The conflict in Gaza

A briefing on applicable law, investigations, and accountability

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INTRODUCTION

Several bodies of international law apply to the conflict in Gaza.

- International humanitarian law, also known as the laws of armed conflict, includes rules protecting civilians and other individuals *hors de combat*, as well as rules regulating the means and methods of warfare. It also includes rules imposing obligations on the power occupying a territory. International humanitarian law binds all parties to an armed conflict, including non-state armed groups.

- International human rights law, including civil, cultural, economic, political and social rights, applies both in peacetime and during armed conflict and is legally binding on states, their armed forces and other agents. It establishes the right of victims of serious human rights violations to remedy, including justice, truth and reparations.

- International criminal law establishes individual criminal responsibility for certain violations and abuses of international human rights and international humanitarian law, such as war crimes, crimes against humanity and genocide, as well as torture, extrajudicial executions and enforced disappearance.

In some instances Amnesty International has identified violations and abuses of international human rights law and international humanitarian law by the parties to the conflict in Gaza. This briefing includes examples of attacks that appear to violate applicable law. In light of this, Amnesty International calls:

(a) for the conduct of hostilities by all parties to be the subject of an international enquiry as laid out in the recommendations at the end of this report. Given the allegations of crimes under international law by members of the Israeli armed forces and members of Hamas, an independent fact finding mission is required to carry out a prompt, thorough, impartial and independent investigation.

(b) where there is sufficient admissible evidence, persons suspected of perpetrating crimes under international law must be prosecuted in proceedings which meet international standards of fairness.

1. INTERNATIONAL HUMANITARIAN LAW

International humanitarian law is a body of rules and principles whose central purpose is to limit, to the maximum extent feasible, human suffering in times of armed conflict. It sets out standards of humane conduct and limits the means and methods of conducting military operations. It seeks to protect primarily those who are not participating in hostilities, notably civilians, as well as combatants who are sick, wounded or captured.

The four Geneva Conventions of 1949 and their two Additional Protocols of 1977 are the principal instruments of international humanitarian law. Israel is a party to the 1949 Geneva Conventions but is not a party to either the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), or the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II).

Nonetheless, Israel is bound by the rules in Additional Protocols I and II, which are part of customary international law and therefore obligatory for all parties to an armed conflict. Hamas is not a party to international treaties, but is bound by customary rules of international humanitarian law applicable to all parties to an armed conflict. The fundamental provisions of Additional Protocol I, including the rules cited below, are considered part of customary international humanitarian law and are, therefore, binding on all parties to a conflict, whether international or non-international.

1.1 INTERNATIONAL OR NON-INTERNATIONAL ARMED CONFLICT

The occupation of the Gaza Strip is a consequence of an international armed conflict and it is governed by international humanitarian law applicable to belligerent occupation (see below section 1.2), as well as human rights law (see below section 3).

Under normal circumstances, the occupying power is bound by law enforcement standards derived from human rights law when maintaining order in occupied territory. For example, these would require the occupying power to seek to arrest, rather than kill, members of armed groups suspected of carrying out attacks, and to use the minimum amount of force necessary in countering

any security threat.

However, if a situation arises in which fighting inside the occupied territory reaches the requisite scale and intensity, then international humanitarian law rules governing humane conduct in warfare apply alongside relevant human rights law. When fighting breaks out during a long-term occupation between the occupying power (a state) and non-state armed groups, it is generally qualified as a non-international armed conflict and such fighting is governed by the rules governing conduct of hostilities (see below section 1.3). However, even when a conflict has broken out, which legal standards apply will depend on the circumstances of a particular situation. For example, in the case of a demonstration during a conflict, law enforcement standards and human rights law would govern the conduct of forces policing the demonstration.

The qualification of an armed conflict as international or non-international is particularly relevant with respect to the distinction between civilians and combatants (see below); but the rules on the conduct of hostilities are essentially the same.

1.2. LAW OF OCCUPATION

Israel is the occupying power in the Gaza Strip. In 2005, as part of what it termed "disengagement" from Gaza, Israel removed its settlements and settlers. Yet despite the redeployment of its troops in 2005, the Israeli army has retained effective control over the Gaza Strip. Israel maintains sole control of Gaza's airspace and territorial waters and does not allow any movement of people or goods in or out of Gaza via air or sea. Israel also continues to exercise a degree of control over Gaza's border with Egypt and Israeli officials have repeatedly made it clear that this border can only be reopened within the framework of a joint agreement with the Palestinian Authority and Egypt.[1] Israel also continues to control electricity, water and telecommunications in Gaza. It has regularly conducted raids in Gaza, often arresting "wanted" men; and carrying out so-called "targeted killings", in air strikes which have claimed a high toll on civilians.

As the occupying power in Gaza, Israel has specific obligations under international humanitarian law. It must comply with the provisions of international humanitarian law applicable to belligerent occupation, including:

[1] According to the UN Office for the Coordination of Humanitarian Affairs (OCHA) which monitors implementation of the Agreement on Movement and Access (AMA), the Rafah crossing has been closed since 7 June 2007. See OCHA's Movement and Access reports (http://www.ochaopt.org). For the text of the AMA, see:
http://www.mfa.gov.il/MFA/Peace+Process/Reference+Documents/Agreed+documents+on+movement+and+access+from+and+to+Gaza+15-Nov-2005.htm

- specific provisions of the Hague Convention (IV) respecting the Laws and Customs of War on Land and its annexed Regulations respecting the Laws and Customs of War on Land of 18 October 1907 (hereafter Hague Regulations);
- the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (hereafter Fourth Geneva Convention);[2]
- customary rules of international humanitarian law applicable to belligerent occupation, including the rule protecting persons in the power of a party to the conflict, detailed in Article 75 of the 1977 Protocol Additional to the Geneva Conventions, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I).

Article 42 of the Hague Regulations defines occupation: *"Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised."* In such situations, the occupying power *"shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."* (Hague Regulations, Article 43).

The Fourth Geneva Convention imposes obligations on an occupying power in relation to the inhabitants of the occupied territory, who are entitled to special protection and humane treatment. Among other things, the rules prohibit the occupying power from wilfully killing, ill-treating or deporting protected persons. The occupying power is responsible for the welfare of the population under its control. This means it must ensure that law and order is maintained and basic necessities are provided for.

The core idea of the international rules governing belligerent occupation is that occupation is transitional, for a limited period. One of the key aims of the rules is to enable the inhabitants of an occupied territory to live as "normal" a life as possible.

As an occupying power, Israel is required by international law to ensure the protection of the rights of the Palestinian population in the Occupied Palestinian Territories (OPT), and to treat them humanely at all times.

1.2.1 MEASURES OF CONTROL OR SECURITY

Measures of control or security must be *"necessary as a result of the war"* (Article 27, Fourth Geneva Convention). However, *"regulations concerning occupation… are based on the idea of the personal freedom of civilians remaining in general unimpaired… What is essential is that the measures of*

[2] The Israeli government stands alone in the international community in contending that the Fourth Geneva Convention does not apply to the Occupied Palestinian Territories (OPT).

constraint they adopt should not affect the fundamental rights of the persons concerned... those rights must be respected even when measures of constraint are justified" (ICRC Commentary to Article 27 of the Fourth Geneva Convention).

1.2.2 DESTRUCTION OF HOMES AND PROPERTY

As the occupying power, Israel is forbidden from destroying the property of Palestinians in the West Bank and Gaza Strip, unless it is militarily necessary to do so. Article 53 of the Fourth Geneva Convention provides that:

"Any destruction by the occupying power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or co-operative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations."

Israel's aerial bombardment, artillery shelling and ground assault have caused extensive destruction of civilian property in the Gaza Strip. In some cases, civilian buildings and homes were deliberately destroyed. It is too early to assess the full extent of the damage; but satellite images suggest that it is devastating – particularly in areas such as Rafah in the south, and parts of the north and east of the Gaza Strip that had already suffered from illegal house destruction by Israeli forces on a mass scale prior to the disengagement in 2005.[3]

According to Article 147 of the Fourth Geneva Convention, *"extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly"* is a grave breach and hence a war crime.

1.2.3 FOOD, MEDICAL SUPPLIES AND RELIEF

As the occupying power, Israel has an obligation to ensure the population of Gaza have adequate access to food, essential supplies, medicine and medical care.

According to Article 55 of the Fourth Geneva Convention, the occupying power *"has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate."*

Article 56 states: *"To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the*

[3] See Amnesty International, *Israel and the Occupied Territories: Under the rubble: House demolition and destruction of land and property* (Index: MDE 15/033/2004) for analysis of Israel's policy of punitive and security house demolition as a war crime.

cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory… Medical personnel of all categories shall be allowed to carry out their duties."

Article 59 is particularly relevant to the current situation in Gaza. It requires that: *"If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal."*

Israel has not only failed to adequately supply the population of Gaza, it has deliberately blocked and otherwise impeded emergency relief and humanitarian assistance. Israeli attacks have struck aid convoys, killing UN personnel. And its forces have obstructed medical personnel attempting to carry out their duties.

1.2.4 COLLECTIVE PUNISHMENT

The prolonged blockade of Gaza, which had already been in place for some 18 months before the current fighting began, amounts to collective punishment of its entire population.

The Fourth Geneva Convention specifically prohibits collective punishment. Its Article 33 provides: *"No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited."*

As explained in the authoritative commentary of the ICRC: *"This paragraph then lays a prohibition on collective penalties... penalties of any kind inflicted on persons or entire groups of persons, in defiance of the most elementary principles of humanity, for acts that these persons have not committed."*[4]

1.2.5 DETENTION

Captured members of non-state armed groups in the Gaza conflict are not entitled to prisoner of war status. The occupying power can take lawful action against armed groups and their members by all legitimate means under domestic legislation and members of non-state armed groups can be prosecuted, tried and sentenced for participating in armed hostilities. However, they must be treated humanely at all times, as outlined in Common Article 3 and Article 75 of Additional Protocol I.

Israel regularly places Palestinians in administrative detention without charge or trial – a practice which they say is based on the Fourth Geneva Convention's

[4] ICRC, Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War, p225, (Geneva, 1958).

provisions for internment on security grounds (Article 78). Amnesty International is opposed to this practice, which is routinely abused by Israeli authorities as a substitute for bringing suspects to trial. Israel tries many Palestinians suspected of attacks on Israelis in unfair trials in military courts in violation of the provisions of Article 75 of Additional Protocol I.

Prior to the beginning of the current Israeli military operation, more than 900 Palestinians from the Gaza Strip were already detained in prisons inside Israel, serving sentences for "security" offences, and have been deprived of family visits since May 2007. Among these detainees, at least three members of the same family, the Ayyads, are being detained under a new Israeli law as illegal combatants. This appears to be because the Israeli government no longer accepts that Gaza is occupied and that its actions are governed by the Fourth Geneva Convention. If this is the case, this would be a violation of Article 47 which prohibits the occupying power from depriving protected persons of the benefits of this Convention.

Amnesty International has not yet confirmed how many Palestinians have been detained since the beginning of this military operation. It appears that some are being held in a military base inside Israel and may be charged as illegal combatants.

1.3. RULES GOVERNING THE CONDUCT OF HOSTILITIES

1.3.1 CIVILIANS AND MEMBERS OF ARMED GROUPS

Civilians are defined in international humanitarian law as those who are not combatants. However, international humanitarian law provides a definition of combatant only with respect to international armed conflict. There are no rules regulating combatant, or prisoner of war (POW) status, with respect to non-international armed conflicts.

In the context of the current conflict in Gaza, Amnesty International uses the term civilians to describe people who are not taking direct part in hostilities.[5] According to Additional Protocol I, *"in case of doubt whether a person is a civilian, that person shall be considered to be a civilian."* (Article 50(1).)

A spokesperson for the Israeli army told the BBC: "Our definition is that anyone who is involved with terrorism within Hamas is a valid target. This ranges from the strictly military institutions and includes the political institutions that provide the logistical funding and human resources for the terrorist arm." And its actions in Gaza have demonstrated that Israeli forces consider all individuals and institutions associated with Hamas to be legitimate targets. The consequences of applying such an overly broad definition, which undermines

[5] There is no clear definition of direct participation in hostilities in international law. But there is consensus that some activities, such as use of weapons to commit acts of violence against enemy forces, would constitute direct participation.

the principle of distinction (see section 1.3.2), are evident in the growing numbers of civilians killed and injured in Gaza. Political leaders involved in military strategy and planning may lose their immunity from attack for the duration of their participation in hostilities. However, Hamas members or supporters who are not taking direct part in hostilities are civilians who must not be made the object of attacks.

1.3.2 PROHIBITION ON DIRECT ATTACKS ON CIVILIANS AND CIVILIAN OBJECTS – THE PRINCIPLE OF DISTINCTION

Article 48 of Additional Protocol I sets out the "basic rule" regarding the protection of civilians – the principle of distinction. This is a cornerstone of international humanitarian law.

"In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives."

According to the Rome Statute, intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities is a war crime.[6]

Under Article 51(3) of Additional Protocol I, civilians remain protected *"unless and for such time as they take a direct part in hostilities"*.

Article 52(1) of Additional Protocol I provides that: *"Civilian objects are all objects which are not military objectives."* Article 52(2) defines military objectives as: *"those 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."* Military advantage may not be interpreted so broadly as to render the rule ineffective. To justify under this provision attacks aimed at harming the economic well-being of a state or demoralizing the civilian population in order to weaken the ability to fight would be to distort the legal meaning of military advantage, undermine fundamental principles of international humanitarian law, and pose a severe threat to civilians.

Objects that do not meet these criteria are civilian objects. In cases where it is unclear whether a target is used for military purposes, *"it shall be presumed not to be so used"* (Article 52(3)).[7]

[6] Article 8(2)(b)(i).

[7] The authoritative ICRC Commentary on the Additional Protocols to the Geneva Conventions interprets the expression *"definite military advantage anticipated"* by stating that *"it is not legitimate to launch an attack which only offers potential or indeterminate advantages."*

No states, and very few armed political groups, admit to deliberately targeting civilians. Direct attacks on civilians are often justified by denying that the victims are actually civilians. Civilian immunity is also undermined by the manner in which definitions of military objectives and civilian objects are interpreted by attacking forces.

In practice, of course, civilians are targeted in most conflicts. The current conflict in Gaza is one in which civilians are overwhelmingly the victims of the hostilities. Of some 900 killed in the first 17 days, more than one third were civilians taking no direct part in hostilities, including more than 200 children. Israeli officials have denied deliberately targeting civilians, but they have launched attacks on civilians and civilian objects, including essential infrastructure, without a convincing explanation of why the objects they have attacked could be making an effective contribution to military action.

Israeli forces have bombed buildings that serve no military purposes such as civilian government ministries and the parliament. They attacked civilian police, killing more than 150.

Other presumptively civilian buildings have been attacked such as mosques, schools, media outlets and homes. Israel has justified such attacks by claiming that these ostensibly civilian objects were actually being used for military purposes: either for storing or producing ammunition, rockets and other weapons; as command and control centres; housing Hamas fighters; that Hamas military commanders were present or that the buildings were being used to fire at Israeli forces or into Israeli towns. But in many cases, no evidence has been provided to support such assertions. Any investigation into serious violations in this conflict will need to be able to examine the basis on which Israeli forces determined that such normally civilian buildings were being used for military purposes.

In less than two days, on 9 and 10 January 2009, Israeli forces attacked the homes of three journalists and a building in which several media outlets were based. One journalist, Ala' Murtaja, was killed on 9 January while he was broadcasting his radio programme from his home. The same day another journalist, Ihab al-Wahidi, was killed together with his mother-in-law in an attack on the home of his wife's parents. On 10 January journalist Samir Khalifa escaped unscathed after a tank shell struck his family home. Israeli forces have not explained why these homes and buildings were attacked.

Israel has extensively bombed public civilian infrastructure which, coupled with the prolonged blockade, has caused the ongoing humanitarian catastrophe. It also raises the strong possibility that Israel may have violated the prohibition against targeting objects indispensable to the survival of the civilian population (Article 54(2) of Additional Protocol I).

In many instances, Israel provided no explanation for why a civilian building

was attacked. On 5 January 2009 at 1am, Israeli forces attacked al-Raeiya medical centre, located near Shifa hospital in Gaza City, in a residential area. Both the centre and its mobile clinics in the car park were bombed from the air. There are no governmental or military installations in its vicinity. According to testimony from the head of the executive committee of the medical centre, Raed Sabah (collected by Israeli human rights organization B'Tselem): "The centre is well known, and everybody knows it only provides medical services. It admits more than 100 patients per day, and bears flags with medical symbols. No warning was received before the air strike."

In some cases, there may have been a military objective that was the target, but in such cases Israeli forces need then to ensure that an attack would meet the proportionality test (see section 1.3.3), in addition to taking all other necessary precautions in planning and carrying out the attack (see section 1.3.4).

Hamas and other armed groups have fired hundreds of indiscriminate rockets at Israeli towns, killing three civilians since 27 December 2008. Some Hamas leaders have stated that they are targeting population centres. Armed groups also say they are targeting military installations in Israel, some of which are located in civilian residential areas.

Intentionally directing attacks against the civilian population as such or against individual civilians not taking a direct part in hostilities is a war crime. Intentionally directing attacks against civilian objects constitutes a war crime.

1.3.3 PROHIBITION ON INDISCRIMINATE OR DISPROPORTIONATE ATTACKS

Article 51(4) of Additional Protocol I prohibits indiscriminate attacks, which are those: "*of a nature to strike military objectives and civilians or civilian objects without distinction.*"

Israel's firing of artillery into densely populated civilian areas in Gaza may amount to indiscriminate attacks. Prior to the current fighting there had been many cases of civilians in Gaza killed by inaccurate shelling. Israel itself appeared to acknowledge that its use of artillery was unacceptably risky when it announced that it had suspended artillery shelling into Gaza in November 2006, after artillery shelling killed 18 members of a family in Beit Hanoun, in northern Gaza, which the Israeli army later stated had been launched in error. Artillery and mortar attacks and shelling from tanks and from naval ships has proved to be insufficiently accurate to pinpoint targets among densely populated residential areas in Gaza. Israel has a considerable arsenal of advanced weaponry and has an obligation to choose means of attack that minimizes the risk to civilians. (See section 1.3.4, Precautions in attack.)

Hamas and other Palestinian armed groups have been firing indiscriminate rockets at Israeli population centres, killing three Israeli civilians since 27

December 2008 and injuring others. Even if they intend to attack military installations in Israel, using these weapons, which cannot be accurately targeted, violates the prohibition on indiscriminate attack.

Disproportionate attacks, a type of indiscriminate attack, are also those that: *"may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."* (Article 51(5b) of Additional Protocol I)

Israel has bombed civilian homes in Gaza, claiming that it was targeting military leaders of Hamas. Some attacks on homes of Hamas leaders have killed dozens of civilians, even though it should have been apparent to Israeli forces that the target of attack was not likely to be present or that civilians were likely to be killed in the attack.

Intentionally launching a disproportionate attack is a war crime.[8] Launching an indiscriminate attack resulting in loss of life or injury to civilians or damage to civilian objects is also a war crime.[9] In addition, the extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly, is a war crime.[10]

1.3.4 PRECAUTIONS IN ATTACK

Article 57 of Additional Protocol I requires all parties to exercise constant care "to spare the civilian population, civilians and civilian objects." Article 57(2) stipulates that:

"(a) those who plan or decide upon an attack shall:

> *"(i) do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives within the meaning of paragraph 2 of Article 52 and that it is not prohibited by the provisions of this Protocol to attack them;*
>
> *"(ii) take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects;*

[8] Rome Statute of the International Criminal Court, Article 8(2)(b)(iv).

[9] ICRC, *Customary International Humanitarian Law, Volume I: Rules*; Rule 156, p589. Rome Statute of the International Criminal Court, Article 8(2)(b)(i).

[10] Rome Statute of the International Criminal Court, Article 8(2)(a)(iv).

> *"(iii) refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;*

"(b) an attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

"(c) effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit."

Israel chose to launch its offensive at a time when the streets of Gaza were very busy, indicating, from the outset, a failure to take necessary precautions leading to needless civilian deaths and injuries. In the first minutes of the bombing offensive, on 27 December 2008, seven students from a school run by the UN were killed outside the school, just after lessons finished as they were trying to get home. The attack came on a Saturday just as children finish school, after midday.

There have been other cases where the choice of timing of an attack by Israeli forces has led to apparently unlawful killing and injury of civilians. A mosque in Beit Lahiya was attacked by Israeli forces on 3 January 2009 during afternoon prayers, thereby maximizing, rather than minimizing civilian casualties. Mosques are normally civilian objects protected from attack but Israel claimed it targeted the mosque because it was being used to store weapons. If this were true, it would not absolve Israel of its legal obligation to take necessary precautions such as warning civilians in the mosque, or choosing a time when civilians are least likely to be present.

Israel has attacked sites that it claims were used to fire rockets into Israel, resulting reportedly in the deaths of many civilians. Even if Israel verifies that rockets have emanated from a particular location, it needs to take necessary precautions before attacking. This includes determining whether the objective remains military in character (if a rocket has been fired from the roof a civilian house and then the rocket launcher is moved and the fighters leave, it can no longer be considered a military objective), ascertaining whether civilians are in the vicinity, and ensuring that if the attack proceeds it will not be disproportionate. Since Israel is well aware that Hamas and members of other armed groups quickly remove rocket launchers after firing their rockets, this would suggest that its forces would anticipate little or no military advantage from pursuing this strategy of attack, which is needlessly risking civilians and civilian objects.

While there have been reports of Israeli forces giving warning to civilians, they

often appear to have been an ineffective means of protecting civilians. Key elements of effective warning have been missing, including: timeliness, informing civilians where it is safe to flee, and providing safe passage and sufficient time to flee before an attack. There have been reports of lethal strikes launched too soon after a warning to spare civilians. In one incident, over 100 civilians are reported to have been moved by the Israeli army to a house in Zeitoun, Gaza City, and told to remain inside. Israeli forces shelled the house the next day, killing 30.[11]

1.3.5 PRECAUTIONS IN DEFENCE AND "HUMAN SHIELDS"

Warring parties have obligations to take precautions to protect civilians and civilian objects under their control against the effects of attacks by the adversary. Additional Protocol I requires each party to avoid, to the maximum extent feasible, locating military objectives within or near densely populated areas (Article 58(b)). The ICRC's authoritative commentary on this provision explains that the use of the term "feasible" is used to illustrate *"the fact that no one can be required to do the impossible. In this case it is clear that precautions should not go beyond the point where the life of the population would become difficult or even impossible."* And it notes: *"Moreover, a Party to the conflict cannot be expected to arrange its armed forces and installations in such a way as to make them conspicuous to the benefit of the adversary."*

International humanitarian law also expressly prohibits the use of tactics such as using "human shields" to prevent an attack on military targets. According to Article 28 of the Fourth Geneva Convention, *"The presence of a protected person may not be used to render certain points or areas immune from military operations."* Israel has ratified the Convention which is also recognized as reflecting customary international law and, therefore, is binding on Israel, Hamas and other Palestinian armed groups. In an accompanying commentary, the ICRC defined the scope of the provision: *"The prohibition is expressed in an absolute form and applies to the belligerents' own territory as well as to occupied territory, to small sites as well as to wide areas."* The prohibition against the use of human shields is further clarified in Article 51(7) of the Additional Protocol I. It states, *"Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations."*

Intentionally shielding a military objective using civilians is a war crime.[12]

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[11] OCHA, *Protection of Civilians Weekly Report*, 1-8 January 2009: http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_2009_01_08_english.pdf

[12] Rome Statute of the International Criminal Court, Article 8(2)(b)(xxiii).

However, the Protocol also makes it clear that even if one side is shielding itself behind civilians, such a violation *"… shall not release the Parties to the conflict from their legal obligations with respect to the civilian population and civilians."*

Furthermore, Article 50(3) states that: *"The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character."*

As indicated by the ICRC in its commentary: *"In wartime conditions it is inevitable that individuals belonging to the category of combatants become intermingled with the civilian population, for example, soldiers on leave visiting their families. However, provided that these are not regular units with fairly large numbers, this does not in any way change the civilian character of a population."*

Israeli soldiers in Gaza have entered and taken up position in a number of Palestinian homes, forcing families to stay in a ground floor room while they use the rest of their house as a military base and sniper position, effectively using civilians as human shields. This practice has been common in the past eight years both in the Gaza Strip and in the West Bank. In a previous incursion in the Gaza Strip in March 2008, Israeli soldiers took over at least three houses in the north and in February 2008 soldiers took over another house in the village of Beit Ummar, near Hebron, in the West Bank.

Palestinian families caught up in the current fighting in the Gaza Strip report that in some cases Palestinian gunmen have agreed to vacate areas near civilian homes without firing at Israeli forces when local residents have objected to their presence. In other cases, however, they have refused the residents' requests and only left after firing. In still other cases, residents say they were too scared to ask the gunmen to leave.

Hamas and other Palestinian armed groups have unlawfully endangered civilians in Gaza by firing rockets into Israel from densely populated residential areas.

1.3.6 PROHIBITION ON REPRISAL

International humanitarian law is not based on reciprocity. The fact that one party may have violated the laws of armed conflict cannot serve as a basis for an opposing party to engage in unlawful acts, whether to bring the offending party into compliance, or as a means of retaliation or retribution.

Attacks against the civilian population or civilians or against civilian objects by way of reprisals are expressly prohibited by international humanitarian law (Articles 51(6) and 52(1) of Additional Protocol I).

1.3.7 SURVIVAL OF THE POPULATION, ATTACKS ON MEDICAL PERSONNEL AND HUMANITARIAN ACCESS

Attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population is prohibited (Additional Protocol I, Article 54(2)). The parties to the conflict must allow and facilitate rapid and unimpeded passage of impartial humanitarian relief (Additional Protocol II, Article 18). They must respect and protect medical personnel and their means of transport (Additional Protocol I, Articles 15 and 21). The specific duties of an occupying power in this regard are discussed in section 1.2.3.

Medical personnel attempting to evacuate injured civilians to hospitals have been victims of Israeli attacks. Several ambulances have been hit by direct gunfire and medical personnel have been seriously injured or killed. According to Physicians for Human Rights - Israel, an attack by helicopter fire on medical personnel on 31 December 2008 left three people dead, including a doctor and medic.

On 8 January 2009 a UN aid convoy was attacked near Erez. The UN said that it had coordinated the convoy's movements in advance with Israeli officials. The attack, which killed one UN-contracted employee and injured two others, was one of a series of attacks on relief and medical personnel that led UNRWA and the ICRC to strictly limit their operations in Gaza due to safety concerns.

Wounded adults and children of the Samouni and Daya families in the Zeitoun neighbourhood of Gaza City were left among their dead relatives' bodies in collapsed houses for four days as the ICRC and Palestine Red Crescent Society were denied access to the area by the Israeli army from 3 to 7 January 2009. Of 110 people sheltering in the houses, 30 had been killed. The ICRC said that the Israeli soldiers stationed nearby must have known of the people in the houses but that the wounded died as they waited for medical care due to the slow negotiations for access

Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance mission in the accordance with the UN Charter is a war crime. Intentionally directing attacks against medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in a war crime. Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions, is a war crime.[13]

1.3.8 WEAPONS

International humanitarian law prohibits the use of weapons that are by nature indiscriminate and weapons that are of a nature to cause superfluous injury or unnecessary suffering. The ICRC Commentary to the Protocols mentions

[13] Rome Statute of the International Criminal Court, Article 8(2)(b)(iii),(xxiv) and (xxv).

"long-range missiles which cannot be aimed exactly at the objective" as an example of indiscriminate weapons.

ROCKETS

Palestinian armed groups affiliated to Hamas and to other Palestinian factions (including the al-Aqsa Martyrs' Brigades, the armed wing of Fatah, the party led by Palestinian President Mahmoud Abbas) have been firing rockets into towns and villages in southern Israel. These weapons are inherently indiscriminate; they cannot be accurately aimed in a manner that properly distinguishes between military objectives and civilian objects. Although most of these rockets fall in empty areas, some have killed and injured Israelis and almost all the fatalities and casualties they caused have been Israeli civilians (in some cases these rockets fail to reach Israel and fall inside Gaza, and some have killed and injured Palestinian civilians). These rockets include "Katyusha" / Grad rockets (a Russian generic name) which have a range of about 35km and home-made short range "Qassam" rockets (another generic name).

WHITE PHOSPHORUS

Human Rights Watch and several media outlets have reported that Israeli forces have been using white phosphorus as an obscurant in Gaza. White phosphorus (WP) is used in grenades and shells to mark targets, to provide smokescreens for troop movement, to "trace" the path of bullets, and as an incendiary.[14] When WP comes into contact with people it causes severe burns and can set objects and buildings on fire.

A spokesman for UNRWA in Gaza said that WP shells fired by Israel struck their compound in Gaza City on 15 January 2009, setting at least one building on fire and injuring three people. Hundreds of civilians had been sheltering at the UNRWA compound at the time of the attack.

Although using WP as a smokescreen is not banned in international humanitarian law, the manner in which it reportedly is being used in densely populated Gaza could violate the requirement to take necessary precautions to protect civilians. According to Human Rights Watch, Israel has been exploding WP shells over Gaza City and Jabalia. It notes that "air bursting of white phosphorus artillery spreads 116 burning wafers over an area between 125 and 250 meters in diameter, depending on the altitude of the burst."[15]

[14] For an explanation of the uses and effects of white phosphorus in weapons, see Federation of American Scientists, "White Phosphorus Fact Sheet", available at: http://www.fas.org/biosecurity/resource/factsheets/whitephosphorus.htm

[15] Human Rights Watch, *Israel: Stop Unlawful Use of White Phosphorus in Gaza*, 10 January 2009.

In Amnesty International's view, the use of WP in this manner in densely populated areas in Gaza would violate the prohibition on indiscriminate attack

Israeli officials have given inconsistent statements about the use of WP. Initially they denied using WP. Later they stated that Israeli forces use munitions that are in accordance with international law, and that it does not reveal specific details about its munitions and military operations.

Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons (a Protocol additional to the 1980 UN Convention on the Prohibition or Restrictions on the Use of Certain Conventional Weapons) prohibits the use of incendiary weapons against civilians. This is a rule of customary international law and, therefore, binding on Israel even if it is not party to Protocol III. Israel has denied that it has been using any illegal weapons. Of course, no weapon is supposed to be used against civilians, but this prohibition is recognition of the particular dangers and consequences of using weapons with incendiary properties in the vicinity of civilians.

CLUSTER MUNITIONS

The Israeli newspaper *Haaretz* has reported that the intense artillery bombardment that preceded the entry of Israeli army ground forces into Gaza "included cluster bombs aimed at open areas."[16]

Cluster bombs or shells scatter scores of bomblets, or submunitions, over a wide area, typically the size of one or two football fields. These can be dropped by aircraft, or fired by artillery or rocket launchers. Depending on which type of submunition is used, between 5 and 20 per cent of cluster bomblets fail to explode. They are then left behind as explosive remnants of war, posing a threat to civilians similar to anti-personnel landmines. The use of these bombs in areas where there is a concentration of civilians violates the prohibition of indiscriminate attack, because of the wide area covered by the numerous bomblets released and the danger posed to all those, including civilians, who come into contact with the unexploded bomblets.

If reports of use of cluster munitions in Gaza are correct, it would pose a serious ongoing threat to civilians. The use by Israel of cluster bombs in Lebanon has caused long-term problems as the de-mining teams are still working today, more than two years after the Israel-Hizbullah conflict, to clear the unexploded cluster submunitions, which continue to kill and injured Lebanese civilians and members of the de-mining teams.[17]

[16] *Haaretz*, "Massive artillery, aerial bombardment precedes invasion by IDF ground forces" by Amos Harel and Avi Issacharoff, 5 January 2009.

[17] For up-to-date information about casualties from cluster submunitions in Lebanon, see UN Mine

A new treaty banning cluster weapons was agreed in Dublin in May 2008, and was opened for signature on 3 December 2008.[18] According to Article 1(1) of the Convention on Cluster Weapons: *"Each State Party undertakes never under any circumstances to: (a) Use cluster munitions; (b) Develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, cluster munitions; (c) Assist, encourage or induce anyone to engage in any activity prohibited to a State Party under this Convention."*

In line with the Convention on Cluster Weapons, Amnesty International opposes the use, transfer and stockpiling of cluster munitions and is calling on all states to ratify the Convention.

2. INTERNATIONAL HUMAN RIGHTS LAW

As affirmed by the International Court of Justice and the UN Human Rights Committee, human rights law remains applicable during times of armed conflict, in a position complementary to international humanitarian law.[19] Israel's actions in the OPT are bound by its obligations under the international human rights treaties that it has ratified, as well as customary rules of international human rights law. Treaties ratified by Israel include: International Covenant on Economic, Social and Cultural Rights (ICESCR); International Covenant on Civil and Political Rights (ICCPR); International Convention on the Elimination of All Forms of Racial Discrimination; UN Convention on the Elimination of All Forms of Discrimination against Women; and UN Convention on the Rights of the Child.

Action Coordination Centre in South Lebanon (http://www.maccsl.org).

[18] The Convention enters into force six months after 30 States have deposited their instruments of ratification (acceptance, approval or accession).

[19] "[T]he Court considers that the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of the kind to be found in Article 4 of the International Covenant on Civil and Political Rights", *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, ICJ reports 2004. See also Human Rights Committee, General Comment 31, para11: "[T]he Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be especially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive." General Comment 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant.

As the UN Human Rights Committee has made clear, the human rights obligations of states in respect of the ICCPR apply extraterritorially.[20] The ICESCR provides for no explicit limitations with respect to territorial jurisdiction. This means that Israel's obligations under international human rights law apply also to the occupied territory under its control.

The ICESCR does not allow for derogation, even in times of emergency, and allows for only those limitations *"as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society."* As the Committee has made clear, any limitations must be proportionate and *"the least restrictive alternative must be adopted where several types of limitations are available."*[21]

As international human rights law is applicable in times of armed conflict alongside international humanitarian law, the same conduct can constitute a breach of both international human rights law and international humanitarian law.

During the conflict in Gaza, the human rights obligations that have been breached include the obligations to respect, protect and promote: the right to life (ICCPR, Article 6)[22]; the right to adequate food and housing (ICESCR, Article 11); the enjoyment of the highest attainable standard of physical and mental health (ICESCR, Article 12), which also includes the right to water; and the right to education (ICESCR, Article 13).[23] Actions that were aimed towards or were likely to result in the destruction or impairment of infrastructure necessary for the enjoyment of those rights, including hospitals and schools, are violations for which state parties can be held responsible.

2.1 RIGHT TO HOUSING AND FORCED EVICTIONS

With respect to the right to housing, certain actions in the war – namely the widespread destruction of hundreds of homes – may constitute unlawful forced evictions, a breach of Article 11 of the ICESCR.

The UN Committee on Economic, Social and Cultural Rights defines "forced evictions" as "*the permanent or temporary removal against their will of*

[20] Human Rights Committee, General Comment 31, para10.

[21] Committee on Economic, Social and Cultural Rights, General Comment 14: The right to the highest attainable standard of health (Article 12), para29. Adopted at the Twenty-second session (2000).

[22] In the course of fighting in an armed conflict, the standard of what constitutes a violation of the right to life is informed by applicable international humanitarian law.

[23] Committee on Economic, Social and Cultural Rights, General Comment 15, The right to water, UN Doc. E/C.12/2002/11 (2002).

individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection."[24] The Committee includes among such evictions those resulting from *"international armed conflicts, internal strife and communal or ethnic violence."*[25]

3. INTERNATIONAL CRIMINAL LAW

Individuals, whether civilians or military, can be held criminally responsible for certain violations of international human rights law and international humanitarian law.

All states have an obligation to investigate and, where enough admissible evidence is gathered, prosecute genocide, crimes against humanity and war crimes, as well as other crimes under international law such as torture, extrajudicial executions and enforced disappearances.

3.1 WAR CRIMES

Grave breaches of the Geneva Conventions and Additional Protocol I and most other serious violations of international humanitarian law are war crimes. Definitions of these crimes are included in the Rome Statute of the International Criminal Court (Rome Statute). The list of war crimes in Article 8 of the Rome Statute basically reflected customary international law at the time of its adoption, although they are not complete and a number of important war crimes are not included.

Article 86(1) of Additional Protocol I requires that:

> *"[P]arties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches of the [1949 Geneva] Conventions or of this Protocol which result from a failure to act when under a duty to do so."*

Amnesty International in the past has accused Israel of committing war crimes in the OPT including: wilful killing, unlawful deportation, torture and inhuman treatment, and extensive destruction and appropriation of property not justified by military necessity.

[24] Committee on Economic, Social and Cultural Rights, General Comment 7, Forced evictions, and the right to adequate housing (Sixteenth session, 1997), UN Doc. E/1998/22, annex IV at 113 (1997), para4.

[25] Committee on Economic, Social and Cultural Rights, General Comment 7, op cit, para7.

3.2 CRIMES AGAINST HUMANITY

According to the Rome Statute, certain acts, if directed against a civilian population as part of a widespread or systematic attack, and as part of a state or organizational policy, amount to crimes against humanity. Such acts include, *inter alia*, murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, rape and other sexual crimes, and enforced disappearances.

Crimes against humanity can be committed in either time of peace or during an armed conflict.

In the past, Amnesty International has found evidence that both Hamas and Israel have been responsible for committing crimes against humanity. The organization has stated that the campaign of suicide bombings and other attacks against civilians by Hamas and other Palestinian armed groups amounted to crimes against humanity. Amnesty International has also concluded that certain practices by Israeli forces in the OPT such as deportations, collective punishment, and unlawful killing of civilians amounted to crimes against humanity.

3.3 RESPONSIBILITY OF SUPERIORS AND COMMANDERS

Military commanders and civilian superiors can be held responsible for the acts of their subordinates. Article 86(2) of Additional Protocol I, which imposes a single standard for military commanders and civilian superiors, reflects customary international law. It states:

> *"The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach."*

Thus, in analyzing current events, it is important to examine the chain of command, both with regard to members of government armed forces and their civilian superiors and with regard to all levels of Hamas.

3.4 SUPERIOR ORDERS

Superior orders cannot be invoked as a defence for violations of international humanitarian law, but they may be taken into account in mitigation of punishment. This principle has been recognized since the Nuremberg trials after World War II and is now part of customary international law.

4. INTERNATIONAL INVESTIGATION

Given the allegations of violations of international law by all parties to the conflict, the mutual recriminations that may affect the impartiality of national investigations, and the poor track record of investigations by Israel into violations by its forces, Amnesty International is calling on all parties to agree to, and the international community to deploy, a full fact-finding mission to carry out a prompt, thorough, independent and impartial investigation of all allegations of serious violations of human rights and humanitarian law committed in the course of the conflict in accordance with the strictest international standards governing such investigations and to report publicly on its findings.

Amnesty International considers that:

- an international fact-finding team of experts should be deployed to Gaza and southern Israel as soon as possible;
- the fact-finding team should carry out its investigations and reporting on the basis of relevant international humanitarian law and human rights law;
- the fact-finding team should carry out its investigations and reporting on the basis of the strictest international standards governing such investigations.
- the report of the mission's findings should include recommendations aimed at ending and preventing further violations of international law and at ensuring justice, truth and full reparations for the victims, including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition;
- such a mission should be provided with sufficient resources to accomplish all its tasks effectively and promptly;
- the expert fact-finding team must have powers to gain access to all relevant documents, other evidence and persons;
- all persons who provide information to the investigation must be effectively protected from reprisals;
- given the range of violations of international humanitarian law and human rights abuses alleged to have occurred and the complexity of the factual and legal issues involved, members of the fact-finding team should be sufficiently equipped and supported to enable them to carry out a thorough and authoritative inquiry. Among other things the team must include or be supported by adequate numbers of: experts in both international

humanitarian and human rights law; military and criminal justice investigators; weapons and ballistic experts; forensic experts; and experts in the protection of victims and witnesses, including women and children.

There are several possibilities for establishing such an investigation.

a) An investigation could be established by the UN Security Council. Such an investigation would have the advantage of carrying the greatest authority. It could also facilitate referral of the situation to the International Criminal Court (as happened with the Darfur situation), if this is deemed appropriate.

b) Alternatively, the UN Secretary-General could establish an investigation. The Security Council could, as it did in resolution 1405 (2002), welcome such an initiative of the Secretary-General "to develop accurate information… through a fact-finding team". The Secretary-General has already called for an investigation into attacks on UN facilities and personnel in Gaza.

c) The UN High Commissioner for Human Rights could put together a commission to carry out an investigation. It would be more likely to be perceived as impartial than one created by the UN Human Rights Council (see below), but it would need to receive cooperation from Israel to be as effective as possible.

d) The UN Human Rights Council, in its resolution S-9/1, mandated the President of the Human Rights Council to appoint an independent international fact-finding mission to be dispatched urgently to "investigate all violations of international human rights law and International Humanitarian law by... Israel against the Palestinian People throughout the Occupied Palestinian Territory, particularly in the occupied Gaza Strip, due to the current aggression ..." In addition, the Human Rights Council has requested the UN Secretary-General "to investigate the latest targeting of UNRWA facilities in Gaza... and submit a report to the General Assembly..." The remarks of the Israeli Ambassador prior to the Council's adoption of resolution S-9/1 leave no reason to believe that Israel will cooperate with the international fact-finding mission. Even if the fact-finding mission were to gain some cooperation from Israel by interpreting its mandate to look at violations by Hamas, as the Human Rights Council's high-level commission of enquiry on Lebanon interpreted its mandate, which addressed only the actions of Israel, to look into the conduct of Hizbullah, the widespread rejection of the enquiry's report suggests that the fact-finding mission will, by itself, be ineffectual.

e) An investigation could be carried out by the International Humanitarian Fact-Finding Commission (IHFFC), a permanent body of independent

experts provided for by Article 90 of Additional Protocol I to investigate allegations of serious violations of international humanitarian law. However, both parties to the conflict would have to accept the Commission's competence and request that it investigate violations in this particular conflict. Amnesty International has called on Israel to do so in past conflicts and it has never done so. (The IHFFC has never actually conducted an enquiry.) Investigations by the IHHFC are conducted by a chamber constituted of five members of the Commission and two ad hoc appointees. (Each party to the conflict nominates one of the ad hoc members.)

5. ACCOUNTABILITY

States have an obligation to respect, protect and fulfil the right of victims of human rights violations to an effective remedy.[26] This obligation includes three elements:

Justice: investigating past violations and, if enough admissible evidence is gathered, prosecute the suspected perpetrators;

Truth: establishing the facts about violations of human rights that occurred in the past;

Reparation: providing full and effective reparation to the victims and their families, in its five forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Principle VII of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law explains:

"Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law: (a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered; and (c) Access to relevant information concerning violations and

[26] The right to an effective remedy for victims of human rights violations is enshrined in Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR). It is also recognized in Article 8 of the Universal Declaration of Human Rights, Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 39 of the Convention on the Rights of the Child, Article 3 of the 1907 Hague Convention concerning the Laws and Customs of War on Land, Article 91 of the Protocol I Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), Article 75 of the Rome Statute of the International Criminal Court and Article 7 of the African Charter on Human and Peoples' Rights.

reparation mechanisms."[27]

With respect to past human rights violations, states must ensure that the truth is told, that justice is done and that reparation is provided to all the victims.

5.1 JUSTICE

There are several possible methods for bringing to justice those responsible for crimes under international law, in proceedings which meet international standards of fairness and do not result in the death penalty.

(a) By Israel: Each state party to the conflict has an obligation to investigate all crimes under international law and, whenever there is sufficient admissible evidence, prosecute the person suspected of those crimes.

(b) By other states: Other states should exercise their obligations to conduct prompt, thorough, independent and impartial criminal investigations of anyone suspected of crimes under international law during the conflict. If there is sufficient admissible evidence, states should prosecute the suspect or extradite him or her to another state willing and able to do so in fair proceedings which do not result in the imposition of the death penalty or surrender him or her to an international criminal court which has jurisdiction. In addition to being obliged to exercise universal jurisdiction for grave breaches of the Geneva Conventions and of Additional Protocol I, as well as over torture, states are permitted to exercise universal jurisdiction for other crimes under international law. If there is sufficient admissible evidence states should also prosecute, extradite the suspects to another state willing and able to try them or surrender them to an international criminal court.

(c) By the International Criminal Court: Israel has not ratified the Rome Statute. However, Israel could recognize the International Criminal Court's jurisdiction on their territories by making a declaration under Article 12(3) of the Rome Statute, or the situation in Israel and the OPT could be specifically referred to the Court by the UN Security Council, in accordance with Article 13(b) of the Rome Statute.

5.2 REPARATIONS

States must respect, protect and promote the right of victims and their families

[27] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles on the Right to a Remedy and Reparation), adopted and proclaimed by UN General Assembly resolution 60/147 of 16 December 2005, UN Doc. A/RES/60/147.

to seek and obtain full reparations. The right to reparation of individual victims is well established in international human rights law and standards as a key element of the right to a remedy contained in international and regional human rights treaties.[28]

The Customary International Humanitarian Law study by the ICRC concludes in Rule 150: *"A state responsible for violations of international humanitarian law is required to make full reparations for the loss or injury caused."*[29]

In addition, the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the UN General Assembly in 2005 (resolution 60/147 of 16 December 2005), enshrine the duty of states to provide effective remedies, including reparation to victims. This instrument sets out the appropriate form of reparation, including, in Principles 19-23, restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

5.3 ARMED GROUPS AND REPARATIONS

The ICRC notes that armed groups are themselves required to respect international humanitarian law. While the question as to whether armed groups are under an obligation to make full reparation for violations of international humanitarian law is unsettled,[30] practice indicates that such groups are required to provide a measure of appropriate reparation.[31]

[28] See, for example, ICCPR, Article 2(3), and the Arab Charter on Human Rights, Article 9.

[29] ICRC, *Customary International Law, Volume I, Rules*.

[30] ICRC, *Customary International Law, Volume I, Rules*; Rule 150.

[31] ICRC, *Customary International Law, Volume I, Rules*; Rule 139.