enormous oppressive Israeli military might used against the Palestinian people and the Palestinian children, we had no choice but to take measure and appropriately respond to the large military operations. When the F-16 Air Force bombers bombard our areas and our people and families, what do the Israelis expect from us? That we answer them back with crude machine guns? Our view was that the appropriate response to such bombardment is to inflict heavy casualties on

the Israeli street so that we can almost match what they inflict on us..." E Broadcast by PBS television on Frontline #2015, "Battle for the Holy Land" on 14 April 2002.

(68) Reported in *Al-Hayat*, 22 May 2002.

(69) Marwan Barghouti, "Want Security? End the Occupation", *Washington Post*, 16 January 2002.

(70) The ICRC Commentary to Article 51 (3) of Protocol I defines hostile acts as "acts which by their nature and purpose are intended to cause actual harm to the personnel and equipment of the armed forces". The word "hostilities" covers "not only the time that the civilian actually makes use of a weapon, but also, for example, the time that he is carrying it, as well as situations in which he undertakes hostile acts without using a weapon."

(71) Article 7 (1) and (2)(a) of the 1998 Rome Statute of the International Criminal Court

(72) Article 7 (1) of the 1998 Rome Statute of the International Criminal Court.

(73) Israel is not yet among the state parties to the Rome Statute, and, until it is a state, the Palestinian Authority may not ratify the treaty. However the Rome Statute, which was adopted by an inter-governmental conference on 17 July 1998 represents the most current comprehensive definition of war crimes and crimes against humanity. The Palestine Liberation Organization indicated its willingness to commit itself to international humanitarian law standards in 1979 and in 1982 declared that it would apply the four Geneva Conventions and Additional Protocol I. In June 1989, the PLO informed the Swiss government that its Executive Committee, acting as Government of the State of Palestine, had decided to adhere to the four Geneva Conventions and the two Additional Protocols. The Swiss Government circulated this communication to the state parties for information only, explaining that it was not in a position to decide whether the communication could be considered an instrument of accession "due to the uncertainty within the international community as to the existence or non-existence of the State of Palestine". It confirmed, however, the validity of the PLO unilateral declaration of June 1982, which remains a significant expression of commitment to abide by the rules and principles of international humanitarian law. Soon after signing the first Oslo Agreement in 1993, President Yasser Arafat stated to Amnesty International delegates that he would abide by international human rights treaties.

(74) Amnesty International's proposal for international monitors is described in, for example, "Statement to the UN Security Council on the protection of human rights and international humanitarian law in Israel and the Occupied Territories", AI Index: MDE 01/003/2002, 18 April 2002.

(75) In the absence of a UN Security Council referral, the Court will not be able to prosecute nationals of a country which has not ratified the Rome Statute or if the crime was committed in a country that has not ratified it unless either such country makes a declaration accepting the jurisdiction of the court.

(76) AFP, "Almost 1000 Palestinians say no to suicide bombings", 22 June 2002.

(77) *Al-Hayat* - 20 June 2002.

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