Civilian Protection and Middle East Armed Groups:
In Search of Authoritative Local Voices

By Joe Stork

The Middle East has over many years been wracked by political violence and armed conflicts in which governments and armed groups alike have shown a pernicious disregard for the lives of civilians. When they do so during armed conflict, they violate the core principle of international humanitarian law—civilian immunity—which requires a warring party to distinguish between the civilian population and military targets, and to direct attacks only against military targets. Outside of armed conflicts, such attacks on civilians may amount to crimes against humanity.

Many of the armed groups in the Middle East responsible for breaching this core principal by deliberately or indiscriminately killing civilians assert an Islamic identity, and some justify their decision to take up arms in Islamic terms. Exception to the principle of civilian immunity is invoked on political and sometimes religious grounds.

It would be hard to exaggerate the impact of the Israeli-Palestinian conflict on the evolution of popular views of political violence and armed conflict in the region, including attitudes toward civilian protection. And owing in large measure to the prominent international dimension of the conflict, human rights proponents as well as governments and groups resistant to human rights criticism have scrutinized the stance of outside actors, particularly the United States, for evidence of partisanship and double standards in monitoring and protesting violations of international law.

Against this backdrop, what prospects exist for identifying authoritative voices in majority Muslim countries of the Middle East who can advance civilian protection, by discussing these issues openly and in ways that demonstrate the shared prohibition in Islamic ethics and international humanitarian law against targeting persons not participating in armed hostilities?

Civilian Protection in Human Rights and Humanitarian Law

International humanitarian law (IHL), or the laws of war, does not address whether a decision to take up arms is legal or justified. Instead, it is concerned with the methods and means of military operations and the treatment of non-combatants (civilians, prisoners-of-war, wounded fighters, etc). A critical feature of IHL is that it applies to all parties to an armed conflict, that is, both states and non-state armed groups. Were the laws of war to apply to only one side to an armed conflict, be it the military aggressor or only a recognized state, then compliance would quickly fall apart. Likewise, violations by one side's forces do not permit or justify violations by their adversary.

The principle of civilian immunity prohibits attacks that target civilians, as well as attacks that indiscriminately harm civilians—that is, in which the attacking party does not or cannot distinguish between civilians and military objectives. States and non-state armed groups responsible for such attacks are committing violations of IHL. War crimes are serious violations of IHL committed with criminal intent—that is, deliberately or recklessly—by individuals. Crimes against humanity are serious criminal acts committed during peacetime or armed conflict that are part of a widespread or systematic attack against a specific civilian population. In the Middle East, the disregard for civilian immunity has resulted in war crimes and crimes against humanity by members of both national armed forces and opposition armed groups.

Attitudes toward Civilian Harm

For some Middle Eastern governments, the path to power was exceedingly violent. The conduct of liberation wars such as Algeria's in the 1950s in turn helped to shape the guerrilla movements that developed in the Middle East, particularly among Palestinians.[1] With such legacies, habits of unrestrained assault on adversaries and their populations were ingrained in the conduct of thoroughly secular parties to various conflicts. When in the 1980s and 1990s new political movements claiming Islamic legitimacy emerged, the armed groups they spawned—in Egypt and Algeria, for example—soon adopted similarly unbounded tactics in their conduct of armed violence, initially directed at the often-brutal security apparatuses of the states they were fighting, but soon also at "soft" civilian targets. Although these groups invoked to varying degrees a discourse they claimed to be grounded in religious doctrine, the violence they perpetrated against civilians and other non-combatants reflected and extended the illegal and murderous practices of secular actors.

Since the Palestinian Islamist groups Hamas and Islamic Jihad initiated suicide bombing attacks against Israeli civilians in 1995-96, Middle East human rights activists and society

until recently had little to say on the issue, reflecting a general perception in the Middle East that illegal Israeli occupation practices, for the most part enjoying international tolerance if not support, made such violence unavoidable and even legitimate.[2] To be sure, human rights proponents did not endorse suicide bombings against civilians, but neither did they criticize them, either because they shared the approving sentiments of opinion-shapers in those countries or because they did not feel secure enough to challenge those sentiments.

One discussion of the issue in the late 1990s, called "The Operations of Hamas from a Human Rights Perspective," appeared as part of a booklet produced by the Cairo Institute for Human Rights Studies.[3] In his introductory remarks, institute director Bahey el-Din Hassan observed that the Hamas bombings had stirred up considerable controversy within Egyptian human rights circles and "particularly in the human rights movement in Palestine." While a number of participants were critical of the bombings, only the comments of political analyst Muhammad al-Sayed Sa`id showed awareness of international humanitarian law and the core principle of respecting civilian immunity. One of the few human rights activists recorded as participating in the discussion endorsed the view that because of Israel's illegal occupation "there is no such thing as 'an Israeli civilian.'" Political analyst Usama al-Ghazali Harb was sharply critical of Hamas's attacks but on a strictly instrumentalist basis: the question of whether the attacks violate human rights, he said, "does not interest me.... Did these operations advance [Palestinian] interests?" Because they do not, "I say that— regardless of the issue of human rights— they are operations worthy of condemnation."

In late 2000, after already limited Palestinian-Israeli negotiations collapsed and the Al Aqsa intifada erupted, Hamas and Islamic Jihad initiated suicide bombings against civilians in Israel in January 2001, joined by the Fatah-affiliated Al Aqsa Martyrs Brigade in late 2001.[4] The number of attacks and number of victims spiked in 2002, but attacks and civilian deaths continued through early 2007.

Palestinian criticism of suicide bombings targeting civilians surfaced publicly at the end of 2001. Critics argued that these actions were ineffective and counter-productive. In one public intervention, Birzeit University professors Rema Hammami and Musa Budeiri wrote that the bombings were "isolated from a strategic reading of Israeli society's reaction to and understanding of the uprising and of Palestinian resistance in general."[5] That criticism grew considerably when Prime Minister Ariel Sharon ordered the Israel Defense Forces (IDF) to reoccupy the West Bank after a Hamas suicide bombing at a Passover celebration in Netanya killed 29 Israelis. On June 19, 2002, and on several subsequent days, the daily *Al-Quds* carried a full-page petition initially signed by 55 academics, writers, and prominent figures, which called on the armed groups to cease "military operations targeting civilians in Israel"

on the grounds that they deepen hatred between Palestinians and Israelis while strengthening "the enemies of peace on the Israeli side" and "pushing the area toward an existential war" between Israelis and Palestinians.[6]

Signatories to the petition included human rights activists Iyad al-Sarraj and Khader Shrikat, but Arab and Palestinian human rights groups as such largely remained silent, reflecting the extent of division among members on the issue. One element in this was a tendency to conflate the question of armed resistance against legitimate military targets and attacks against Israeli civilians, as well as frustration with the persistent failure of Israel's supporters internationally to hold Israeli leaders accountable for numerous killings of Palestinian civilians in the West Bank and Gaza Strip by the Israeli military. The silence may also have reflected uneasiness among human rights activists about their sometimes thin support in society and among political elites, and wariness about testing that support with a public stance that would surely attract public criticism from the armed groups and their partisans. Palestinian rights activist Fateh Azzam, reviewing the record of the leading Palestinian human rights group, Al-Haq, wrote in 2004 that "a serious gap" in its "honorable human rights record" was its "failure to take a clear public position on the problem of armed attacks against civilian targets inside Israel during the first three years of the current intifada."[7]

Human Rights Watch, when it released a highly critical investigative report on Palestinian suicide bombings against Israeli civilians in November 2002, encountered condemnations from some human rights activists in the region. There were indications, however, that this initial hostility moderated in the following period. The Gaza-based Palestinian independent legislator (and briefly Minister of Foreign Affairs in a Palestinian Authority unity government) Ziad Abu Amr said that the report "helped define the public debate, allowing people to speak critically about these attacks," although in his view the perpetrator groups remained "trapped by their own past positions and rhetoric."[8] Palestinian journalists in the West Bank agreed that the report "helped raise questions about the [suicide] bombings."[9]

Arab human rights groups, for their part, did move on the issue as well, initially in a collective fashion. The "Rabat Declaration" from a meeting of Arab civil society NGOs in December 2004 criticized "the silence or the collaboration of the majority of Arab governments with a religious discourse and *fatwa* justifying terrorism issued by [Islamic] jurists, some of them working for religious institutions subject to the state." The declaration also spoke against "terrorist groups in Iraq" that "bombarded civil institutions, abducted and murdered police officers as well as Iraqi and non-Iraqi civilians." Most significantly, with regard to the Palestine-Israel conflict, "The conference condemns targeting and terrorizing civilians on both sides."[10] In 2006 several human rights organizations in the region did make

public statements critical of armed attacks against Israeli civilians by Palestinian and Lebanese armed groups. In July Al-Haq issued a public appeal stating that the armed groups "may not resort to reciprocity as a legal justification" for violations of humanitarian law.[11]

Over the past several years, I and colleagues from Human Rights Watch met in various Arab countries with civil society activists, editors, and religious leaders to discuss attacks against civilians as serious human rights abuses and violations of humanitarian law.[12] With what we called the Civilian Protection Initiative, Human Rights Watch sought to engage with activists and opinion-shapers across the region on the question of attacks targeting civilians, and to encourage them to criticize publicly such attacks when they occur, even when the perpetrators espouse a cause that enjoys widespread popular support, such as ending Israel's military occupation of the West Bank and Gaza Strip. Our previous experience investigating and reporting on such violence in the Occupied Palestinian Territories, Iraq, and Egypt suggested that greater engagement around these issues by local human rights activists and sympathizers would be essential in any effort to persuade the perpetrators to cease such attacks.[13] The views of our interlocutors provide a complicated portrait of the state of elite opinion regarding civilian protection.

First, virtually every interlocutor stressed the need to appreciate the context of military occupation in terms of killings in Israel and Iraq. For some, this context was everything: end the occupation and the violence will end. "Stop the injustice that makes me tolerate [attacks against Israeli civilians]" was how one former high-ranking Jordanian official put it. "We are fighting an occupation that violates [international humanitarian] law every day," said a West Bank leader of the reformist wing of Fatah. International humanitarian law, however, obliges all parties to an armed conflict to respect civilian immunity, including in resisting military occupation.[14]

Second, almost all interlocutors made a point of distinguishing between the attacks on civilians in Iraq, which they condemned, and attacks by Palestinians against Israeli civilians. "Denunciations of Iraqi attacks have been clear, no one justifies them," said a Dubai-based Islamist lawyer and human rights activist, "but Palestine remains outside of such a critique." Perhaps the most common refrain in these discussions is the notion that the Palestine/Israel conflict is "unique": for persons who agreed with the basic principle that civilians should be immune from attack, Palestine is the "but" that almost invariably follows. On this point, there is no discernible difference between Islamists or Islamic leaders, on the one hand, and secularists and leftists, on the other. This Palestine exceptionalism takes several forms. A common one is the assertion that Israeli society is militarized to the point that "there are no civilians there." Another is that the disparity of arms between Israel and Palestinian armed

groups gives the latter leeway to use whatever means they can devise. Neither of these rationales can justify targeting civilians.[15]

The greatest readiness to criticize Palestinian attacks against Israeli civilians, perhaps not surprisingly, was among Palestinians themselves. Journalists and writers in the West Bank appeared to have no problem accepting that targeting civilians was wrong in all circumstances. They indicated interest in being part of a public service campaign to promote awareness of this humanitarian principle, its history, and what it means in the Palestinian context—although they were emphatically not proposing to initiate such an effort. Several spoke of a "culture of fear" of running afoul of the armed groups and their partisans.

This vulnerability is even more pronounced in nearby countries where solidarity with Palestinians has taken on a doctrinaire quality, notably Egypt and Jordan. An Egyptian political activist from an Islamist background and well disposed toward human rights concerns said he condemned Palestinian attacks against civilians, but "I can't convince other intellectuals to join me, and the broader public is more difficult yet. We need a package solution. In our environment I or others can easily be isolated as a traitor or agent. We need to emphasize abuses by the superior power."[16]

In the view of many with whom we spoke, Western human rights groups also betray elements of double standards. Human Rights Watch, they said, criticizes Israeli violations, to be sure, but in their view the language tends to be more restrained than when discussing Palestinian violations. "We don't feel justice in the way international human rights organizations view conflict in our region," one Egyptian activist said.[17]

Probably the most difficult challenge to efforts to promote public criticism of Palestinian attacks on Israeli civilians was what many interlocutors argued was Israeli impunity in the face of its considerably more extensive (and in their view more egregious) violations of international humanitarian law, and the failure of those states that proclaim their fidelity to human rights to hold Israel—or, in the case of Iraq, the United States—accountable. "Show me that international humanitarian law matters" was their bottom line. In the words of a West Bank Hamas spokesperson, "We will follow [IHL] if we have a guarantee" that Israel will also abide. At present, he said, Israel left Palestinians with few options.[18]

The intense international attention focused recently on the report of the United Nations Fact-Finding Mission on the Gaza Conflict ("the Goldstone report"), with its findings of serious laws of war violations by Israel and Palestinian armed groups and its call for their referral to international justice mechanisms if they do not mount credible domestic investigations, has

highlighted in an unprecedented way the importance of accountability for war crimes and crimes against humanity. Much will hinge on whether and to what extent the international community uses this opportunity to promote respect for international humanitarian law principles by addressing the important element of accountability. As discussed below, the laws of war prohibition against targeting civilians is absolute, and does not rest on compliance by an adversary.[19]

Human rights organizations in the region put forth one further argument for remaining silent on this issue. Their focus is on abuses committed by their own governments, which are all too ready to pounce on any opportunity to discredit these groups. Those governments and their cronies dominate the media. If, say, the Tunisian League for Human Rights were to condemn Palestinian armed groups for attacks on Israeli civilians, the Tunisian government-controlled media would depict their action as proof of their "Zionist" or at least pro-Western agenda and their betrayal of the Palestinian cause. If the Tunisian media were free, a group like the League might be able to fight back, but it is not. In this situation, these organizations are protective of their credibility and carefully monitor their political capital so that they can continue to monitor abuses by their own governments, and they would find the risks too high in coming out with statements criticizing Hamas or other Palestinian groups.

Our meetings also involved conversations with groups perpetrating violations. Members of groups that have carried out attacks against Israeli civilians knew basic IHL standards and claimed to have no quarrel with them. Sometimes they excuse the harm to civilians as unavoidable, in terms not that different from IHL notions of "collateral damage." But in reality these groups have a major quarrel with those standards, particularly regarding non-reciprocity—the principle that violations by one party to a conflict do not permit or justify violations by the other. The groups are familiar with the prohibition against indiscriminate attacks or those that target civilians, but they made clear that they were willing to spare civilians only to the extent that their adversary—Israel—did so as well. "Targeting civilians is utterly unacceptable," a Hezbollah leader told us in early July 2006. But in the same conversation, this spokesman acknowledged that Hezbollah did carry out such attacks as reprisals for Israeli attacks that killed Lebanese civilians. "How can you counter Israeli targeting of your civilians? You have to punish [them]," he said.[20] Discussing Iraq, however, he was unequivocal: "What we consider resistance there targets only military occupiers," he said. "Those who target civilians are terrorists." A week after this interview, the war in Lebanon erupted and Hezbollah and Israel systematically traded indiscriminate attacks that killed and wounded civilians on the other side.

Some Hamas leaders have been more blunt in asserting that it is permissible to target an adversary's civilians in reprisal. Under IHL, a belligerent reprisal is an otherwise unlawful action permitted in exceptional circumstances as an enforcement measure against unlawful acts by an adversary. Reprisals against civilians are broadly if not universally condemned by states. As a matter of customary IHL, reprisals are never permitted in non-international armed conflicts—those not between states.[21]

"It's not targeting civilians," Ismail Abu Shanab told Human Rights Watch. "It is saying if you attack mine I'll attack yours." Abu Shanab continued: "If you ask us to comply [with IHL], that is not difficult. Islamic teachings support the Geneva Conventions. They are accepted. When it comes to the other side, if they don't abide, we cannot be obliged to them, except insofar as we can achieve something."[22] In Beirut, Human Rights Watch also met with Usama Hamdan, who represents Hamas in Lebanon. His comments demonstrated that the policy of reprisal went hand in hand with a tendency to erase the operative distinctions between civilian and combatant in the case of Israel: "Israel is a democratic state and popular pressure on this issue could change policies, but those civilians are supporting [IDF] attacks on our civilians."[23] In addition to justifying attacks against civilians, which international humanitarian law absolutely prohibits, this is a recipe for collective punishment, which is also a serious violation of the laws of war.

Myths and Realities of Islamist Motivation

Few of those we have met with to discuss these issues, including Islamists and Islamic scholars or representatives of Islamist groups that have been responsible for targeting civilians, suggested that Islamic law differed significantly from international humanitarian law when it comes to prohibiting attacks on civilians. Typical was the comment of an Egyptian Muslim Brotherhood leader. "One crime does not justify another," he said. "Muslims are being diverted from Islam, including the rules of war."[24]

This is not to argue that religion, religious history, and religious symbols play no role in facilitating attitudes of disregard for humanitarian principles. Invocations of religious doctrine are important in recruitment of fighters (or "martyrs") and enlisting them in attacks against civilians. But we encountered little or no effort on the part of our interlocutors, even those who were Islamist activists or religious leaders, to justify violations of the principle of civilian immunity from attack on grounds that such attacks are permitted, or not prohibited, under Islamic law. In an investigation into Hezbollah's firing of rockets into civilian areas in Israel, Human Rights Watch encountered no instance in which Hezbollah leaders cited religious justifications for those attacks.[25] But at the same time, in an environment of

Islamist revivalism, the imprimatur of Islamic authority is important. Thus, Khalid Mishal, the head of Hamas's political bureau, claimed that "martyrdom operations [are] one of the many forms of resistance, indeed it is the highest and noblest form of resistance and one that is most effective. Most of the scholars in our Islamic nations have ruled that it is permissible and, indeed, one of the best forms of jihad and resistance."[26] It would appear from the videotaped messages that suicide bombers typically leave, as well as other statements, that this Islamic legitimation is an important factor in their recruitment and motivation.

The role of Islamic doctrine and Islamist ideology is much more pronounced in the other main category of movements that have taken up arms and employed violence against ordinary people as well as agents of the state, namely political movements that aim to overthrow or radically alter an existing government that itself claims Islamic legitimacy. The Gama`a Islamiyya and Islamic Jihad movements in Egypt in the 1980s and 1990s, influenced by the writings of Sayyid Qutb, and the jihadist *salafiyya* movement in Saudi Arabia, led by veterans of the anti-Soviet campaign of the 1980s in Afghanistan, illustrate this.[27]

Such insurgencies raise serious legitimacy issues: Muslim polities, like others, do not look kindly on armed insurgencies and would-be usurpers, and this resistance to rebellion is encoded in the opposition to *fitna*, or disorder. In Islamic terms, it is essential for a rebel or insurgent movement to make a credible claim that the government in question is not, and in some versions never was, genuinely or sufficiently Islamic in its practices, or has betrayed Islam in some serious manner. In the eyes of the insurgents, such governments are no longer Muslim and must be fought as apostates and non-believers (*kufar*). This can be self-evident where the ruling party is foreign and non-Muslim. With regard to existing Arab governments, rebels and insurgents justify in Islamic terms their recourse to armed violence by declaring the leaders of the state in question, and those who support those leaders, to be *kufar*.

Although the Egyptian government ruthlessly suppressed the Islamist insurgency in the 1990s, an element of its defeat (at least as significant in the opinion of many Egyptian observers as the repressive capacity of the state) was the political isolation that Gama`a Islamiyya had brought on itself by its tactic of attacks that indiscriminately killed civilians, many of them directed at the tourist industry, an important source of income for many citizens as well as for the government. In the aftermath of this defeat, many leaders of the Gama`a Islamiyya renounced the use of violence. However, in the view of Hugh Roberts, who wrote an exceptionally lucid series of analytical pieces on contemporary Islamism for the International Crisis Group, the "recantations" written by Karam Zuhdi and others disavowing the group's recourse to violence "left unanswered the critical question of whether Egyptian Islamic radicalism has genuinely and comprehensively come to terms with the bankruptcy of

its *jihadi* strategy and settled its intellectual accounts with the thinking that inspired it."[28] Islamic Jihad responded to the defeat of the insurgency in Egypt by reorienting itself to the international arena, joining with al Qaeda in the late 1990s. Only in late 2007 did one of the group's founders and chief ideologues, Sayid Imam Sharif, issue a similar "reinterpretation" of jihad, specifically ruling out the denunciation and condemnation of persons as *kufar* in order to justify harming them, as well as the killing of non-Muslims in Muslim countries or Muslims belonging to other sects, such as Shia.[29]

The targeting of civilians by Islamist armed groups became particularly controversial among Islamist militants themselves in the context of the bloodbath in Iraq in the years after the US invasion. Some, with impeccable militant credentials, have condemned such attacks in no uncertain terms. The Palestinian-Jordanian Islamist ideologue Abu Muhammad al-Maqdisi unreservedly denounced as *kufar* governments that do not institute rule based on Sharia (Islamic law), and dismissed democracy as tantamount to changing one's religion—that is, committing apostasy.[30] In 2005, however, he criticized his former comrade Abu Musab al-Zarqawi for his brutal campaign of attacks targeting civilians in Iraq's Shia communities. "My project is not to blow up a bar, my project is not to blow up a cinema," al-Maqdisi told an Al Jazeera interviewer in July 2005:

> My project is to bring back to the Islamic Nation its glories and to establish the Islamic state that provides refuge to every Muslim, and this is a grand and large project that does not come by small vengeful acts…. Since when did we speak of killing women and children? Since when did we speak of killing the laymen of the Shia?[31]

The Iraq experience, with its multiplicity of actors and unrelenting reign of terror against civilians, often solely on the basis of their being Sunni or Shia, in some ways reprises the massacres of civilians that characterized the Algerian civil war in the mid-1990s. In both cases the insurgent forces included at the leadership level Arab veterans of the war in Afghanistan who, among other things, put great store in imposing what they regarded as "correct" Islamic practices.

The armed insurgents in Saudi Arabia appear to present a case of Islamist political violence most directly and unambiguously rooted in doctrine and religious ideology. In part this probably reflects the near-total hegemony of religious discourse in Saudi Arabian discussions of political and social issues, fostered by the free hand Saudi rulers have given to Islamist ideologues along with their systematic silencing of dissenting liberal views. Many of the perpetrators of political violence in Saudi Arabia are the political and ideological heirs

of those whom the Saudi state had encouraged and enabled (with fulsome support from Washington) to fight against the former Soviet-supported government in Afghanistan. Their shift of focus to Saudi Arabia and the Western presence there seems to be doctrinally inspired. In Nasir al-Fahd's pamphlet "Revealing the Blasphemy of Those Who Help Americans" it would be difficult to find a more succinct statement of the rationale for insurgent violence directed not just at Americans and other Westerners in the kingdom, but against the indigenous (and religiously-sanctioned) political authority. Al-Fahd's pamphlet, according to Saudi scholar Madawi al-Rasheed, describes a "legitimizing narrative of violence" that draws on the Quran and Hadith (sayings of the Prophet Mohammed), with "its own religious codes, meanings, politics and poetics."[32]

Human Rights Watch had the opportunity to raise these issues with Saudi dissidents during a visit to the country in December 2006.[33] There seemed to be full agreement on two points. First, public support for violent opposition groups, or at least reluctance to condemn such violence, is motivated primarily by the close Saudi government relationship with the United States, without regard for what they consider to be Washington's unacceptable policies in Iraq and the Israeli-Palestinian conflict. Second, they argued, the Saudi government must end its systematic suppression of basic civil and political rights, especially freedom of expression, to allow peaceful challenges to the status quo. To the extent that these views are representative, the basis for whatever popular support exists for the armed attacks against civilians is grounded in politics rather than religion. There was also widespread agreement, though not consensus, on a third point, which underscores a religious dimension to the violence: that the Saudi ruling family's accommodation of a religious establishment whose intolerance toward non-Muslims and Muslims who do not subscribe to the official Wahhabi interpretation of Islam has also contributed to support for attacks against foreigners, and any successful political liberalization requires religious reform as well.

Our interlocutors largely agreed, as noted, that "behind the violence is oppression, injustice, and occupation," referring to conditions in the Arab world. With regard to Saudi Arabia itself, they stressed as well the "zero framework for civil society and no independent judiciary," in the words of Matrook al-Faleh, a political science professor at King Saud University who has been jailed for his reformist activism and remains banned from traveling. The state, he and others said, was just as hostile to their peaceful criticisms as to the challenge of the violent groups. "A nine-year prison term for suggesting a constitution!" said Abdullah al-Hamid, a former professor of literature and reform activist, referring to prison terms handed down to himself, al-Faleh, and another activist.[34] "Proponents of violence point to that and say, see what your peaceful petitions get you."

A Way Ahead?

The concept of *jihad*, or struggle, is integral to Islamic doctrine and tradition, but, in addition to incorporating many different meanings of struggle, it has been quintessentially rule-bound, particularly as it applies to combat and use of force.[35] Rules, of course, are part of the field of contestation, not just in terms of legal or juridical understandings but ethical imperatives as well. The questions at stake now include who can speak with authority regarding core elements of Islamic tradition, at a time when authority is contested and fragmented.

More important than identifying authoritative voices, who are likely to be contested in any event, is the need for opinion-shapers in majority Muslim countries of the Middle East to discuss these issues in ways that incorporate the shared parameters of Islamic ethics and international humanitarian law principles. The underlying element in both systems is the understanding that, in warfare, there are limits as to the means and methods that warring parties may employ.[36] The limits spelled out in the Islamic tradition include prohibitions against treachery and mutilation, and specify categories of enemy persons who are immune from attack, including children, slaves, women, and the lame and blind.[37] This requires attention to areas of divergence as well, but with the purpose of building a broad and encompassing framework for identifying the most effective ways of ensuring respect for those shared principles. Humanitarian law principles address not whether states or non-state groups should take up arms in a particular struggle, but how they deploy and use those arms in the conduct of a particular conflict. In Islamic terms, the issue is not whether jihad is permissible, compulsory, or prohibited (though these are certainly important questions about which Islamic law and more generally international law have much to say), but how that struggle is conducted when it assumes an armed dimension.

Whether religious or political in character, groups perpetrating attacks that target or indiscriminately harm civilians frequently justify those attacks as reprisal for attacks by an adversary that harms their civilians—a justification that is not permitted under international humanitarian law, but also not an impulse limited to Muslims. The reprisal argument, while not acceptable, does point to a factor that proponents of international humanitarian law must address in any effort to get traction for their advocacy in Muslim societies today— namely, the apparent absence of political will internationally to address such killings by all parties, including powerful states. From their perspective, IHL is a legal regime that favors states: states can afford precision weapons and appear respectful of IHL even when their attacks kill many civilians, but insurgent groups often only have access to weapons that are crude and inaccurate. (States, for their part, argue that IHL favors insurgent groups by

making it easy for their fighters to blend in with the civilian population, increasing civilian casualties that are blamed on state armed forces.) Here one cannot overstate the place of the Israeli-Palestinian conflict, and the deep and widespread sympathy that most Muslims share towards Palestinian goals and grievances.

This, rather than any fundamental incompatibility of humanitarian law principles with Islamic ethics and law, constitutes a major obstacle to constructing a viable and effective body of public opinion ready to speak out against such attacks by groups with whose goals they sympathize. When it comes to the most serious violations of international humanitarian law, such as targeting civilians, the prohibitions are not contingent on reciprocal behavior by one's adversary. However, if the more powerful adversary encounters no consequences for its own serious violations, it is more difficult to persuade others that it is in the interest of all parties to uphold and respect international humanitarian law.

In the process of promoting respect for core international humanitarian law principles and effective accountability mechanisms in Arab societies, there is clearly a role for persons who are able to articulate those principles in language that will persuade other Muslims, including Islamists and nationalists who use primarily Islamic idioms and doctrinal references. There is a need in particular for persons who have credibility and who are not merely religious authorities speaking on behalf of the government, particularly if that government's own compliance with these principles is questionable.

Human Rights Watch's effort to promote this conversation in the region, with its Civilian Protection Initiative, has had resonance among human rights and other civil society activists in the region, and it is no longer unusual to find columns and editorials in Arab media criticizing attacks against civilians by armed groups in the Arab region or in other Muslim contexts. Eliciting broader commitment to the core principle of civilian immunity from opinion-shapers, not to mention society more broadly, will require further initiatives from regional as well as international activists. This is why it is critical for political and religious leaders and influential media, as well as human rights and other social movement activists, to speak out forcefully against such atrocities, even when—indeed, especially when—they are perpetrated by a government in their name or a movement whose goals they broadly support.

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[1] On the Palestinians, see Yezid Sayigh, *Armed Struggle and the Search for State* (Oxford: Oxford University Press, 1997); on atrocities by all parties in the Algerian war of independence, see Alistair Horne, *A Savage War of Peace: Algeria 1954-1962* (New York: Viking Press, 1977)

[2] In this essay I use the term "Islamist" to refer to politically engaged persons or groups who assert and promote policies and political programs that they believe are consistent with Islamic traditions and teachings and advance what they consider to be Islamic interests. There are many different Islamist organizations and tendencies that share this orientation, though their own understandings of what those traditions, teachings, and interests may be vary considerably. Here I am mainly concerned with that subset of Islamist groups that use or promote the use of armed violence.

[3] *The Peace Process: Implications for Democracy and Human Rights* Ibn Rushd Booklets Series, 3 (1997), pp. 75 - 128.

[4] Ariel Sharon's provocative visit to the site of the Al Aqsa mosque in East Jerusalem on September 29, 2000, and the response of Israeli security forces to Palestinian protestors, led to sustained clashes involving Israeli forces and armed Palestinians in what became known as the Al Aqsa intifada, or uprising. For details on Palestinian suicide bombings through late 2002, and analysis of such attacks from a human rights perspective, see Human Rights Watch, *Erased in a Moment: Suicide Bombing Attacks against Israeli Civilians* (New York, Human Rights Watch, 2002), http://www.hrw.org/legacy/reports/2002/isrl-pa/.

[5] Cited in Lori Allen, "Palestinians Debate 'Polite' Resistance to Occupation," in Joel Beinin and Rebecca Stein, *The Struggle for Sovereignty: Palestine and Israel 2003-2005* (Stanford: Stanford University Press, 2006), p. 289.

[6] Ibid., pp. 301-02.

[7] "Al-Haq in 2004: A Twenty-five Year Retrospective," in *Waiting for Justice: Al-Haq Annual Report 2004* (Ramallah, 2005), pp. 12-13. Azzam worked with Al-Haq from 1987 to 1995.

[8] Human Rights Watch interview with Ziad Abu Amr, Washington, DC, June 2006.

[9] Human Rights Watch discussion with Palestinian journalists in Ramallah, August 2005.

[10] "Rabat Declaration: Towards an Equal Partnership for Democracy, Human Rights, Fair Peace and Economic and Social Development," Statement of the Civil Society NGOs and Actors to the Forum for the Future[summit meeting of G-8 and Arab foreign ministers], December 8-9, 2004. The NGO assembly was sponsored by the Euro-Mediterranean Human Rights Network, the Moroccan Organization for Human Rights, the Cairo Institute for Human Rights Studies, and the International Federation for Human Rights.

[11] "Al-Haq's Appeal to Palestinian Political Parties and Armed Factions," Al-Haq Press Release REF: 21.2006E, 3 July 2006). A year earlier, in August 2005, Al-Haq activists told Human Rights Watch that the group had drafted talking points to use in a Beirut meeting on armed groups sponsored by Amnesty International, but then decided not to participate in the meeting before getting full agreement of the group's staff and board. "We need to be courageous, but it's difficult," one person said, noting that many of those who had signed the public petitions had been "harassed by the community."

[12] These meetings took place in Cairo, Ramallah, Bethlehem, Amman, Rabat, Tunis, Kuwait, Dubai, Riyadh, Beirut, and Bahrain.

[13] On Palestinian attacks, see Human Rights Watch, *Erased in a Moment,* http://www.hrw.org/legacy/reports/2002/isrl-pa/; on Iraqi attacks, see *A Face and a Name: Civilian Victims of Insurgent Groups in Iraq*, vol, 17, no. 9(E), October 2005, http://www.hrw.org/en/reports/2005/10/02/face-and-name-0; on Egypt see *Egypt: Mass Arrests and Torture in Sinai*, vol. 17, no. 3(E), February 2005, http://www.hrw.org/en/reports/2005/02/21/egypt-mass-arrests-and-torture-sinai-0.

[14] For instance, the First Additional Protocol of 1977 to the Geneva Conventions (Protocol I), which prohibits attacks against civilians, expressly covers "armed conflicts in which people are fighting against colonial domination and alien occupation and racist regimes in the exercise of their right of self determination...." Protocol I, article 1(4).

[15] Under IHL, anyone who is not a combatant is a civilian, and civilians lose their immunity only when and for such time as they directly participate in hostilities. Under IHL, reserve soldiers, when they are not subject to the

integrated disciplinary command of the armed forces, are the Cairo Institute for Human Rights Studies, and the International Federation for Human Rights.

[15] "Al-Haq's Appeal to Palestinian Political Parties and Armed Factions," Al-Haq Press Release REF: 21.2006E, 3 July 2006). A year earlier, in August 2005, Al-Haq activists told Human Rights Watch that the group had drafted talking points to use in a Beirut meeting on armed groups sponsored by Amnesty International, but then decided not to participate in the meeting before getting full agreement of the group's staff and board. "We need to be courageous, but it's difficult," one person said, noting that many of those who had signed the public petitions had been "harassed by the community."

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considered civilians. Most wars are between forces of unequal means, and an exception to IHL on these grounds would completely undermine the principle of civilian immunity.

[16] Human Rights Watch interview, Cairo, April 9, 2006.

[17] The comment was made at a roundtable in Cairo co-hosted by Human Rights Watch and the Cairo Institute for Human Rights Studies, June 26, 2005.

[18] Human Rights Watch interview, Ramallah, August 2005.

[19] See, e.g. article 51(6) of Protocol I, which states: "Attacks against the civilian population or civilians by way of reprisals are prohibited."

[20] Human Rights Watch interview, Beirut, July 1, 2006.

[21] International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law*, pp. 513-29.

[22] Human Rights Watch, *Erased in a Moment*, http://www.hrw.org/legacy/reports/2002/isrl-pa/, p. 52.

[23] Human Rights Watch interview, Beirut, July 2, 2006.

[24] Human Rights Watch interview, Cairo, April 9, 2006.

[25] Human Rights Watch, *Civilians Under Assault: Hizbollah's Rocket Attacks on Israel in the 2006 War,* vol. 19, no. 3(E), August 2007, at http://hrw.org/reports/2007/iopt0807/.

[26] Cited in Mohamed M. Hafez, "Rationality, Culture, and Structure in the Making of Suicide Bombers: A Preliminary Theoretical Synthesis and Illustrative Case Study," *Studies in Conflict & Terrorism* 29, pp. 165-185.

[27] The Egyptian Muslim Brotherhood activist Sayyid Qutb spent 10 years in prison for his alleged involvement in a coup against President Gamal Abdel Nasser, where he was subjected to torture. Released in 1964, he was jailed again in 1965 in connection with another alleged plot and hanged in August 1966. His *Signposts on the Road* (Ma`alim fi'l-tariq), in the view of Malise Ruthven, "more than any other text, articulates both the rage and revolutionary energy underpinning the Islamist movement." Malise Ruthven, *A Fury for God* (London: Granta Books, 2002), p.85.

[28] Hugh Roberts, "Islam in North Africa II: Egypt's Opportunity," International Crisis Group Middle East and North Africa Briefing, April 20, 2004, p. 9.

[29] Imam Sharif, also known as Dr. Fadl, was the author of *Basic Principles in Making Preparations for Jihad* (*Al-umda fi e'dad al-udda*). His revision, entitled "Rationalizing Jihad in Egypt and the World," appeared as a series

of articles in November 2007 in the Egyptian daily, *Masri al-Yom*. See Jailan Halawi, "Bidding Violence Farewell," *Al-Ahram Weekly*, November 22-28, 2007, and Marc Lynch's commentary in his Abu Aardvark blog of November 27, 2007, available at http://abuaardvark.typepad.com/abuaardvark/2007/11/dr-fadls-review.html.

[30] Nibras Kazimi, "A Virulent Ideology in Mutation: Zarqawi Upstages Maqdisi," in Hillel Fradkin, et al., eds., *Current Trends in Islamist Ideology* (Washington: The Hudson Institute, 2005), also available at http://www.futureofmuslimworld.com/research/pubID.24/pub_detail.asp. (accessed March 22, 2007).

[31] The interview, dated July 5, 2005, is cited in Kazimi. Al-Maqdisi, who in the late 1990s had been imprisoned with al-Zarqawi, was detained again on terrorism-related charges in 2000 but released after a Jordanian State Security Court found him innocent of the charges on December 28, 2004. He was rearrested the day after the Al Jazeera interview, apparently for not denouncing al-Zarqawi more forcefully. The case of al-Maqdisi is one of those discussed in Human Rights Watch, *Suspicious Sweeps: The General Intelligence Department and Jordan's Rule of Law Problem* (New York, September 2006), available at http://hrw.org/reports/2006/jordan0906/.

[32] Madawi al-Rasheed, *Contesting the Saudi State: Islamic Voices from a New Generation* (Cambridge, UK: Cambridge University Press, 2007), pp. 135-36.

[33] Joe Stork, "Violence and Political Change in Saudi Arabia," *ISIM Review* 19, Spring 2007, pp. 54- 55, http://www.isim.nl/files/Review_19/Review_19-54.pdf.

[34] Al-Faleh, al-Hamid, and writer Ali al-Dumaini were detained in March 2004 after they refused to sign a pledge to cease all public criticism of the government. Following an unfair trial a court sentenced them in May 2005 to six, seven, and nine years respectively. In August 2005 King Abdullah pardoned them but they still are banned from travel and from access to Saudi media.

[35] For an illuminating analysis of the evolution of the concept of jihad in Islam's first centuries, see Roy Parviz Mottahedeh and Ridwan al-Sayyid, "The Idea of the *Jihad* in Islam before the Crusades," in Angeliki E. Laiou and Roy Parviz Mottahedeh, *The Crusades from the Perspective of Byzantium and the Muslim World* (Washington, D.C.: Dumbarton Oaks Research Library and Collection, 2001), available at www.doaks.org/etexts.html.

[36] Sohail Hashemi, who notes that "jus in bello issues receive very little attention" in contemporary Muslim discourses on war, cites the Quranic injunction to "not transgress limits" in the course of fighting "God's cause," and enumerates restraints based in the *sunna* (practices) of the Prophet Muhammad and his earliest ("rightly guided") successors as leaders of the Muslim community. See his "Interpreting the Islamic Ethics of War and Peace," in Sohail H. Hashmi, ed., *Islamic Political Ethics: Civil Society, Pluralism, and Conflict* (Princeton: Princeton University Press, 2002).

[37] John Kelsay, *Arguing the Just War in Islam* (Cambridge, MA: Harvard University Press, 2007), especially chapter 3: "Politics, Ethics, and War in Premodern Islam." There Kelsay writes: "The point is not simply that the Prophet identified, women, children and others as protected groups. Rather, these persons are listed because, as a general matter, they 'do not fight'" (p. 114).