
Letter to the Leaders of Hamas

Khaled Mishaal
Head of the political bureau of the Islamic Resistance Movement, Damascus

Dr. Mahmoud Zahar
Head of the Islamic Resistance Movement in Gaza

Ismail Haniya
Head of the parliamentary list of the Islamic Resistance Movement, Gaza

January 29, 2006

Dear Mr. Mishaal, Dr. Zahar and Mr. Haniya:

We write to urge you, on the occasion of the victory of the Islamic Resistance Movement (Hamas) in the Palestinian parliamentary elections, to announce publicly that your organization will not use lethal force to target civilians or cause indiscriminate harm to civilians. This is a recommendation we have made to Hamas on earlier occasions. We believe that Hamas's majority in the new Palestinian Legislative Council and your mandate to form the next Palestinian Authority government make it both opportune and essential for you to extend and broaden the moratorium that Hamas declared early last year, and to declare unconditionally that the organization will not attack civilians under any circumstances in the future.

Any government formed by Hamas should also call on other Palestinian armed groups to halt all attacks against civilians, and to take measures to ensure respect for this fundamental humanitarian principle.

The Hamas organization or its military wing, the `Izz al-Din al-Qassam Brigades, has in the past carried out suicide bombings and other attacks that have killed scores of civilians in Israel and wounded hundreds, many seriously. The most recent such attack occurred on August 31, 2004, when a pair of suicide bombers blew up two municipal buses on the main street of Beersheba killing sixteen persons and injuring about 100.

Attacks that intend to kill or maim civilians violate the most elemental principle of humanity. The universal prohibition against such attacks applies regardless of whether the perpetrators are agents of a government or of an armed opposition group. The intentional killing of civilians, including reprisal attacks, constitute war crimes, and are crimes against humanity when conducted massively or systematically. Those who commit crimes against humanity and war crimes, as well as those superiors who order or condone them, have individual criminal responsibility for their actions and are subject to universal jurisdiction -- that is, all states are responsible for bringing them to justice, irrespective of where the crime was committed and regardless of the nationality of the victim or perpetrator.

The Hamas organization or its military wing have also claimed responsibility for firing so-called Qassam rockets of its own manufacture at Israeli towns and cities, several of which have resulted in fatalities and injuries. It is impossible to target these weapons with any accuracy or precision. This makes their use against or near civilian-populated areas a violation of international humanitarian law, which prohibits the use of weapons that cannot be directed at specific military objectives.

Spokespersons for the Hamas organization frequently claim that its attacks are responses to Israeli attacks against Palestinian civilians, and that they are a legitimate form of resistance to military occupation. Under international law, attacks that target civilians or cause indiscriminate harm to civilians constitute crimes of the gravest sort. The absolute prohibition against targeting civilians extends to acts of reprisal for attacks against one's own civilians, as well as acts that a group claims are intended to resist occupation. There can never be any justification for such blatant disregard of these fundamental humanitarian principles.

We therefore strongly urge Hamas to adopt and publicize, without delay, a policy of full respect for humanitarian law principles that will include an unconditional end to attacks that target civilians or that cause them indiscriminate harm. We ask that you publicly and unequivocally call on the military wing of your organization, the Qassam Brigades, and any other groups or individuals acting on behalf of Hamas, as well as all Palestinian armed groups, to desist from any attacks or acts of reprisal that deliberately target civilians, or cause them disproportionate harm.

We look forward to your response.

Sincerely,

Sarah Leah Whitson
Executive Director, Middle East and North Africa Division