



PCHR and LAW Position Paper on the Conference of High Contracting Parties to the Fourth Geneva Convention

As depositary of the Geneva Conventions, the government of Switzerland has called a conference of High Contracting Parties to the Fourth Geneva Convention to meet in Geneva on 5 December 2001 to discuss ways of ensuring Israel's respect for the Convention in the Occupied Palestinian Territories (OPT). The US and Israel have evaded any criticism from other states about their decision to boycott the meeting, despite the fact that Israeli occupying forces have escalated their systematic violations of the Convention, including war crimes (defined as grave breaches of the Convention), since October 2000.

The Convention is a cornerstone of international humanitarian law and provides basic legal standards for the treatment of civilians during armed conflict or under occupation. It bans, among other things: indiscriminate use of force against civilians, wanton destruction of property, torture, collective punishment, the annexation of conquered territory, and the establishment of settlements on occupied land. It requires judicial accountability for those who commit war crimes. And most importantly, it requires all High Contracting Parties to ensure that the Convention is respected in all circumstances.

The Palestinian Centre for Human Rights (PCHR) and LAW – the Palestinian Society for the Protection of Human Rights and the Environment – believe that the High Contracting Parties are poised to repeat the disaster of their July 1999 meeting, which dealt a major setback to the cause of international humanitarian law and the protection of civilians. The timing of the conference, the exclusion of NGOs, the failure to condemn the US-Israeli boycott, the fact that the draft Declaration is due to be adopted without a vote, and the text of the draft Declaration itself are all evidence of this. The draft Declaration fails to meet even the basic minimum standard of what is required of the High Contracting Parties. The text of the draft Declaration is attached.

PCHR and LAW's Position

The joint position of PCHR and LAW has always consisted of three basic points:

1. International humanitarian law, specifically the Fourth Geneva Convention, must be applied de jure and de facto in the Occupied Palestinian Territories. The Convention cannot be undermined or ignored on behalf of political interests. Rather, respect for the Convention is a necessary foundation for a just and lasting peace.¹
2. Due to the Israeli government's persistent refusal to recognise the applicability of the Convention in the OPT and its systematic violation of the Convention since 1967, responsibility for enforcement necessarily falls to the other High Contracting Parties. This

¹ Contrary to opinions expressed by every single other High Contracting Party, the ICRC, and the United Nations, Israel claims that only the Hague Regulations of 1907 are applicable in the OPT, and not the Fourth Geneva Convention, indicating that it has always considered the situation as one of open warfare.



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is the essence of common Article 1 of the Geneva Conventions, which states that High Contracting Parties “undertake to respect and to ensure respect [for the Conventions] in all circumstances.”

3. The mandate of the first High Contracting Parties conference, as called for by numerous UN General Assembly resolutions, is to discuss “measures to enforce the Convention in the Occupied Palestinian Territory, including Jerusalem, and to ensure respect thereof in accordance with common article 1.”² A meeting of the High Contracting Parties that fails to address and adopt enforcement measures violates the spirit of these resolutions.

Background

In response to the expansion of Israeli settlements in occupied east Jerusalem, the UN General Assembly passed a number of resolutions in 1999 calling for a meeting of the High Contracting Parties to discuss measures to compel Israel to enforce the Convention in the OPT. Whether or not Israel was violating the Convention or whether or not the Convention was applicable in the OPT are questions that had already been definitively resolved. The only purpose of the conference was to decide on enforcement.

Under pressure from the US and Israel, who were boycotting the meeting, the conference was adjourned after 15 minutes without taking any steps to enforce the Convention in the OPT. Governments used the absence of open conflict on the ground and the excuse to “give peace a chance” to justify this blatant politicisation of international humanitarian law, which was an enormous disappointment to global civil society.

After the escalation of attacks against Palestinian civilians and systematic violation of the Convention by Israeli occupying forces in late 2000, the General Assembly invited Switzerland to:

... consult on the development of the humanitarian situation in the field, in accordance with the statement adopted on 15 July 1999 by the ... Conference of High Contracting Parties to the Convention, with the aim of ensuring respect for the Convention in all circumstances in accordance with common article 1 of the four Conventions.³

In November 2001, after more than one year of procrastination, a conference was of High Contracting Parties was finally called by governments, scheduled for 5 December 2001.

² A/RES/ES-10/6, para. 6 (9 February 1999). Also see A/RES/ES-10/5, para. 3 (17 March 1998); A/RES/ES-10/4, para. 4 (13 November 1997); A/RES/ES-10/3, para. 10 (15 July 1997).

³ A/RES/ES-10/7, para. 16 (20 October 2000).



Shutting Out Other Voices

PCHR and LAW note with dismay several indications in the timing and format of the Conference of High Contracting meeting which indicate that is not being taken in good faith:

1. The announcement of the meeting left barely one month's advance notice, making it difficult to organise and prepare any widespread involvement, either among governments or civil society.
2. The conference has been scheduled on the same day as an important follow-up meeting to the World Conference Against Racism, to be held at the Office of the High Commissioner for Human Rights in Geneva. Many of the NGOs concerned with the matter of the application of the Convention would be forced to choose between this meeting and the High Contracting Parties conference.
3. NGOs and the media are excluded from the conference. NGO access and participation is standard practice for international fora; the format of the High Contracting Parties conference is untransparent, undemocratic, and highly irregular.

Promoting Impunity

The decision of the Israeli and US governments to boycott the conference not only violates their international legal obligations under Article 1, but is a rejection of the will of the international community as expressed in multiple General Assembly resolutions. As is the case with the World Conference Against Racism in Durban earlier this year, these boycotts cannot be allowed to undermine the legitimacy of the conference of the High Contracting Parties. Rather, it is the responsibility of the participating High Contracting Parties to condemn the boycott and to affirm the legitimacy of the conference despite it.

Instead, by remaining silent in the face of the boycott, the other High Contracting Parties – especially the member states of the European Union – are contributing to Israel's impunity as a state that consistently acts as if it is above international law.

The draft Declaration:

An examination of the draft Declaration itself reveals that it is a failure for the cause of international humanitarian law.

1. Failure to Take Enforcement Measures:

The most glaring deficiency of the draft Declaration is that it does not mention any specific measures that High Contracting Parties should take to enforce the Convention in the OPT. Yet the entire purpose of the conference is for all High Contracting Parties to take measures to enforce the Convention. Moreover, state third parties are barely mentioned at all. In paragraphs 4 and 17, the



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draft Declaration merely calls upon third parties to fulfill their Article 1 obligation to ensure respect for the Convention, but fails to recommend, let alone enact, such steps.

There is no lack of available enforcement measures. As a state that has breached its treaty obligations, Israel could be subject to any number of sanctions regularly employed under international law, including: bans or restrictions on arms transfers, expulsion of diplomats, severance or downgrading of diplomatic relations, freezing of assets, and trade embargoes. Rather than a lack of enforcement measures, the draft Declaration represents a failure of political will to punish states that consistently commit violations and grave breaches of the Convention, which are war crimes under international law.

The only specific reference to possible involvement of state third parties at all is in paragraph 11:

The participating High Contracting Parties ... encourage any arrangements and agreements supported by the parties to the conflict on the deployment of independent and impartial observers to monitor, inter alia, breaches of the Fourth Geneva Convention as a protection and confidence building measure, with the aim to ensure effectiveness of humanitarian rules.

The encouragement of observers “supported by the parties to the conflict” is rendered meaningless in light of the Israeli government’s public and persistent refusal to accede to any such mechanisms. The declaration does not even demand that parties to the conflict accept such arrangements. Furthermore, it must also be noted that a monitoring presence is not an enforcement measure, but a reporting mechanism.

Nearly all of the other passages in the draft Declaration are variations on a call for Israel to respect the Fourth Geneva Convention and general principles of international humanitarian law. This is not the purpose of the High Contracting Parties conference. Numerous other entities have called for Israel’s respect of the Convention, ad nauseam. The only purpose of the High Contracting Parties Conference, as stipulated in numerous General Assembly resolutions, is to discuss enforcement measures. This draft Declaration clearly demonstrates the failure of the High Contracting Parties to fulfill the mandate of their conference.

2. Failure to Condemn Israeli Violations of the Convention

By failing to include any actions to be taken against the Israeli government, the draft Declaration falls far short of the mandate of the High Contracting Parties meeting, which is to enforce the Convention. But even as a statement without action, the draft Declaration lacks substance, as it omits any condemnation of Israel’s systematic and gross violations of the Fourth Geneva Convention. Such violations have already been extensively documented by Palestinian, Israeli, and international NGOs, the International Committee of the Red Cross, the UN High Commissioner for Human Rights, the UN Human Rights Enquiry Commission, and the UN Special Rapporteur for Human Rights. The draft Declaration



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explicitly recognises that such violations, including the indiscriminate use of force and the existence of settlements on occupied land⁴, have taken place but fails to condemn them.

Moreover, the language of the draft Declaration is highly misleading. It repeatedly calls upon the “parties to the conflict” to respect international humanitarian law, obscuring the fact that Israel has been responsible for the overwhelming majority of the violations of the Convention in the OPT. The draft Declaration asks the Occupying Power not to violate the Convention, but fails to condemn it for already having violated it on numerous occasions.

3. Failure to Demand Application of the Convention

Although the draft Declaration notes that the Convention should be applied in the OPT and asks Israel to do so, the language it uses is completely inappropriate in light of the urgent nature of the situation. Israel has refused to recognise the applicability of the Convention in the OPT for 34 years and violates it as a matter of state policy. The failure of the draft Declaration to demand an immediate end to this unacceptable state of affairs is appalling.

4. Representation of High Contracting Parties

The draft Declaration includes many semantic sleights of hand intended to undermine and subvert the legal gravity demanded by the occasion. The statements in the draft Declaration are made in the name of “participating High Contracting Parties,” implying that the opinions expressed in the draft Declaration represent only a subset of opinions and are thus less valid. Similarly, the General Assembly resolutions explicitly call for a meeting of “the High Contracting Parties”; yet the draft Declaration is being prepared for a meeting “of High Contracting Parties.” The omission of the word “the,” while seemingly innocuous, is another attempt to dilute the General Assembly resolutions and undermine the legally binding nature of the Article 1 obligation.

It is true that not every single High Contracting Party will participate in the conference. But as noted above, the Israeli-US boycott should not be allowed to undermine the conference’s potential importance; rather, it is incumbent upon the other High Contracting Parties to deplore their absence and reaffirm the legitimacy of the conference despite it.

Disrespecting the Convention⁵

In ignoring their obligation to take immediate and practical steps to enforce the Convention in the OPT, the High Contracting Parties are violating not only the General Assembly resolutions, but their legal obligations under common Article 1 of the Geneva Conventions.

⁴ See paragraphs 2 and 12, respectively.

⁵ For a thorough analysis of this issue, see “The Obligation to ‘Ensure Respect’: A Call for a High Contracting Parties Meeting on the Enforcement of Israel’s Respect of the Fourth Geneva Convention,” Palestinian Centre for Human Rights, November 2001./



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According to common Article 1, the High Contracting Parties are obligated not only to respect the Convention, but to ensure respect for it in all circumstances. In 1986, the International Court of Justice ruled in *Nicaragua vs. US* that under Article 1, the encouragement of violations of the Convention by other parties constituted a violation of the Convention itself. It is clear that certain High Contracting Parties, by providing continuous military, economic, and diplomatic aid to Israel, are directly contributing to Israel's violations of the Convention.

Moreover, one can interpret Article 1 to include failure to act in the face of violations as a violation itself. Enforcement of the Convention remains in the first instance the responsibility of state parties to a conflict. But when a party to the conflict fails or refuses to adhere to the Convention, responsibility for enforcement then falls to the other High Contracting Parties. Israel's belligerent 34-year occupation is the clearest possible example of this, as Israel has continued to refuse to recognise the Convention's applicability and to violate the Convention as a matter of state policy, while giving no indication of changing either of these behaviours in the future.

Filling in the Silence

The draft Declaration's glaring omission of any concrete and immediate steps to be taken by the High Contracting Parties to enforce the Convention in the OPT make it little more than an ineffectual statement intended to obscure the legal and moral obligations of the international community. PCHR and LAW condemn this draft Declaration and urges the High Contracting Parties to use the opportunity of the Geneva meeting to fulfill their legal obligations under Article 1 of the Convention in good faith.

To this end, PCHR and LAW are organising a **Civil Society & Human Rights Parallel Conference on the Fourth Geneva Convention** in Geneva on 4-5 December 2001 to demand that the High Contracting Parties take immediate and practical steps to enforce the Convention in the OPT. The Parallel Conference will be accompanied by a public demonstration in Geneva on 5 December. By bringing together global civil society to speak out against the mockery of the Fourth Geneva Convention by the High Contracting Parties, the Parallel Conference will provide a forum for the voices of victims to be heard. The Parallel Conference is open to human rights activists, jurists, academics, solidarity groups, and all who support the application of international humanitarian law in the OPT.