



PALESTINIAN CENTRE FOR HUMAN RIGHTS

10 November 2001

Dear Representative,

Please find enclosed a copy of “The Obligation to Ensure Respect: A Call for the High Contracting Parties Meeting on the Enforcement of Israel’s Respect for the Fourth Geneva Convention” published by the Palestinian Centre for Human Rights.

12 August 2001 was the fifty-second anniversary of the *Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949* (the Fourth Geneva Convention). Israel has long been a High Contracting Party to the Convention, yet since its occupation in 1967 of the Gaza Strip, the West Bank, including Jerusalem, Israel has refused to recognize the *de jure* applicability of the Convention to these Occupied Palestinian Territories. During the last thirty-four years of this occupation, Israel has consistently and repeatedly violated many of the provisions of the Convention. However, the first year of the *Al-Aqsa Intifada* has borne witness to an unprecedented escalation in violence against Palestinian civilians. Willful killings, torture, ill-treatment of prisoners, willful destruction of homes and property, population transfer (settlements), and collective punishments are just some of the violations that Israel has committed and continues to commit against Palestinian civilians. As grave breaches of the Fourth Geneva Convention, these violations constitute war crimes, as recognized by the International Committee of the Red Cross, international human rights organizations and some High Contracting Parties to the Convention.

The High Contracting Parties’ meeting held on 15 July 1999 in response to a call by the United Nations General Assembly was intended to discuss ways of ensuring Israel’s respect for the Fourth Geneva Convention. Under pressure from the United States, Canadian and Australian governments, political interests compromised the conference and although its convening was a manifestation of the legal obligation embodied in Article 1 of the Fourth Geneva Convention, which calls upon all High Contracting Parties to “respect, and ensure respect for the present Convention in all circumstances”, the conference essentially failed to constitute any step towards the fulfilment of this obligation.

The Palestinian Centre for Human Rights notes with appreciation the recent call of the Swiss Government to reconvene the meeting on December 5, 2001 and urges the High Contracting Parties not to allow its subjugation to political interests as occurred in the conference in 1999. The outcome of this conference must not be merely a statement of condemnation of Israel’s violations. Palestinian civilians are daily paying a heavy price for

the inaction of the international community and it is time for this conspiracy of silence to be broken. The Palestinian Centre for Human Rights therefore demands that the outcome



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of this meeting of the High Contracting Parties be a plan of action, consisting of practical measures, to be implemented with immediate effect to ensure Israel's respect of the Fourth Geneva Convention.

The Palestinian Centre for Human Rights condemns the US government's decision to boycott the meeting and is concerned that this action undermines their commitment to the eradication of terrorism, in all its forms, around the world. State terrorism, as perpetrated by Israel against Palestinian civilians, must be combated with the same commitment and efforts as all other forms of terrorism. No state which commits or supports terrorism can be allowed to enjoy impunity.

The meeting of the High Contracting Parties to the Fourth Geneva Convention to be held on December 5, 2001 is an essential step in ensuring the implementation of the Convention in the Occupied Palestinian Territories, in protecting Palestinian civilians and in halting war crimes and acts of state terrorism which have been or are currently being perpetrated in the Occupied Palestinian Territories.

The Palestinian Centre for Human Rights wishes the international community to recognize and accept that the resolution of the situation in the Occupied Palestinian Territories can be found only in the application and implementation of international, human rights and international humanitarian law.

Please also find enclosed a copy of a Press Release issued by the Palestinian Centre for Human Rights in cooperation with LAW, the Society for the Protection of Human Rights and the Environment, on 10 November 2001.

Yours sincerely,

Raji Sourani
Director
Palestinian Centre for Human Rights



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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***



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The Obligation to ‘Ensure Respect’

A Call for a High Contracting Parties Meeting on Enforcing Israel’s Respect of the *Fourth Geneva Convention*

Introduction

The Palestinian people in the Gaza Strip, the West Bank, including Jerusalem, have been living under a belligerent occupation since the deployment of Israeli forces to these territories in 1967. For 34 years, Palestinians have been denied their inalienable right to self-determination. As the Occupying Power, Israel owes the Palestinian civilians living under the occupation protective guarantees as provided under the *Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949* (hereinafter *Fourth Geneva Convention* or “Convention”). All members of the international community, except Israel, have repeatedly recognised that the Fourth Geneva Convention applies *de jure* to the ongoing situation in the Occupied Palestinian Territories. The Oslo Accords between Israel and the Palestine Liberation Organisation, the official representative of the Palestinian people, have in no way changed the applicability of the *Fourth Geneva Convention* in the Occupied Palestinian Territories. According to Articles 7 and 47 of the Convention, no agreement concluded between the belligerents shall deprive the protected persons of their rights as guaranteed under the Convention.

A series of resolutions passed during the United Nations General Assembly’s tenth emergency special session reaffirmed the *de jure* applicability of the *Fourth Geneva Convention* to the situation in the Occupied Palestinian Territories. These resolutions further made an unprecedented recommendation to the High Contracting Parties of the *Fourth Geneva Convention* to “convene a conference on measures to enforce the Convention in the Occupied Palestinian Territory, including Jerusalem, and to ensure its respect, in accordance with common Article 1.”¹

At the conference that convened on 15 July 1999, the United States strongly pressured the other High Contracting Parties to abandon the intended purpose of the meeting and to effectively ignore their legal commitment to ensure respect of the *Fourth Geneva Convention*. The conference became subject to political interests and there was no serious discussion regarding the implementation of the Convention. Indeed, the High Contracting Parties adjourned the meeting after approximately fifteen minutes with the following concluding statement:

¹ *Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory*, UNGA res. A/RES/ES-10/3, 15 July 1997.



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*Taking into consideration the improved atmosphere in the Middle East as a whole, the Conference was adjourned on the understanding that it will convene again in the light of consultations on the development of the humanitarian situation in the field.*²

In the two years since the conference, there has not been, nor does there exist at present, an “improved atmosphere in the Middle East as a whole.”³ The second *intifada* has entered its second year. It has borne witness to some of the worst and most systematic violations of the *Fourth Geneva Convention* by Israel since the commencement of the occupation. The main reason for the early adjournment of the first conference of the High Contracting Parties – “to give peace a chance” – does not exist at this time, assuming it once did. It is more timely than ever – imperative actually – for the High Contracting Parties to the *Fourth Geneva Convention* to reconvene to consider the means available to enforce Israel’s *de jure* implementation of the *Fourth Geneva Convention*.

The purpose of this report is to highlight those violations of human rights law and humanitarian law perpetrated by Israel and to obtain the commitment of the High Contracting Parties to fulfill their responsibilities under the *Fourth Geneva Convention*. To this end, Part I shall address the violations of the *Fourth Geneva Convention* perpetrated by Israel during the Al-Aqsa *intifada*, and Part II shall highlight the legal obligation of the High Contracting Parties to “ensure respect for the [*Fourth Geneva Convention*] in all circumstances.” It is imperative that there are immediate moves to fulfill this obligation, and a meeting of the High Contracting Parties is the first effective step towards achieving that goal.

² Part of the final statement from the Conference of High Contracting Parties to the Fourth Geneva Convention, Geneva, 15 July 1999 reprinted in *Politicisation of the International Humanitarian Law: An Analytical, Critical Study of the Conference of the High Contracting Parties to the Fourth Geneva Convention* (Gaza: Palestinian Centre for Human Rights, 2000) at 75.

³ *Ibid.*



Part I: Israeli Violations of the *Fourth Geneva Convention* against Palestinian Civilians

Willful Killing

Article 147

Grave breaches ... shall [include] ... willful killing, ... willfully causing great suffering or serious injury to body or health ...

At least 631 Palestinians have been killed in the OPT since 29 September 2000, including 164 under the age of eighteen and 19 women.⁴ About 83 percent of those killed were civilians. At least 16,275 Palestinians have been injured.⁵ Both Israeli occupation forces and Jewish settlers have been responsible for these deaths and injuries.

In the majority of cases, Israeli occupation forces have stated that the resort to lethal force was in response to direct threats to the lives of soldiers. In reality, however, few of those Palestinians killed were shot in incidents in which there was any real danger to the life of Israeli soldiers, settlers, or other Israeli citizens. Indeed, there are many cases in which Palestinians were unarmed and/or were targeted apparently without provocation.

In some cases of willful killing, Palestinian demonstrators were participating in stone-throwing demonstrations. Their actions, however, have rarely posed any threat, either real or reasonably feared, to the safety of the soldiers; Israeli soldiers, wearing protective military clothing, have often remained within military jeeps or tanks, have been located in military posts fortified with cement blocks and towers, or have been positioned above the location of demonstrations. In addition, demonstrators have usually been shot when they were at a significant distance from Israeli soldiers. In such circumstances, it is extremely doubtful that Palestinian demonstrators actually presented a danger to the lives of Israeli soldiers in all of the cases involving the use of lethal violence against Palestinians.

In those situations in which the actions of Palestinian demonstrators have posed a threat to the safety of Israeli soldiers, the latter's response should have been proportionate to the threat itself. However, an analysis of the kinds of ammunition which have caused injuries to Palestinians indicates that this has not been the case:⁶

- 21% live ammunition,
- 32% rubber-coated steel bullets or plastic bullets,

⁴Unless indicated otherwise, all statistics are calculated from information gathered by PCHR field workers in the Gaza Strip and LAW field workers in the West Bank, updated to 15 October 2001.

⁵Palestinian Red Crescent Society, updated to 15 October 2001.

⁶Palestinian Red Crescent Society, updated to 15 October 2001.



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- 29% tear gas, and
- 18% miscellaneous (mostly bomb fragments and shrapnel).

Over half of the reported injuries involved the use of live or rubber-coated bullets. The above statistics clearly indicate a pattern of disproportionate and excessive use of force by Israeli soldiers against Palestinians.

Extra-Judicial Killings

Israel has pursued a policy of assassination of Palestinians in the OPT suspected of hostile activity against Israel. Prime Minister Ariel Sharon has repeatedly reaffirmed Israel's right to extra-judicially kill Palestinians who are on Israel's 'most wanted' list. In flagrant violation of international and national laws on judicial processes of arrest, charge, and trial of those suspected of criminal acts, Israel has assassinated at least 37 targeted individuals whom it alleges were a threat to its security. The assassinations have involved direct shootings, booby-trapped telephones or cars used by the victims, and helicopter-launched missile attacks. At least 11 civilian bystanders have been killed in these illegal operations and many more have been injured.

Killings by Jewish Settlers

Since the outbreak of the *intifada*, Jewish settlers have been responsible for the wilful killings of at least 24 Palestinian civilians. To date, Israeli prosecutors have not brought a single charge against any settler in connection with these killings.

Medical Care, Personnel, and Patients

Article 16

The wounded and sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect.

During the *intifada* Israel has subjected the West Bank and the Gaza Strip to a near-complete closure of all border crossings into Israel, Jordan, and Egypt. As a result, Israel has obstructed the transfer of the wounded to hospitals abroad and the entry of necessary medical equipment to Palestinian hospitals in the West Bank and the Gaza Strip. In addition, Palestinians who previously visited Israeli hospitals for regular treatment before the *intifada* have been denied access to those medical facilities. Israeli forces have also obstructed internal movement and the transfer of patients to Palestinian hospitals within the territories. At least 22 Palestinian civilians in urgent need of medical care have died after long delays imposed by Israeli forces at border crossings and checkpoints.



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Article 20

Persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases, shall be respected and protected.

Attacks or reprisals on medical personnel, ambulances, or installations constitute violations of the *Fourth Geneva Convention*. Yet, during the *intifada*, Israeli occupation forces have attacked ambulances of the Palestinian Red Crescent Society 156 times, causing damage to 66 emergency vehicles.⁷ Similarly, 116 of the Red Crescent's emergency medical personnel have been injured since 29 September 2000, and one medical worker killed.⁸ Israeli forces have either denied or restricted access to Red Crescent emergency vehicles at least 185 times during the current *intifada*.

Torture

Article 31

No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties.

Article 32

The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering ... of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishment, ... but also to any other measures of brutality whether applied by civilian or military agents.

Article 147

Grave breaches ... shall [include] ... torture or inhuman treatment.

On 6 September 1999, the Israeli High Court of Justice delivered its decision in a number of applications submitted by human rights groups and individual Palestinian detainees against the use of torture by the Israeli General Security Service (GSS). The Court found that the GSS had been systematically using physical force during its interrogations, "imping[ing] upon the suspect's dignity, his bodily integrity and his basic rights beyond what is necessary."⁹ In spite of the finding that the physical interrogation methods were contrary to the Israeli Basic Law and to Israel's international legal obligations, the Court ruled that "[i]f

⁷ Palestinian Red Crescent Society, 5 October 2001. For related information, see also *Palestinian Medical Personnel between Fire and their Humanitarian Mission 29 September 2000 – April 2001: A Report on Israeli Violations against Palestinian Medical Personnel* (Gaza: Palestinian Centre for Human Rights, 2001), (in Arabic only.)

⁸ Palestinian Red Crescent Society, 5 October 2001.

⁹ Israeli High Court of Justice decision on use of torture by GSS, para. 27.



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the State wishes to enable GSS interrogators to utilise physical means in interrogations, it must seek the enactment of legislation for this purpose.¹⁰

The Israeli government accepted the Court's tacit invitation to reopen the debate about the legalisation of torture. Although then Prime Minister Barak agreed on 15 February 2000 to shelve all legislation pertaining to the use of torture, the Israeli Attorney General, in direct violation of Article 146 of the *Fourth Geneva Convention*, countered with a declaration that he retained the prerogative not to prosecute individual GSS interrogators if they chose to use physical force against Palestinian suspects when they deemed it 'necessary.'

As the matter presently stands, Israel is in breach of international laws on torture in the following respects:

- Reports about the use of various forms of physical force by GSS interrogators continue to emerge even after the High Court of Justice ruled that the use of physical force was unlawful. Forms of torture include beatings, using Palestinian collaborators to physically pressure detainees into disclosing information, and imprisoning Palestinian minors with common law criminals.
- The Israeli *Knesset* still has not passed legislation to formally outlaw the use of all torture by GSS interrogators. The failure to do so constitutes a breach of Article 2(1) of the *Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishment* [hereinafter *Convention against Torture*] to which Israel is a state party.
- GSS interrogators who committed acts of torture against Palestinian suspects before the ruling have not yet been prosecuted in accordance with Article 146 of the Convention. Further, the Israeli Attorney General officially stated that he would not necessarily prosecute GSS interrogators who individually choose to use physical pressure against Palestinian suspects when they deem it necessary, even after the High Court of Justice ruled that such practices were unlawful.
- Article 15 of the *Convention against Torture* states that evidence extracted by means of torture shall not be admitted in court against the accused. No steps have been taken to re-try those Palestinian prisoners whose convictions rested upon evidence obtained by physical methods of interrogation that the High Court of Justice declared unlawful.
- Palestinian detainees who were subjected to torture before the ruling have still not been provided with compensation or rehabilitation. This is in direct violation of Article 14 of the *Convention against Torture*.

¹⁰ Israeli High Court of Justice decision on use of torture by GSS, para. 37.



III-Treatment of Palestinian Prisoners

Article 5

Where in occupied territory an individual protected person is detained ... as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall ...nevertheless be treated with humanity, and in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention.

Article 71

Accused persons who are prosecuted by the Occupying Power shall be promptly informed, in writing, in a language which they understand, of the particulars of the charges preferred against them and shall be brought to trial as rapidly as possible.

Article 72

Accused persons shall have the right to present evidence necessary to their defence and may, in particular, call witnesses. They shall have the right to be assisted by a qualified advocate or counsel of their own choice, who shall be able to visit them freely and shall enjoy the necessary facilities for preparing the defence.

Administrative Detention

Administrative detention has been a frequent tool of Israeli forces since the beginning of the occupation. Under this procedure, arrest orders are issued by the Israeli District Military Commander in Palestinian-controlled areas in the Gaza Strip and the West Bank. Administrative detention involves the denial of the rights of judicial processes, including the right to a fair trial, access to legal counsel, the knowledge of the charge, contravenes international human rights law and standards. Palestinians held in administrative detention have the right to appeal administrative decisions before a military judge and before the Israeli High Court of Justice, but their lawyers are denied the right, under the pretext of security concerns, to review the evidence adduced against their clients. Presently, 26 Palestinians remain in administrative detention in Israel.¹¹

Trial Procedure

In Israeli military courts, the conditions for trial do not meet international standards for judicial procedure in a number of respects. Since 1996, Israel has not allowed Palestinian lawyers to visit Palestinians detained in Israel. This restriction has had serious implications for Palestinian prisoners, most of whom cannot afford Israeli lawyers and are thus effectively denied access to legal counsel. In those cases where Palestinian defendants can afford Israeli lawyers, the lawyers are often not informed of the time of their clients' court appearance, thus undermining the provision of adequate legal representation. In addition, trial appearances are often delayed without any appropriate justification. Further, information extracted through

¹¹ Addameer Prisoners' Support Association, 26 September 2001.



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the use of physical or unacceptable psychological pressure during interrogation of Palestinian suspects has been admitted by military courts as evidence against them. Similarly, Israeli authorities have come to rely on evidence obtained by Palestinian collaborators who are held with Palestinian detainees. Military courts continue to admit such illegally obtained evidence and to convict Palestinians on the basis of such evidence.

Transfer of Palestinian Prisoners

Article 49

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power ... are prohibited, regardless of their motive.

Article 76

Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein.

Under the Oslo Agreements, Israeli occupation forces redeployed from parts of the West Bank and the Gaza Strip had to abandon prisons located in those areas. As a result, Israel transferred Palestinians detained and imprisoned in those locations to prisons inside Israel. Before the *intifada*, approximately 2,000 Palestinians were imprisoned in jails located within Israel. Since the beginning of the *intifada*, several hundred more Palestinians have been and are currently being held in Israeli prisons. These detentions are a clear and repeated violation of Article 49, which prohibits the transfer of protected persons from occupied territory to the territory of the Occupying Power, and of Article 76, which calls for prison sentences to be served by protected persons in the occupied territory.

The transfer of these detainees to prisons and detention facilities inside Israel has resulted in the denial of access to family members. Family visits to prisons in Israel have been rendered almost impossible due to the continued restrictions imposed by the Israeli authorities on the freedom of movement of Palestinians both within the OPT and from the OPT into Israel. Additionally, family members of Palestinian prisoners have often been denied permission to visit them without reason.

Prison Conditions

Article 76

Protected persons [convicted] of offences ... shall, if possible, be separated from other detainees and shall enjoy conditions of food and hygiene which will be sufficient to keep them in good health, and which will be at least equal to those obtained in prisons in the occupied country.

They shall receive the medical attention required by their state of health.

...



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Proper regard shall be paid to the special treatment due to minors.

Palestinian prisoners are held in deteriorating and overcrowded quarters, exposed to extremes of temperature and inadequate standards of hygiene in prison accommodation. In addition, there is clear discrimination between the standards of prison conditions for Israeli prisoners and for Palestinian prisoners held in Israeli prisons.

The quality and the quantity of food provided to Palestinian prisoners contravene international normative standards. The inadequate provision of food to Palestinian prisoners has a direct impact on their health and increases their vulnerability to illness. Due to illness or to particular conditions, some Palestinian prisoners require special diets, which Israeli prison authorities do not provide. Poor health has been exacerbated by a substandard nutritional regime.

There is also inadequate provision of medical facilities and care for Palestinian prisoners in Israeli jails. For instance, there is a serious shortage of medical personnel in prisons. Some prisons do not have a resident doctor while others have doctors who are available only for a short time each day. The doctors who work in prison facilities are usually qualified in general practice only, and Palestinian prisoners requiring special attention are subjected to long delays in access to specialist medical care.

Minors held in Israeli jails are not afforded the specific care that Israeli prison authorities are required to provide. Indeed, Palestinian minors held as political prisoners in Telmond prison in Israel have been imprisoned in the Israeli criminal population holding areas, thereby exposing them to physical and psychological dangers.

House Demolitions and Sweeping of Agricultural Land

Article 53

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 cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.

Article 33

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.

...

Reprisals against protected persons and their property are prohibited.



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For the duration of the occupation, Israel has maintained a policy of house demolitions. In the past, the state has justified its demolition of houses on the basis of owners having built their homes without a permit, on Israeli state land, inside “green areas,” on land not zoned for building, or on land zoned for agricultural or security purposes.

Since the outbreak of the *intifada*, there has been an alarming increase in the number of demolitions of Palestinian homes, buildings, and agricultural lands in the West Bank and the Gaza Strip. Israel has completely demolished at least 308 houses in the Gaza Strip alone, leaving thousands of people homeless. In addition, Israel has swept at least 13,500 dunums of Palestinian agricultural land in the Gaza Strip, approximately 9% of the total agricultural land in the Strip. This has had and will continue to have devastating effects on the economy of the OPT, where agriculture is a primary sector.

The official Israeli justification for the demolitions and the leveling of land has changed. The reason for any particular demolition or sweeping has not always been announced, either before or after the act of destruction. When giving reasons for this destruction, Israeli authorities invariably claim that the property or land destroyed was providing cover for Palestinian gunmen and its destruction was therefore necessary in the interests of security. In reality, such claims have been largely unfounded and no evidence has been provided of the use of these properties or land by Palestinian gunmen. Preemptive demolitions have also occurred in areas and on properties which cannot reasonably have been used as cover for Palestinian attacks on Israeli forces or Israeli settlers.

Article 53 of the Convention prohibits the destruction of civilian property by the Occupying Power unless the destruction is absolutely necessitated by military operations. Military necessity refers to a situation in which a state cannot escape from a danger of war in any other way than by committing an act which would otherwise constitute a violation of international law. The term *absolutely* stresses that the article is to be read narrowly, and any ambiguity in the application of the article should be interpreted in favour of the civilians for whom the protection is intended.

Israel has alternatively claimed that the demolitions are justified on the basis of self-defence. However, these arguments are misapplied by the Israeli state in at least two respects. To rely upon self-defence, the violent act must be in response to an act of violence or to an imminent threat of violence, and the response must be directed at the perpetrators of the attacks. In the case of the demolitions and land sweeping, the immediate quality of the risk has been absent, and the acts of destruction taken in response to the Palestinian attacks have been directed at innocent civilians rather than at the perpetrators of the attacks.

On the ground, all the facts indicate that the Israeli destruction of Palestinian property constitutes reprisals against and indiscriminate punishment of civilians, both of which are prohibited by Article 33 of the Convention. The excessive nature of the Israeli response to Palestinian attacks violates the principle of proportionality that underlies the arguments of self-defence and military necessity. Palestinian owners of the properties around which



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violence occurs have had little or no control over the clashes that have occurred between Palestinian militants and Israeli forces. Israel fails to provide any evidence indicating that the property owners have participated in, assisted, or encouraged the attacks against Israelis. The demolitions are thus reprisatory and constitute a violation of Article 33.

Settlements

Article 49

...

The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

Since the beginning of the occupation, Israel has pursued an aggressive policy of settlement, increasing both the number and the size of settlements in the OPT. The establishment of settlements in land illegally occupied by Israel is a violation of Article 49 and a grave breach of the Convention. Israel is responsible for planning, approving, funding, and constructing the settlements, and it offers Israelis financial incentives to move to the territories. Presently, about 400,000 Jewish settlers live in more than 200 settlements in the West Bank, the Gaza Strip, and East Jerusalem.¹² On 30 April 2001, the Sharm el-Sheikh Fact-Finding Committee, headed by former American senator George J. Mitchell, recommended that all settlement activity be halted in an effort to bring peace to the region. Israel has not complied with these recommendations. Israeli Prime Minister Ariel Sharon maintains that he will restrict expansion to the 'natural growth' requirements of existing settlements, but only after a period of complete calm. On the ground, about 950 new housing units were added to settlements in the last quarter of 2000.¹³

Israel has argued that its settlements are strategic and necessary to maintain security. The facts on the ground, however, belie these claims. Since their establishment and, particularly during this *intifada*, the existence and the growth of settlements in the OPT have been a *cause* of increasing Palestinian anger. During this *intifada* that anger has manifested itself in Palestinian demonstrations that have drawn a violent response from Israeli occupation forces, a great number of which have been deployed near settlements to guard them. All facts establish that the settlements threaten Israel's security rather than enhance it and that the settlements are more about creating demographic 'facts on the ground,' making the creation of a viable Palestinian state an impossibility.

Israel has defended its settlement policy by arguing that settlements are an issue that the PLO, as the representative of the Palestinian people, agreed to discuss in the final peace negotiations of the Oslo Agreements. These negotiations were scheduled for 1999 but have yet to take place. Such negotiations are, however, violate Article 47 of the *Fourth Geneva*

¹² *Report on Israeli Settlement in the Occupied Territories* (Washington: Foundation for Middle East Peace, 2001) at 1.

¹³ Peace Now. The statistic does not include new housing units added to the settlements in Jerusalem.



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Convention, which provides that protected persons shall not be deprived of the benefits of the Convention by any agreement concluded between the authorities of the occupied territories and the Occupying Power. Consequently, any agreement between Israel and the PLO on this issue does not negate the fact that the existence of the settlements constitutes a grave breach of the Convention.

Closures

Article 33

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.

...

Reprisals against protected persons and their property are prohibited.

Since the beginning of the occupation, Israel has retained the ability to control the free movement of Palestinians and commodities into and out of the territories through imposition of a *general closure*. In 1989, *strict closures* were introduced, along with the magnetic card system for all Palestinian residents over the age of sixteen. Periodically, Israel has tightened its control of the borders of the Gaza strip and the West Bank, imposing even *absolute closures* – blockades that prevent all movement of Palestinians and goods in and out of these territories.

Since 29 September 2000, Israeli occupation forces have imposed a near-total air, sea, and land siege on the West Bank and the Gaza Strip. Its effect has been to isolate these territories from Israel and from the outside world, severing links between the two territories and restricting movement even within these territories themselves.

Israeli occupation forces have severely restricted, and at times have entirely halted:

- movement through all border crossings from the West Bank and the Gaza Strip into Israel
- movement through all border crossings between the Palestinian territories and Jordan and Egypt
- movement along the Safe Passage, linking the Gaza Strip and the West Bank,
- flights to and from Gaza International Airport, the sole air outlet for the Gaza Strip, and
- use by fishermen of the Mediterranean Sea.

In addition, travel *within* the Gaza Strip itself has been severely hampered by the periodic closure of the main roads that link the south of the Strip to the north and the imposition of tight Israeli control along all major roads. In the West Bank, in addition to the restrictions on movement resulting from the increasing number of Israeli checkpoints, strict curfews have been imposed upon many Palestinian towns, cutting them off from the rest of the territories.



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The network of checkpoints, roadblocks, and access roads reserved exclusively for Israeli use have fragmented the West Bank into some 64 separate areas.

The closures of the West Bank and the Gaza Strip have had devastating effects on a Palestinian economy that is almost entirely dependent upon the Israeli economy and Israeli control of territorial borders. Near-total restrictions on the movement of Palestinians into Israel have resulted in approximately 120,000 unemployed Palestinian labourers. This represents a 75% reduction in the number of Palestinians working in Israel¹⁴, and a \$US 750 million annual loss in revenues from labour services to the Palestinian economy.¹⁵ In addition, the restrictions on the movement of goods imposed through the closure of border crossings into Israel have resulted in the loss of at least \$US 60 million worth of exports to Israel since the outbreak of the *intifada*.¹⁶

Not a single Palestinian in the Gaza Strip or the West Bank has remained unaffected by the closures imposed by Israel. Approximately 14.2% of households have lost their sources of income during the *intifada* while 47.4% have lost at least half of their usual income in the same period.¹⁷ The median monthly income of Palestinians has decreased from 2500 NIS to 1300 NIS.¹⁸

For its part, Israel has cited security concerns, and in particular its vulnerability to suicide bombers, as the reason for the tightening of its control over the territories. However, the closures have not prevented suicide bombers from entering Israel during the *intifada*, a fact that demonstrates that the siege has not had the effect that Israel allegedly desires. In fact, the crippling and sweeping effects the siege has had on the lives of the normal civilian population serves to inspire acts of violence against Israel rather than quell them. In addition, the closures indiscriminately punish all Palestinians, including innocent civilians, and thus constitute a form of collective punishment. Collective punishments are a clear violation of international humanitarian law.

¹⁴Survey published by the Federation of Israel Chambers of Commerce on 4 July 2001 as reported in *Ha'aretz* on 5 July 2001.

¹⁵*Ibid.* Palestinians living in occupied East Jerusalem are not subject to these closures.

¹⁶*Ibid.*

¹⁷*Impact of the Israeli Measures on the Economic Conditions of Palestinian Households (2nd Round: May-June, 2001)* (Ramallah: Palestinian Central Bureau of Statistics, July 2001). The statistics in the report were based on a survey completed by 2936 households between 19 May 2001 and 5 July 2001.

¹⁸*Ibid.*



Part II: Legal Basis for a Meeting of the High Contracting Parties

Part I has demonstrated that Israel has contravened multiple provisions of the *Fourth Geneva Convention*. There is little to indicate that Israel will change its illegal practices in the future, especially when it continues to refuse to recognise the *de jure* applicability of the Convention in the OPT. The High Contracting Parties of the Convention have an obligation to ensure Israel's respect of the Convention in all circumstances. It is on the basis of Article 1, which clearly sets out this responsibility, that the Palestinian Centre for Human Rights urges the High Contracting Parties to convene a meeting at the earliest possible time to discuss ways of securing Israel's compliance with the Convention.

Article 1: Right or Obligation?

Article 1 creates not only a *right* of state third parties to ensure respect of the Convention by state belligerents, but a *duty* to do so.

In its 1986 ruling in *Nicaragua v. US* the International Court of Justice (ICJ) interpreted common Article 1 as such when it stated that there

is an obligation on the United States Government, in the terms of Article 1 of the Geneva Conventions, to 'respect' the Conventions and even 'to ensure respect' for them 'in all circumstances, since such an obligation does not derive only from the Conventions themselves, but from the general principles of humanitarian law to which the Conventions merely give specific expression.¹⁹

UN General Assembly and Security Council resolutions have repeatedly called upon the High Contracting Parties to ensure Israel's respect of its obligations.²⁰ Most recently, 115 of the 188 High Contracting Parties reaffirmed their duty under common Article 1 by voting in favour of a series of General Assembly resolutions during the GA's tenth emergency special session.²¹ All of the GA resolutions passed during the emergency session referred to the Article 1 undertaking as an "obligation."

¹⁹ *Military and Paramilitary Activities in and against Nicaragua Case (Nicaragua v. US)* (Merits), [1986] ICJ Rep. 14 at para. 220 [hereinafter *Nicaragua v. US*].

²⁰ M.T. Kamminga *Inter-State Accountability for Violations of Human Rights* (Philadelphia: University of Pennsylvania Press, 1992) at 185.

²¹ The series of UNGA resolutions passed during the tenth emergency special session yielded the following votes (for-against-abstention):

A/RES/ES-10/2, 25 April 1997	134-3-11
A/RES/ES-10/3, 15 July 1997	131-3-14
A/RES/ES-10/4, 13 November 1997	139-3-13
A/RES/ES-10/5, 17 March 1998	120-3-5
A/RES/ES-10/6, 9 February 1999	115-2-5



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In recognition of their Article 1 obligation, the High Contracting Parties met in Geneva in 1999 to discuss ways of securing Israel's compliance with the Convention. They released a joint statement upon the conclusion of the conference expressing their common intention to reconvene at a later date.²²

However, thus far there has been no sign of a concrete effort on the part of the High Contracting Parties to fulfill their legal obligation to ensure Israel's respect of the Convention, more than two years after their first meeting. This indifference can be attributed to a lack of political will rather than to a flaw in the legal basis of the Article 1 obligation. The politicisation of the first conference of the High Contracting Parties, as evidenced in their concluding statement, bears witness to this claim. The Palestinian Centre for Human Rights considers that in the current circumstances, the failure of a majority of High Contracting Parties to "ensure respect for the Convention" in the Occupied Palestinian Territories is a breach of their Article 1 obligation. The Palestinian Centre for Human Rights therefore urges the High Contracting Parties to reconvene at the earliest possible time as a means of actively reaffirming their recognition of their legal obligation. States should make it clear that their participation in the High Contracting Parties conference is motivated by their legal obligation under Article 1 and not motivated or influenced by political considerations alone.

Scope of the Obligation

Article 1 of the *Fourth Geneva Convention* constitutes a twofold legal obligation undertaken by 188 states. Firstly, the undertaking to *respect* the Convention places a duty upon each State party to implement all of the provisions of the Convention when the state is a party to a conflict of the kind contemplated by the Convention. Secondly, each State party has the obligation of *ensuring respect* for the Convention even when the state is not a belligerent in the conflict.

The *Fourth Geneva Convention* does not explicitly define the content of the obligation to ensure respect within the text of the treaty. However, the International Court of Justice has developed the understanding of the obligation in *Nicaragua v. US*.²³ In that case, the ICJ held that the US had breached the customary obligation to ensure respect of the Convention by *encouraging* Nicaraguan *contras* who violated the Convention. Thus, while it did not attempt to exhaustively define the scope of Article 1, the Court ruled that the encouragement of conventional violations constitutes one of the ways a state can breach its obligation to ensure respect.

The states opposed to the first four resolutions were Israel, the United States, and the Federated States of Micronesia. Israel and the United States were the only states to oppose A/RES/ES-10/6.

²² *Supra* note 2.

²³ *Supra* note 2.



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In fact, the undertaking to ensure respect can be more broadly interpreted to recognise a *failure to act* in the face of known or reasonably foreseeable violations of the Convention, as well as various *acts*, as a violation itself. In other words, Article 1 places a duty upon High Contracting Parties to *actively* enforce the *Fourth Geneva Convention* in all circumstances. If those circumstances are such that a High Contracting Party, party to a conflict, is violating the terms of the Convention, then it is necessary for the remaining High Contracting Parties to make sincere and reasonable efforts to compel the offending state to cease its violations. If the State parties fail to do so, they will be in breach of their Article 1 obligation. In this way, the Article 1 obligation not only makes certain actions in contravention of the Convention unlawful. It also makes *inaction* in the face of such violations by another state unlawful. Article 1, then, prevents third parties to a conflict from absolving themselves of any responsibility based on their non-involvement in a conflict. It makes the protection of civilians the concern of all states, irrespective of their participation or non-participation in the conflict.

Implementation of the Convention remains in the first instance the responsibility of the State parties to a conflict. When a party to the conflict fails or refuses to ensure that its practices comply with the law, responsibility for enforcement of the Convention necessarily falls to states otherwise not involved in the conflict. These are precisely the circumstances that have befallen the Occupied Palestinian Territories. Since the commencement of the occupation, Israel has systematically committed violations of the *Fourth Geneva Convention* against Palestinians. Part I unequivocally demonstrates that the violations have escalated to an unprecedented level within the last year. Although Israel makes its High Court of Justice available to Palestinians for the review of the decisions and the actions of the military in the territories, the Israeli judicial system has failed to provide Palestinian civilians with adequate protection from violations by Israeli occupation forces. The failure stems, in large part, from the fact that Israel disputes the *de jure* applicability of the *Fourth Geneva Convention* to the situation in the OPT, so Palestinians cannot use the Convention to raise a question about the legality of military actions. Since Israel's refusal to accept the applicability of the Convention renders the internal implementation mechanism inoperable, the other High Contracting Parties have the duty to bring about Israel's compliance.

Clearly, then, there is unequivocal evidence that Israel has failed to abide by its legal obligation to protect Palestinian civilians in the OPT. This evidence has been available to the High Contracting Parties for some time. No High Contracting Party acting in good faith can have a reasonable expectation that the Occupying Power itself will in this case respect the Convention, as Israel has done little to demonstrate a willingness to do so. And with the express knowledge of Israel's blatant disrespect of the provisions of the Convention, responsibility falls to the other High Contracting Parties to ensure Israel's compliance with the Convention. The only question that remains is how they are to do so.



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Mechanism of Enforcement

Article 1 places the obligation to ensure respect of the *Fourth Geneva Convention* on High Contracting Parties but it does not specify any particular way of securing compliance with the provisions of the Convention. Similarly, Article 146 only contemplates violations of the Convention *ex post facto*, while also calling for a suppression of all acts contrary to the provisions of the Convention. The absence of an express provision regarding a mechanism of enforcement does not derogate from the express legal obligation on all High Contracting parties to ensure respect of the Convention. Rather it highlights the importance of convening a conference that addresses this absence.

In their exploration of various mechanisms of enforcement, the High Contracting Parties may consider all measures provided by general international law to the victim of a breach of a treaty so long as international humanitarian law does not exclude them (such as reprisals against protected persons).²⁴ While not exhaustive, the following list provides some examples of the possible mechanisms of enforcement:²⁵

- Expulsion of diplomats
- Severance of diplomatic relations
- Halting ongoing diplomatic negotiations or refusing to ratify agreements already signed,
- Non-renewal of trade privileges or agreements
- Reduction or suspension of public aid to the offending state
- Restrictions and/or ban on arms trade, military technology and scientific cooperation
- Restrictions on exports and/or imports to and from the offending state; total ban on commercial relations,
- Ban on investments
- Freezing of capital
- Suspension of air transport agreements, and
- Request for an advisory opinion from the ICJ on whether an alleged violation of international humanitarian law by a state actually constitutes a breach of an international commitment undertaken by it.

The High Contracting Parties should also recall their duty under Article 146 of the Convention to take all measures necessary to hold accountable all Israeli government officials

²⁴M. Assoli & A.A. Bouvier *How Does Law Protect in War?: Cases, Documents, and Teaching Materials on Contemporary Practice in International Humanitarian Law* (Geneva: International Committee of the Red Cross, 1999) at 231.

²⁵This list is derived from U. Palwankar "Measures available to States for fulfilling their obligation to ensure respect for international humanitarian law" (January-February 1994) 298 Int. Rev. Red Cross 9.



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and military personnel guilty of committing or encouraging the commission of grave breaches of the Convention, as defined in Article 147. The High Contracting Parties may do so in their own national courts or in an international tribunal in addition to pressuring Israel to try and punish suspected individuals before its own courts.

A meeting of the High Contracting Parties is necessary to explore other enforcement options and to decide which ones are most appropriate for the situation in the Occupied Palestinian Territories.

Arguably, nothing short of Israel's *de facto* and *de jure* compliance with the Convention in its entirety will suffice to release those High Contracting Parties not party to the conflict of their obligation to ensure respect. However, such an interpretation necessarily assumes a possible recourse to armed intervention, yet given its very nature, international humanitarian law could not serve as the basis for an armed intervention to enforce Israel's respect of the Convention.²⁶ Alternatively, an armed intervention instigated by the UN Security Council on the basis of Chapter VII of the UN Charter could be one of the enforcement options available to the High Contracting Parties. Action of this kind finds some support in Article 89 of the *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, which calls upon the High Contracting Parties to "act, jointly or individually, in co-operation with the United Nations and in conformity with the United Nations Charter." However, Israel is not a party to *Protocol I* and *Protocol I* has not yet achieved customary status. Thus it becomes the responsibility of the Security Council to determine whether Israeli violations in the OPT represent a threat to peace that authorises it to resort to armed intervention in accordance with Articles 39 and 40 of the Charter.

At the very least, Article 1 of the *Fourth Geneva Convention* obliges the High Contracting Parties to use all other means to the fullest extent possible to bring about Israel's compliance with the Convention in its entirety. The High Contracting Parties will have discharged their Article 1 obligation to ensure respect so long as they make reasonable efforts, using all available measures in good faith, to secure Israel's compliance with the Convention. This implies that any decision of the High Contracting Parties to employ a particular measure must be rationally connected to the desired goal. In other words, the measure must have a reasonable chance of effecting Israel's compliance with the *Fourth Geneva Convention*. If, after a reasonable period of time, it becomes apparent that the measure is not successful in doing so, the High Contracting Parties must try another. It is unacceptable for the High Contracting Parties to continue with a particular course of action without trying anything more if that measure does not bring about Israel's respect for the Convention in its entirety. Naturally, this will require a time-frame for the use of any particular enforcement measure, based upon a reasonable expectation of success in securing Israel's compliance for the

²⁶ *Report on the Protection of War Victims* (Geneva: International Committee of the Red Cross, 1993) reprinted in Assoli & Bouvier, *supra* note 27 at 450.



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Convention. It will also require a monitoring system by which the High Contracting Parties can continuously gather information about and, ultimately, evaluate the effectiveness of any particular enforcement measure.



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Conclusion

Part I clearly establishes that the Palestinians living in the Occupied Palestinian Territories are victims of violations of the *Fourth Geneva Convention* by the Israeli Occupying Power. All states are in possession of detailed knowledge of those violations. Consequently, it is imperative for the High Contracting Parties to begin discharging their Article 1 obligation. The Palestinian Centre for Human Rights calls upon the High Contracting Parties to reconvene at the earliest possible time in order to discuss ways of enforcing the Convention. A conference of this kind would send a strong message to Israel that it cannot rely upon the indifference of other states in the face of its violations of the Convention.

More generally, the same unequivocal message would be conveyed to all states breaching or contemplating violations of the *Fourth Geneva Convention*. Further, a meeting of the High Contracting Parties would cement the obligatory nature of Article 1 common to the Geneva Conventions, thus demonstrating that the pursuit of the protection of civilians from the destruction of war is to be based upon the rule of law.

The meeting of the High Contracting Parties that took place on 15 July 1999 held much promise, particularly for the civilians living in the Occupied Palestinian Territories and, more generally, for the development of international humanitarian law. However, this international test of the strength of the *Fourth Geneva Convention* was a serious disappointment, mocked by the politicisation the High Contracting Parties' legal obligation to ensure respect of the Convention. In light of the disappointing conclusion of the first conference of the High Contracting Parties, the Palestinian Centre for Human Rights urges the High Contracting Parties to make their best efforts to ensure a more successful conclusion to the second conference, one motivated by their commitment to international humanitarian law. The High Contracting Parties should work towards a solution with the following characteristics:

- ***A solution dependent upon respect for human rights***. Under no circumstances can the obligation to respect and ensure respect for the Convention be cast aside. The protection of civilians, codified by the *Fourth Geneva Convention*, cannot be sacrificed in the name of political expediency. Respect for human rights and international humanitarian law must serve as the cornerstone of any political resolution to the situation in the Occupied Territories. Until then, that same respect for human rights and international humanitarian law must govern the relationship between Israel (as the Occupying Power) and the civilians in the Occupied Palestinian Territories, as expressly stipulated in Articles 7 and 47 of the Convention. Since Israel shows no willingness to abide by the law, the High Contracting Parties must fulfill their own legal obligation to enforce Israel's respect of the law.

- ***Time***. A meeting of the High Contracting Parties must be convened **immediately** to investigate effective ways of enforcing Israel's respect for the Convention. Any delay in convening such a conference contributes to the commission of human rights violations – wilful killing, denial of medical care, torture, ill-treatment of prisoners, destruction of civilian



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property, settlements, closures. The Palestinian Centre for Human Rights calls upon the High Contracting Parties to immediately set a date for a conference of the High Contracting Parties **no later than the end of the year 2001**, in order to begin discharging their legal obligation to ensure respect of the Convention.

- **Concrete plan of action.** The High Contracting Parties must approach the conference with the specific objective of investigating measures of enforcing Israel's respect of the *Fourth Geneva Convention* in the Occupied Palestinian Territories. At the conclusion of the conference, the High Contracting Parties must have a practical, well-reasoned plan of action upon which to base and to coordinate their response to Israel's breaches of the *Fourth Geneva Convention*.
- **Test case.** The recommendation by the UN General Assembly that the High Contracting Parties convene a conference to investigate measures to ensure respect of one of the Geneva Conventions in a specific situation has no precedent. It is the first such recommendation since the signing of the Geneva Conventions in 1949. The High Contracting Parties had the opportunity to make history on 15 July 1999 by spearheading the development of international humanitarian law and the enforcement of that body of law in the OPT. The achievements of the High Contracting Parties at the first conference fell far short of those expectations. The Palestinian Centre for Human Rights urges the High Contracting Parties to recognise the full significance of such a conference and to approach it with as the respect that such a conference commands.



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