



## PALESTINIAN CENTRE FOR HUMAN RIGHTS

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### **Switzerland and the Geneva Accord: Undermining the Rule of Law**

The Palestinian Centre for Human Rights (PCHR) strongly denounces Switzerland's involvement and endorsement of the so-called "Geneva Accord."<sup>1</sup> PCHR asserts that Switzerland's support of the Geneva Accord contradicts its duties both as the depository of the Geneva Conventions<sup>2</sup> and as a High Contracting Party to the *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, 1949 (Fourth Geneva Convention).

#### **The Geneva Accord and International Humanitarian Law**

The "Geneva Accord" an unofficial "peace proposal" drafted and endorsed by a group of Palestinian leaders and Israelis, including former members of the Israeli government,<sup>3</sup> with the sponsorship of the Swiss Foreign Ministry, was released in October 2003 and promoted as "the realization of the permanent status peace component envisaged in...the Quartet Roadmap process."<sup>4</sup> The document is intended to give a detailed and comprehensive over-view of the "compromises" that are required<sup>5</sup> for "reconciliation between Palestinians and Israelis"<sup>6</sup> to occur. The Geneva Accord has been marketed as a "breakthrough" in peace negotiations. However, PCHR asserts that the document's "recommendations" undermine the fundamental individual and collective rights of Palestinians and undermine the rule of law by circumventing Israel's obligations under international human rights and humanitarian law, specifically the Fourth Geneva Convention.

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<sup>1</sup> Also referred to as the "Geneva initiative"

<sup>2</sup> Geneva Conventions of 12th August 1949:

- for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field
- for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea
- relative to the Treatment of Prisoners of War
- relative to the Protection of Civilian Persons in Time of War

<sup>3</sup> The principle drafters were former Israeli Minister of Justice Yossi Beilin and former Palestinian Authority Information Minister Yasser Abed Rabbo.

<sup>4</sup> Geneva Accord (GA), Preamble, paragraph 11.

<sup>5</sup> GA, Preamble, paragraph 3.

<sup>6</sup> GA, Preamble, paragraph 12.



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In direct contravention of the spirit and provisions of international humanitarian law, specifically the Fourth Geneva Convention<sup>7</sup>, the Geneva Accord does not require Israel to withdraw from all lands occupied since 1967, including relinquishing all land confiscated for settlement use and the removal of Jewish settlers. Furthermore, the model of the future Palestinian “state” that the Geneva Accord envisions allows for the continued violation of the Fourth Geneva Convention in that it negates the fundamental right of Palestinians to self-determination and the right to self-defense<sup>8</sup>. The Accord further effectively rescinds the right of return of approximately 5 million Palestinian refugees by affording the government of Israel the ability to veto any and all requests from Palestinian refugees to return to his or her home in what is now the territory of Israel.<sup>9</sup>

Furthermore, the Geneva Accord not only fails to hold Israel accountable for the widespread and systematic war crimes it has continued to perpetrate within the Occupied Palestinian Territories (OPTs), but it effectively legitimizes Israel's colonization and confiscation of Palestinian territory and allows for Israel's ongoing suppression of the Palestinians' right of self determination through the use of belligerent force to become a permanent arrangement under the pretext of a “legal” final status agreement.

### **Switzerland’s Role in Undermining International Humanitarian Law**

Switzerland has specific responsibilities as both a High Contracting Party to the Fourth Geneva Convention and as the depository of the Geneva Conventions. As a High Contracting Party Switzerland is under a clear obligation to “ensure respect for the convention in all circumstances” (article 1), and specifically to “search for and prosecute those responsible for grave breaches of the convention (article 146). The depository of the Geneva Conventions has particular responsibilities, including administrative responsibilities to (1) register the treaties with the United Nations, (2) arrange for the undertaking and

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<sup>7</sup> See for instance the Fourth Geneva Convention, Article 49, paragraph 6 which prohibits population transfer into occupied territory, further defined as a war crime under Additional Protocol 1, Article 85(4)(a); Article 147 of the Fourth Geneva Convention and Articles 46 and 55 of the *Regulations Annexed to the Hague Convention No. IV respecting the laws and customs of war on land* of 1907 (Hague Regulations) which prohibit the confiscation of occupied territory by an occupying power, and is also defined as a war crime under Article 85 of Additional Protocol 1. See also Fourth Geneva Convention, Article 27 and Article 47 which protects the fundamental rights of protected persons in occupied territory; and Third Geneva Convention, Article 4 along with Additional Protocol I, Articles 43, 44 and 48 which provide for right of resistance and self-defense against invasion.

<sup>8</sup> According to the Geneva Accord the future “state” of Palestine will be restricted from establishing an army to defend against external attack (GA, Article 5 (3)), and will not possess sovereignty or control over its airspace and borders (GA, Article 5 (9) (b) and Article 5 (12) (c)). In addition, the Geneva arrangement allows for the permanent presence of Israeli military forces and intelligence personnel within the OPTs with the ability to carry out military operations (GA, Article 5 (7) (f) and Article 5 (8) (a) (f)). What is more, the Geneva Accord fails to end the illegal occupation of Palestinian territory; instead of Israeli control a “Multinational Force,” almost inevitably led by the United States, would assume the roll of occupying power, and could only be withdrawn with Israeli agreement (GA, Article 5 (6) (a) (c) (f)).

<sup>9</sup> See GA, Article 7



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completion of official translations of the treaties, and (3) transmit official translations and certified copies of the treaties to High Contracting Parties and “Parties to conflict.”<sup>10</sup>

Switzerland has consistently failed to fulfill its responsibilities as both the depository of the Geneva Conventions and a High Contracting Party to the Fourth Geneva Convention, including its legal obligation to hold Israel accountable for the gross violations of the Fourth Geneva Convention routinely committed in the OPTs. This total failure to hold Israel accountable for its actions was most clearly illustrated at the two conferences of the High Contracting Parties to the Fourth Geneva Convention that took place in Geneva on 15 July 1999 and again on 5 December 2001. Both of these conferences were convened in accordance with U.N. General Assembly resolutions calling for a conference to discuss practical enforcement measures to compel Israel to cease violations of the Fourth Geneva Convention in the OPTs. Both conferences failed in their principle objective. These conferences also demonstrated Switzerland’s unwillingness to use its position of leadership as the depository to ensure that meaningful enforcement mechanisms would be adopted; in fact, the process and manner by which Switzerland organized and conducted the conferences indicates a tendency to undermine the purpose of the conferences.<sup>11</sup>

PCHR maintains that the support for the Geneva Accord by Switzerland conflicts with its role as the depository of the Geneva Conventions, and its *de jure* obligation to *enforce* the provisions of the Fourth Geneva Convention. PCHR asserts that such support represents a degenerative shift of policy within the government of Switzerland from complacent acceptance of Israel's illegal acquisition of territory, population transfers and other widespread and systematic violations of Palestinians' rights by the Israeli government in the OPTs, to an actual endorsement and process of legitimization for these methods, and, as such, constitutes an *active* breach of its obligation to *respect* the convention.<sup>12</sup> Furthermore, in accordance with the principle of *pacta sunt servanda* as manifest in article 26 of the *Vienna Convention on the Law of Treaties*,<sup>13</sup> PCHR argues that Switzerland’s distinct status as the depository of the Geneva Conventions entails a responsibility to set reputable standards of state practice that uphold and strengthen international humanitarian law. As such, the support and endorsement of the depository of the Geneva Conventions, and High Contracting Party of the Fourth Geneva Convention, for a proposal that so blatantly contradicts with the provisions and spirit of the Fourth Geneva Convention, and the fundamental principles of international humanitarian law, only serves to seriously undermine and erode the standards contained within the law of armed conflict; and serves to further encourages violations of the Convention by Israel.

PCHR insists that as the depository and a High Contracting Party to the Fourth Geneva Convention, Switzerland has a clear obligation to ensure strict enforcement of international humanitarian law in the

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<sup>10</sup> For a comprehensive list of the articles that specify these responsibilities see: Waldemar Soft and J. Ashley Roach, Index of International Humanitarian Law, International Committee of the Red Cross, Geneva, 1987, p. 74.

<sup>11</sup> See PCHR, “PCHR and LAW Position Paper on the Conference of High Contracting Parties to the Fourth Geneva Convention,” 22 November 2001, at <http://www.pchrgaza.org/files/PressR/English/2001/71-2001.htm>.

<sup>12</sup> Fourth Geneva Convention, Article 1

<sup>13</sup> Article 26- “Pacta sunt servanda: Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”



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OPTs, in cooperation with other governments, *including as a fundamental basis of any peace negotiations*. Hence, Switzerland's support for the Geneva Accord, an initiative that effectively ignores the basic concepts of international humanitarian law, contradicts with these obligations. In doing so, Switzerland's efforts have served to undermine the rule of law by encouraging state parties to the Fourth Geneva Conventions to ignore their contractual obligation to ensure respect for the Convention.