

A. UN Security Council Resolution 681 (1990)

[Source: United Nations, S/RES/681, 20 December 1990; available on [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/681\(1990\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/681(1990))]

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

The Security Council, [...]

Having received the report of the Secretary-General submitted in accordance with Security Council resolution 672 (1990) of 12 October 1990 on ways and means for ensuring the safety and protection of the Palestinian civilians under Israeli occupation and taking note in particular of paragraphs 20 to 26 thereof, [...]

Gravely concerned at the dangerous deterioration of the situation in all the Palestinian territories occupied by Israel since 1967, including Jerusalem, and at the violence and rising tension in Israel, [...]

1. *Expresses its grave concern* over the rejection by Israel of Security Council resolutions 672 (1990) of 12 October 1990 and 673 (1990) of 24 October 1990;
2. *Deplores* the decision by the Government of Israel, the occupying Power, to resume deportations of Palestinian civilians in the occupied territories;
3. *Urges* the Government of Israel to accept the de jure applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to all the territories occupied by Israel since 1967, and to abide scrupulously by the provisions of the Convention;
4. *Calls upon* the High Contracting Parties to the said Convention to ensure respect by Israel, the occupying Power, for its obligations under the Convention in accordance with article 1 thereof;
5. *Requests* the Secretary-General, in co-operation with the International Committee of the Red Cross, to develop further the idea, expressed in his report, of convening a meeting of the High Contracting Parties

to the said Convention to discuss possible measures that might be taken by them under the Convention and, for this purpose, to invite the Parties to submit their views on how the idea could contribute to the goals of the Convention, as well as on other relevant matters, and to report thereon to the Council; [...]

B. UN General Assembly Resolution ES-10/2

[Source: UN Doc. A/RES/ES-10/2 (May 5, 1997); footnotes omitted; available on <http://www.un.org>]

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

[without reference to a Main Committee (A/ES-10/L.1 and Add.1)]

Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory

The General Assembly,

Aware of the commencement, after the adoption of General Assembly resolution 51/223 of 13 March 1997, of construction by Israel, the occupying Power, of a new settlement in Jebel Abu Ghneim to the south of East Jerusalem on 18 March 1997, and of other illegal Israeli actions in Jerusalem and the rest of the Occupied Palestinian Territory, [...]

Reaffirming also the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, [...] and the Regulations annexed to the Hague Convention IV of 1907 to the Occupied Palestinian Territory, including Jerusalem, and all other Arab territories occupied by Israel since 1967,

Recalling the obligation of the High Contracting Parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War to respect and ensure respect for the Convention in all circumstances, in accordance with article 1 of the Convention,

Conscious of the serious dangers arising from persistent violation and grave breaches of the Convention and the responsibilities arising therefrom,

Convinced that ensuring respect for treaties and other sources of international law is essential for the maintenance of international peace and security, and determined, in accordance with the preamble to the Charter of the United Nations, to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained,

Also convinced, in this context, that the repeated violation by Israel, the occupying Power, of international law and its failure to comply with relevant Security Council and General Assembly resolutions and the

agreements reached between the parties undermine the Middle East peace process and constitute a threat to international peace and security,

Increasingly concerned about the actions of armed Israeli settlers in the Occupied Palestinian Territory, including Jerusalem,

Aware that, in the circumstances, it should consider the situation with a view to making appropriate recommendations to the States Members of the United Nations, in accordance with General Assembly resolution 377 A (V) of 3 November 1950, [...]

1. Demands also that Israel accept the de jure applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to all the territories occupied since 1967, and that it comply with relevant Security Council resolutions, in accordance with the Charter of the United Nations; [...]
2. Calls for the cessation of all forms of assistance and support for illegal Israeli activities in the Occupied Palestinian Territory, including Jerusalem, in particular settlement activities;
3. Recommends to the States that are High Contracting Parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War to take measures, on a national or regional level, in fulfilment of their obligations under article 1 of the Convention, to ensure respect by Israel, the occupying Power, of the Convention; [...]

C. UN General Assembly Resolution ES-10/3

[Source: United Nations, A/RES/ES-10/3, July 15 1997; available on <http://www.un.org>]

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

[without reference to a Main Committee (A/ES-10/L.2/Rev.1)]

Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory

The General Assembly,

Having received with appreciation the report of the Secretary-General, [A/ES-10/6; S/1997/494 and Add.1 [available on <http://www.un.org>]], [...]

Reaffirming its resolution ES-10/2 of 25 April 1997, [available on <http://www.un.org>],

Having been informed in the report of the Secretary-General that, *inter alia*, the Government of Israel, as of 20 June 1997, has not abandoned its construction of the new Israeli settlement at Jebel Abu Ghneim and that settlement activity, including the expansion of existing settlements, the construction of bypass roads, the

confiscation of lands adjacent to settlements and related activities, in violation of Security Council resolutions on the matter, continues unabated throughout the Occupied Palestinian Territory, and also that the Israeli Prime Minister and other representatives of the Government continue to reject the terms of resolution ES-10/2 requiring the cessation of those activities,

Aware that, in the light of the position of the Government of Israel, as indicated in the report of the Secretary-General, the General Assembly should once more consider the situation with a view to making additional appropriate recommendations to States Members of the United Nations, in accordance with General Assembly resolution 377 A (V) of 3 November 1950, [**available on** <http://www.un.org>]],

1. *Condemns* the failure of the Government of Israel to comply with the demands made by the General Assembly at its tenth emergency special session in resolution ES-10/2; [...]

6. *Recommends* to Member States that they actively discourage activities which directly contribute to any construction or development of Israeli settlements in the Occupied Palestinian Territory, including Jerusalem, as these activities contravene international law;

7. *Demands* that Israel, the occupying Power, make available to Member States the necessary information about goods produced or manufactured in the illegal settlements in the Occupied Palestinian Territory, including Jerusalem;

8. *Stresses* that all Member States, in order to ensure their rights and benefits resulting from membership, should fulfil in good faith the obligations assumed by them in accordance with the provisions of the Charter of the United Nations;

9. *Emphasizes* the responsibilities, including personal ones, arising from persistent violations and grave breaches of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949;

10. *Recommends* that the High Contracting Parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War 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, and requests the Secretary-General to present a report on the matter within three months; [...]

D. UN Secretary-General's Report

[Source: United Nations, A/ES-10/16 and S/1997/798, 14 October 1997; available on <http://www.un.org>]

**ILLEGAL ISRAELI ACTIONS IN OCCUPIED EAST JERUSALEM
AND THE REST OF THE OCCUPIED PALESTINIAN TERRITORY**

**Report of the Secretary-General submitted in accordance
with General Assembly resolution ES-10/3**

I. INTRODUCTION

1. The present report is submitted pursuant to resolution ES-10/3 adopted on 15 July 1997 by the General Assembly at its tenth emergency special session. [...]
2. In order to fulfil my reporting responsibilities, on 31 July 1997, I addressed a *note verbale* to the Permanent Observer of Switzerland to the United Nations requesting the Government of Switzerland, in its capacity as depositary of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, to provide me, in due course, with the necessary information.

II. INFORMATION PROVIDED BY THE GOVERNMENT OF SWITZERLAND

1. On 7 October 1997, the Government of Switzerland conveyed to me the following information:

“In response to the note of the Secretary-General, the Government of Switzerland sought the views of the 188 States parties to the Fourth Geneva Convention. The notes addressed to the States parties stated, *inter alia*, the following:

‘It is the responsibility of the States parties to the Fourth Convention, after considering the recommendation addressed to them, to determine how they wish to follow it up. As depositary, the Swiss Government is interested in knowing their views. Therefore, the Embassy has the honour to consult the Ministry and to invite it to submit its comments on possible measures to follow up paragraph 10 of resolution ES-10/3, including comments on the convening of a conference, as recommended, and on the results that might thereby be achieved.’

“To date, 53 States parties to the Convention have sent written replies to the note requesting their views. These views are as follows:

[follows a list of opinions expressed by States, including:]

- ○ ■ One State said that it had ‘no objection to the proposal to convene a conference of experts from the interested parties, with a view to discussing the existing humanitarian problems in the Palestinian territory’. That State also felt that ‘another possible measure ... would be for the interested parties to appeal to the International Fact-Finding Commission (article 90 of Additional Protocol I of 1977). The Commission is competent to facilitate, through its good offices, the restoration of an attitude of respect for the 1949 Conventions’. That State believes, in that regard, ‘that the fact that Israel has not acceded to Additional Protocol I of 1977 should not prevent the Commission from resolving the issue on an *ad hoc* basis’. In the view of this State, ‘the implementation of either of these two measures would be a positive step and would encourage a normalization of the humanitarian situation in the Palestinian territory’. [...]
- One State thought it would be preferable, ‘given the delicate situation in the Middle East, to

await progress on the efforts being made to bring about the resumption of the peace process, particularly at a time when meetings are planned in the near future between the parties directly involved'.

- One State wrote that it wished 'to try to exchange views with other Governments in order to ensure that the convening of the conference at the current stage will not provoke further tensions in Israeli-Palestinian relations and will not endanger the fragile peace which has already been threatened by the outbreak of violence'. [...]

"Similarly, the Secretary-General of the League of Arab States sent a letter expressing 'the approval of all the Arab countries of the contents of the letter from the Swiss Government concerning the holding of such a conference', adding, in a subsequent letter, that 'the Arab countries would hope that this conference will be held as soon as possible in order to safeguard the interests of the Palestinian people'.

"Lastly, the Presidency of the Council of the European Union stated that it had been 'authorized by the 15 States members of the European Union, High Contracting Parties to the Geneva Conventions, to transmit a joint reply from the 15 member States concerning the follow-up to resolution ES-10/3, paragraph 10 of which provides for the convening of a conference'. In this joint reply, the member States said that they 'believe that the convening of a conference in the immediate future would, in the present circumstances, risk giving rise to additional complications unless it was carefully prepared'. The member States therefore suggested that 'the possibilities should be explored of convening a meeting of experts which would be charged with examining the political and legal context before a conference of the High Contracting Parties was convened. The meeting of experts could also examine the broader implications of such a conference'.

"Upon receipt of these collective replies, the depositary indicated that, out of a concern for clarity and precision, it would, as far as possible, like to be able to obtain individual replies from the States concerned. A number of those States acceded to the depositary's request and sent individual replies, included in the 53 mentioned above, along the lines of the reply sent by the body of which those States were members."

E. UN General Assembly Resolution ES-10/4

[Source: UN Doc. A/RES/ES-10/4 (November 19, 1997); footnotes omitted; available on <http://www.un.org>]

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

[without reference to a Main Committee (A/ES-10/L.3 and Add.1)]

***Illegal Israeli actions in Occupied East Jerusalem
and the rest of the Occupied Palestinian Territory***

The General Assembly,

Having received the report of the Secretary-General submitted in accordance with paragraph 10 of its resolution ES-10/3 of 15 July 1997, [...]

Reiterating the demands made in resolutions ES-10/2 and ES-10/3, [...]

Having been informed in the report of the Secretary-General of the responses of the High Contracting Parties to the Geneva Convention and of the collective responses transmitted through letters from the President of the Coordinating Bureau of the Movement of Non-Aligned Countries, the Secretary-General of the League of Arab States and the Presidency of the Council of the European Union, to the note sent by the Government of Switzerland in its capacity as the depository of the Convention, [...]

Gravely concerned at the continuing deterioration of the Middle East peace process and the lack of implementation of the agreements reached,

Reaffirming that all illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory, especially settlement activities, and the practical results thereof, cannot be recognized irrespective of the passage of time,

Recalling its rejection of terrorism in all its forms and manifestations in accordance with all relevant resolutions and declarations of the United Nations [...]

1. *Reiterates its recommendation* to the High Contracting Parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, to take measures on a national or regional level, in fulfilment of their obligations under article 1 of the Convention, to ensure respect by Israel, the occupying Power, of the Convention, as well as its recommendation to Member States to actively discourage activities that directly contribute to any construction or development of Israeli settlements in the Occupied Palestinian Territory, including Jerusalem, as these activities contravene international law;
2. *Reiterates also its recommendation* that the High Contracting Parties to the Geneva Convention 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;
3. *Recommends* to the Government of Switzerland, in its capacity as the depository of the Geneva Convention, to undertake the necessary steps, including the convening of a meeting of experts in order to follow up on the above-mentioned recommendation, as soon as possible and with a target date not later than the end of February 1998;
4. *Requests* the Government of Switzerland to invite the Palestine Liberation Organization to participate in the above-mentioned conference and any preparatory steps for that conference; [...]

F. Press Release, Experts' Meeting, June 1998

[Source: Federal Department of Foreign Affairs, Switzerland, Geneva, 11 June 1998; available on <http://www.dfae.admin.ch>]

Experts' meeting on the application of the Fourth Geneva Convention

An experts' meeting on the application of the Fourth Geneva Convention was held at Sarasin Villa, near Geneva, from 9 to 11 June 1998. The meeting chaired by Switzerland brought together Israeli and Palestinian representatives in the presence of the International Committee of the Red Cross. The President of the Swiss Confederation, Flavio Cotti, took the opportunity to meet the delegations and express the support of the Swiss government for the ongoing efforts with regard to this important issue.

Bearing in mind several Emergency Session Resolutions of the General Assembly of the United Nations, Switzerland, depository of the Geneva Conventions, convened this meeting after having conducted extensive consultations with the High Contracting Parties and in particular with states and organisations concerned.

This meeting was the first part of a package of two measures proposed by Switzerland. The second measure, an experts' meeting of the High Contracting Parties of the Geneva Conventions on problems of the Fourth Geneva Convention (in general, and in particular in occupied territories), will be proposed in the early days of July. It is expected to take place in early autumn 1998.

Parties participating at the meeting held at Sarasin Villa agreed to hold their discussions in camera and to commonly issue the present press release.

Main issues regarding the application of the Fourth Geneva Convention have been raised. Significant conceptual differences have emerged concerning the implementation of the Fourth Geneva Convention, its relation with the peace process in the Middle East and the security environment.

The discussions have been frank and constructive and have been held in a spirit of respect and understanding. Israeli and Palestinian representatives have agreed to follow the three principles proposed by Switzerland for meetings on this issue:

- contribute to real improvements in the respect for the international humanitarian law on the ground;
- avoid any politicisation of international humanitarian law, and
- support the peace process in the Middle East.

The parties exchanged views on the feasibility of establishing mechanisms and taking concrete measures to implement the Fourth Geneva Convention. All delegations have reaffirmed that the Geneva Conventions are a core value of international law and have to be respected.

With a view to continuing the dialogue, the parties agreed to meet again to take into consideration ideas and suggestions that can foster respect of the Fourth Geneva Convention.

G. Chairman's Report, Experts' Meeting, October 1998

Experts' Meeting on the Fourth Geneva Convention

Geneva, 27-29 October 1998

Chairman's Report

I. Introduction

An experts' meeting on the Fourth 1949 Geneva Convention, Relative to the Protection of Civilian Persons in Time of War (the Fourth Convention), took place in Geneva from 27 to 29 October 1998. It was held in order to analyse general problems regarding the application of the Fourth Convention – in general and, in particular, in occupied territories –, to consider measures aimed at overcoming those problems and to examine the necessary means to implement such measures.

Representatives of 118 States Parties to the Fourth Convention and 15 delegations of observers took part in the Meeting. Participants were provided with a report for the Meeting prepared by the International Committee of the Red Cross.

The Meeting was convened by the Swiss authorities as part of a package of measures that emerged from a long consultation process with the States Parties to the Fourth Convention and the organisations most closely concerned, bearing in mind the message conveyed to the States Parties by an emergency special session of the United Nations General Assembly.

In his opening statement, which is attached to the present report, the Chairman pointed out that several delegations had expressed diverging views as to whether the Meeting constituted a preliminary step to the conference recommended in Paragraph 3 of resolution ES-10/5 of the General Assembly of the United Nations. He emphasised that the Swiss authorities deemed that the holding of this Meeting, which would not be devoted to any specific situation, should not in one way or another prejudice the positions of the States Parties with regard to the implementation of resolution ES-10/5 or possible recommendations that the General Assembly of the United Nations might make on these questions in the future. Indeed, it would be up to the States Parties to evaluate the results of the Meeting and to consider the advisability and modalities of possible subsequent action. [...]

At the end of the Meeting, the Chairman presented his summary of the discussions. This summary identifies general problems regarding the application of the Fourth Geneva Convention – in general and, in particular, in occupied territories –, considers a number of possible measures aimed at overcoming these problems and examines the means required to implement such measures. The summary is the Chairman's personal

account of the Meeting, and is not binding on the delegations which participated at it.

* * * * *

II. Chairman's summary

1. General problems identified

It emerged from the exchange of views and from the discussions that it is not technical problems that are hindering the application of the Fourth Geneva Convention but essentially political and legal disputes over its applicability:

- In today's armed conflicts the great suffering of the civilian population is most often not only the result of ignorance of the obligations contained in the Fourth Geneva Convention, but of political and legal disputes over its applicability or the duration of its applicability. Such problems arise as a result of States Parties concerned denying the existence of an international armed conflict (or any armed conflict beyond that of a police operation or the struggle against terrorism), or contesting the legal status of certain territories, or claiming that the Convention lacks clarity on various issues, and so forth;
- The obligation of the States Parties to ensure respect for the Convention's rules in accordance with its Article 1, is frequently subordinated to considerations of political expediency;
- Parties to an armed conflict often fail to agree on the establishment of protected zones.

2. Identified violations of the Fourth Convention

In the light of the general problems listed above, the following violations of the Fourth Convention were identified by the participants in particular. It emerges in particular that in many recent armed conflicts and in situations in occupied territories, civilians are no longer merely victims of hostilities but have become the actual target of them:

In armed conflicts in general:

- Killing, torture, rape, pillage, hostage-taking;
- Displacement of civilians not justified by security reasons;
- Repatriation of foreign nationals in violation of the principle of non-refoulement, or their detention under inhuman conditions;
- Violation of family rights;
- Refusal to grant providers of humanitarian assistance or religious personnel access to civilian victims, particularly children, women, the elderly, and the medically dependent;
- Deportation or expulsion of civilians, as in the practice of ethnic cleansing;
- Use of anti-personnel mines to terrorise civilians or to prevent their safe return;
- Destruction of hospitals and places of worship;
- Destruction of property without military justification;
- Destruction of the environment.

In occupied territories:

- Destruction of the economic and social structures of the occupied territory, failure to respect local customs, substitution of the occupying power's laws for those previously in force;
- Restrictions on the local population communication with the outside world, thus impeding the intellectual, economic and structural development of the occupied territory;
- Destruction of the cultural heritage;
- Deportation and displacement of civilians not justified by the safety of the civilians themselves or by imperative military considerations;
- Arbitrary detention;
- Confiscation and destruction of property not rendered absolutely necessary by military operations;
- Transfer by the occupying power of a part of its own population to the occupied territory, which could amount to the territory's gradual annexation;
- Ill-treatment of and violence against civilian populations, such as rape, torture, summary execution and measures of collective punishment – sometimes continuing.

3. Principal measures proposed by the States Parties to solve the problems and to prevent future violations

On the basis of the identified violations of the Fourth Convention, the participants at the Experts' Meeting examined aspects of possible solutions and reviewed appropriate measures to implement such solutions. The participants proposed a series of concrete measures aimed at overcoming the problems encountered and to prevent future violations. Some of these measures explicitly require the States Parties to do everything to ensure full respect for the Fourth Convention in armed conflicts, in general and in occupied territories in particular. The participants were unanimous in underscoring the need for better implementation. Nevertheless, diverging views were expressed concerning some of the envisaged measures, in particular, those which were proposed in relation to specific situations. The measures which were discussed are the following:

- Ensure observance, in all circumstances and by all parties to an armed conflict, including the occupiers and the inhabitants of occupied territory, of the principles of humanity and of the dignity to which all human beings are entitled;
- Recognise that the humanitarian objective of the Fourth Convention, i.e. the protection of the civilian population during armed conflicts and in situations of occupation, must not be jeopardised by unduly narrow interpretations of the provisions defining the Convention's applicability;
- Ensure, both in international and non-international armed conflicts, full and non-selective respect for the Convention in accordance with Article 1 common to the 1949 Geneva Conventions;
- Accede to other instruments of international humanitarian law (IHL) protecting the civilian population in armed conflicts, such as the two Additional Protocols to the 1949 Geneva Conventions, Protocol II to the 1980 UN Convention on Certain Conventional Weapons as amended on 3 May 1996, and the 1997 Convention on the prohibition of anti-personnel mines;
- Encourage, through diplomatic dialogue, parties to an armed conflict to ensure respect for the Fourth Convention;
- Organise regular meetings of States Parties to examine, in the tradition of the humanitarian dialogue – for example, within the framework of Periodical Meetings as decided at the 26th International Conference of the Red Cross and the Red Crescent –, general problems regarding the application of the

Fourth Convention;

- Organise meetings which would be attended by States or by entities particularly concerned as well as, when appropriate, by a certain number of States Parties to examine specific situations;
- Examine, both in general and in particular cases, the advisability of convening meetings of States Parties on specific situations for the purpose of determining i.a. if and to what extent such meetings can contribute to making concrete improvements to the fate of victims; and examine the modalities for convening and holding such meetings;
- Co-operate in taking sanctions and other coercive measures which would be decided by the Security Council in accordance with the UN Charter against States Parties which seriously and systematically violate the Convention, and in allocating just compensation to the victims;
- Prosecute on a national level individual violators, and support international efforts to try alleged perpetrators of war crimes, including through ratification of the Statute of the International Criminal Court;
- Recognise, where appropriate, the competence of the International Humanitarian Fact-Finding Commission pursuant to Article 90 of Additional Protocol I to the 1949 Geneva Conventions, or make use of the procedure which allows the Commission to open an inquiry with the consent of the parties to a conflict;
- Enact appropriate national legislation to prevent and repress violations of IHL, bearing in mind the availability of the ICRC advisory services;
- Establish programmes to disseminate IHL in armed forces and in civilian society, and support the activities of the ICRC and of the National Red Cross and Red Crescent Societies in this regard;
- Establish a mechanism allowing States Parties to exchange views and experiences in the field of dissemination;
- Encourage the United Nations to establish a programme for teaching IHL to peacekeeping forces that may also serve as a model for the dissemination of IHL in national armed forces;
- Establish national committees to assist different branches of government in the implementation of IHL;
- Support the activities of the ICRC and the National Red Cross and Red Crescent Societies, as well as those of the non-governmental organisations that provide humanitarian assistance.

Geneva, 11 December 1998

The Chairman of the Experts' Meeting on the Fourth Geneva Convention

Walter B. Gyger

H. UN General Assembly Resolution ES-10/6

[Source: United Nations, A/RES/ES-10/6, 24 February 1999, footnotes omitted; available on www.un.org]

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

[without reference to a Main Committee (A/ES-10/L.5/Rev.1)]

***Illegal Israeli actions in Occupied East Jerusalem
and the rest of the Occupied Palestinian Territory***

The General Assembly, [...]

1. *Reiterates* in the strongest terms all the demands made of Israel, the occupying Power, in the [...] resolutions of the tenth emergency special session, including the immediate and full cessation of the construction at Jebel Abu Ghneim and of all other Israeli settlement activities, as well as of all illegal measures and actions in Occupied East Jerusalem, the acceptance of the *de jure* applicability of the Fourth Geneva Convention and compliance with relevant Security Council resolutions, the cessation and reversal of all actions taken illegally against Palestinian Jerusalemites and the provision of information about goods produced or manufactured in the settlements; [...]

I. Declaration adopted by the Conference of High Contracting Parties to the Fourth Geneva Convention, 5 December 2001

[Source: Declaration adopted at the Conference of High Contracting Parties to the Fourth Geneva Convention, 5 December 2001, published in *IRRC*, No. 847 (2002); available on <http://www.icrc.org>]

CONFERENCE OF HIGH CONTRACTING PARTIES TO THE FOURTH GENEVA CONVENTION

Geneva, 5 December 2001

DECLARATION

1. This Declaration reflects the common understanding reached by the participating High Contracting Parties to the reconvened Conference of High Contracting Parties to the Fourth Geneva Convention. The Conference of 15 July 1999, recommended by United Nations' General Assembly Resolution ES-10/6 in an Emergency Special Session, issued a statement as follows: "The participating High Contracting Parties reaffirmed the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including East Jerusalem. Furthermore, they reiterated the need for full respect for the provisions of the said Convention in that Territory. 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. The participating High Contracting Parties express deep concern about the deterioration of the humanitarian situation in the field. They deplore the great number of civilian victims, in particular children and other vulnerable groups, due to indiscriminate or disproportionate use of force and due to lack of respect for international humanitarian law.
3. Taking into account art. 1 of the Fourth Geneva Convention of 1949 and bearing in mind the United

Nations' General Assembly Resolution ES-10/7, the participating High Contracting Parties reaffirm the applicability of the Convention to the Occupied Palestinian Territory, including East Jerusalem and reiterate the need for full respect for the provisions of the said Convention in that Territory. Through the present Declaration, they recall in particular the respective obligations under the Convention of all High Contracting Parties (para 4-7), of the parties to the conflict (para 8-11) and of the State of Israel as the Occupying Power (para 12-15).

4. The participating High Contracting Parties call upon all parties, directly involved in the conflict or not, to respect and to ensure respect for the Geneva Conventions in all circumstances, to disseminate and take measures necessary for the prevention and suppression of breaches of the Conventions. They reaffirm the obligations of the High Contracting Parties under articles 146, 147 and 148 of the Fourth Geneva Convention with regard to penal sanctions, grave breaches and responsibilities of the High Contracting Parties.
5. The participating High Contracting Parties stress that the Fourth Geneva Convention, which takes fully into account imperative military necessity, has to be respected in all circumstances.
6. The participating High Contracting Parties see the need to recall basic humanitarian rules with regard to persons taking no active part in the hostilities, which shall be treated humanely without any discrimination, and to recall the prohibition at any time and in any place whatsoever of acts of violence to life and person, torture, outrages upon personal dignity and of arbitrary or extra-judiciary executions.
7. The participating High Contracting Parties express their support for the endeavours of the humanitarian relief societies in the field in ensuring that the wounded and sick receive assistance, and for the activities of the International Committee of the Red Cross (ICRC), the United Nations Relief and Works Agency in the Near East (UNRWA) and of other impartial humanitarian organisations. They also express their support for the efforts of the United Nations High Commissioner for Human Rights and of UN Special Rapporteurs in order to assess the situation in the field and they take note of the reports and recommendations [sic] of the High Commissioner for Human Rights (E/CN/4/2001/114) and of the Commission of Inquiry (E/CN/4/2001/121). **[available on <http://www.ohchr.org>]**
8. The participating High Contracting Parties call upon the parties to the conflict to ensure respect for and protection of the civilian population and civilian objects and to distinguish at all times between the civilian population and combatants and between civilian objects and military objectives. They also call upon the parties to abstain from any measures of brutality and violence against the civilian population whether applied by civilian or military agents and to abstain from exposing the civilian population to military operations.
9. The participating High Contracting Parties call upon the parties to the conflict to respect and to protect at all times the fixed establishments and mobile medical units of the Medical Services and to facilitate the operations of the humanitarian relief societies in the field, including the free passage of their ambulances and medical personnel, and to guarantee their protection.
10. The participating High Contracting Parties call upon the parties to the conflict to facilitate the activities of the ICRC, within its particular role conferred upon it by the Geneva Conventions, the UNRWA and of other impartial humanitarian organisations. They recognise and support their efforts to assess and to improve the humanitarian situation in the field. They invite the parties to the conflict to co-operate with independent and impartial observers such as the Temporary International Presence in the City of Hebron (TIPH).
11. The participating High Contracting Parties call upon the parties to the conflict to consider anew suggestions made at the meeting of experts of High Contracting Parties in 1998 to resolve problems of

implementation of the Fourth Geneva Convention and to respect and to ensure respect in all circumstances for the rules of international humanitarian law and to co-operate within the framework of direct contacts, including procedures of inquiry and of conciliation. They 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.

12. The participating High Contracting Parties call upon the Occupying Power to fully and effectively respect the Fourth Geneva Convention in the Occupied Palestinian Territory, including East Jerusalem, and to refrain from perpetrating any violation of the Convention. They reaffirm the illegality of the settlements in the said territories and of the extension thereof. They recall the need to safeguard and guarantee the rights and access of all inhabitants to the Holy Places.
13. The participating High Contracting Parties call upon the Occupying Power to immediately refrain from committing grave breaches involving any of the acts mentioned in art. 147 of the Fourth Geneva Convention, such as wilful killing, torture, unlawful deportation, wilful depriving of the rights of fair and regular trial, extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly. The participating High Contracting Parties recall that according to art. 148 no High Contracting Party shall be allowed to absolve itself of any liability incurred by itself in respect to grave breaches. The participating High Contracting Parties also recall the responsibilities of the Occupying Power according to art. 29 of the Fourth Geneva Convention for the treatment of protected persons.
14. The participating High Contracting Parties also call upon the Occupying Power to refrain from perpetrating any other violation of the Convention, in particular reprisals against protected persons and their property, collective penalties, unjustified restrictions of free movement, and to treat the protected persons humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.
15. The participating High Contracting Parties call upon the Occupying Power to facilitate the relief operations and free passage of the ICRC, UNRWA, as well as any other impartial humanitarian organisation, to guarantee their protection and, where applicable, to refrain from levying taxes and imposing undue financial burdens on these organisations.
16. The participating High Contracting Parties stress that respect for the Fourth Geneva Convention and international humanitarian law in general is essential to improve the humanitarian situation in the field and to achieve a just and lasting peace. The participating High Contracting Parties invite the parties concerned to bring the conflict to an end by means of negotiation and to settle their disputes in accordance with applicable international law.
17. The participating High Contracting Parties welcome and encourage the initiatives by States Parties, both individually and collectively, according to art. 1 of the Convention and aimed at ensuring the respect of the Convention, and they underline the need for the Parties, to follow up on the implementation of the present Declaration.
18. The participating High Contracting Parties express their gratitude to the Depositary of the Fourth Geneva Convention for its good services and offices.

J. UN General Assembly Resolution ES-10/10

[Source: United Nations, A/RES/ES-10/10, 7 May 2002, available on <http://www.un.org>]

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

[without reference to a Main Committee (A/ES-10/L.9/Rev.1)]

Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory

The General Assembly, [...]

1. *Calls* for the implementation of the declaration adopted by the Conference of High Contracting Parties to the Fourth Geneva Convention, reconvened in Geneva on 5 December 2001, through concrete action on the national, regional and international levels to ensure respect by Israel, the occupying Power, of the provisions of the Convention; [...]

K. UN General Assembly Resolution ES-10/15

[Source: United Nations, A/RES/ES-10/15, 2 August 2004, available on <http://www.un.org>]

Advisory opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, including in and around East Jerusalem

[See ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory [Part A]]

The General Assembly [...],

Having received with respect the advisory opinion of the Court on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, rendered on 9 July 2004 [See ICJ/Israel, Separation Wall/Security Fence in the Occupied Palestinian Territory],

[...]

3. *Calls upon* all States Members of the United Nations to comply with their legal obligations as mentioned in the advisory opinion;

4. *Requests* the Secretary-General to establish a register of damage caused to all natural or legal persons concerned in connection with paragraphs 152 and 153 of the advisory opinion;

[...]

7. *Calls upon* all States parties to the Fourth Geneva Convention to ensure respect by Israel for the

Convention, and invites Switzerland, in its capacity as the depositary of the Geneva Conventions, to conduct consultations and to report to the General Assembly on the matter, including with regard to the possibility of resuming the Conference of High Contracting Parties to the Fourth Geneva Convention;

[...]

L. UN General Assembly Resolution 64/10

[Source: United Nations, A/RES/64/10, 1 December 2009, available on <http://www.un.org>. Footnotes omitted.]

Resolution adopted by the General Assembly

[...]

64/10

Follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict

[See Case No. 124, Israel, Operation Cast Lead [Part II]]

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling the relevant rules and principles of international law, including international humanitarian and human rights law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable to the Occupied Palestinian Territory, including East Jerusalem,

[...]

Recalling further its relevant resolutions, including resolution ES-10/18 of 16 January 2009 of its tenth emergency special session,

Recalling the relevant Security Council resolutions, including resolution 1860 (2009) of 8 January 2009,

[...]

Expressing its appreciation to the United Nations Fact-Finding Mission on the Gaza Conflict, led by Justice Richard Goldstone, for its comprehensive report,

Affirming the obligation of all parties to respect international humanitarian law and international human rights law,

Emphasizing the importance of the safety and well-being of all civilians, and *reaffirming* the obligation to ensure the protection of civilians in armed conflict,

Gravely concerned by reports regarding serious human rights violations and grave breaches of international humanitarian law committed during the Israeli military operations in the Gaza Strip that were launched on 27 December 2008, including the findings of the Fact-Finding Mission and of the Board of Inquiry convened by the Secretary-General,

Condemning all targeting of civilians and civilian infrastructure and institutions, including United Nations facilities,

Stressing the need to ensure accountability for all violations of international humanitarian law and international human rights law in order to prevent impunity, ensure justice, deter further violations and promote peace,

Convinced that achieving a just, lasting and comprehensive settlement of the question of Palestine, the core of the Arab-Israeli conflict, is imperative for the attainment of a comprehensive, just and lasting peace and stability in the Middle East,

1. *Endorses* the report of the Human Rights Council on its twelfth special session, held on 15 and 16 October 2009;
2. *Requests* the Secretary-General to transmit the report Israel, Operation Cast Lead [Part II] of the United Nations Fact-Finding Mission on the Gaza Conflict to the Security Council;
3. *Calls upon* the Government of Israel to take all appropriate steps, within a period of three months, to undertake investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, towards ensuring accountability and justice;
4. *Urges*, in line with the recommendation of the Fact-Finding Mission, the undertaking by the Palestinian side, within a period of three months, of investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, towards ensuring accountability and justice;
5. *Recommends* that the Government of Switzerland, in its capacity as depositary of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, undertake as soon as possible the steps necessary to reconvene a Conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure its respect in accordance with common article 1;
6. *Requests* the Secretary-General to report to the General Assembly, within a period of three months, on the implementation of the present resolution, with a view to the consideration of further action, if

necessary, by the relevant United Nations organs and bodies, including the Security Council;

[...]

M. UN General Assembly Resolution 64/92

[Source: United Nations, A/RES/64/92, 19 January 2010, available on <http://www.un.org>. Footnotes omitted.]

Resolution adopted by the General Assembly

[on the report of the Special Political and Decolonization Committee (Fourth Committee) (A/64/406)]

64/92

Applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and the other occupied Arab territories

The General Assembly,

[...]

Recalling the Regulations annexed to The Hague Convention IV of 1907, the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and relevant provisions of customary law, including those codified in Additional Protocol I to the four Geneva Conventions,

[...]

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice, and also recalling General Assembly resolution ES-10/15 of 20 July 2004,

Noting in particular the Court's reply, including that the Fourth Geneva Convention is applicable in the Occupied Palestinian Territory, including East Jerusalem, and that Israel is in breach of several of the provisions of the Convention,

Recalling the Conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, held on 15 July 1999, as well as the Declaration adopted by the reconvened Conference on 5 December 2001 and the need for the parties to follow up the implementation of the Declaration,

Welcoming and encouraging the initiatives by States parties to the Convention, both individually and collectively, according to article 1 common to the four Geneva Conventions, aimed at ensuring respect for the Convention, as well as the efforts of the depositary State of the Geneva Conventions in this regard,

Stressing that Israel, the occupying Power, should comply strictly with its obligations under international law, including international humanitarian law,

1. *Reaffirms* that the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, is applicable to the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967;
2. *Demands* that Israel accept the *de jure* applicability of the Convention in the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967, and that it comply scrupulously with the provisions of the Convention;
3. *Calls upon* all High Contracting Parties to the Convention, in accordance with article 1 common to the four Geneva Conventions and as mentioned in the advisory opinion of the International Court of Justice of 9 July 2004, to continue to exert all efforts to ensure respect for its provisions by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967;
4. *Reiterates* the need for speedy implementation of the relevant recommendations contained in the resolutions adopted by the General Assembly at its tenth emergency special session, including resolution ES-10/15, with regard to ensuring respect by Israel, the occupying Power, for the provisions of the Convention;

[...]

Discussion

I. Common Article 1

1.
 - a. What does Art. 1 common to the Geneva Conventions require States Parties to do to “ensure respect” for international humanitarian law (IHL)? Does the UN General Assembly resolution demanding that Israel accept the *de jure* applicability of GC IV and respect its provisions constitute an implementation by the States Parties of their obligations under common Art. 1? For compliance with Art. 1, is it enough that they made such a demand even if Israel does not respect the above resolutions?
 - b. How should States Parties implement Art. 1? How can they “ensure respect” for the Conventions? To act in conformity with Art. 1, what means must they use? What means may they use? What means may they not use?
 - c. What do you think of the use of public opinion to exert pressure on States that are not fulfilling their obligations? Of confidential or public approaches by inter-governmental or non-governmental organizations? What if these methods fail?
 - d. Do States violate Art. 1 if they uphold or authorize, on their territory, acts by people advocating

violations of IHL?

- e. Under Art. 1, must or may States ban the import of goods produced by Israel in the settlements established in violation of GC IV, Art. 49(6) (as suggested in Part H, para. 3)?
- f. Does this obligation to “respect and ensure respect” for the Conventions derive only from the Conventions? Or is it also a general principle of IHL? Of treaty-based law? Does this principle apply to all multilateral treaties? [See ICJ, *Nicaragua v. United States* [Para. 220]]

II. UN General Assembly resolutions

- 1.
 - a. What is the legal value of General Assembly resolutions? Does the reference to the resolution “Uniting for peace” (Resolution 377 (V) of 3 November 1950, available at www.un.org), in which the General Assembly states that it will take over the functions of the Security Council if the latter is paralysed by the veto of a permanent member, reinforce this value? Does this mean that the States party to the Conventions do not need to respect the recommendations made in para. 10 of Part C? Does not each State have an individual obligation to ensure respect for the Conventions?
 - b. Should the General Assembly have reminded the States Parties of their treaty obligations? Is it appropriate for the UN, which is neither a State party to the Geneva Conventions nor an implementing mechanism foreseen by them, to call for the application of common Art. 1? (P I, Art. 89)

III. Conferences of States Parties

- 1. Why did Switzerland twice make preliminary inquiries about the idea of a Conference of all States Parties? What is the depositary State's role in the implementation of the Conventions? Does the depositary have a specific role in the event of violations? May the depositary convene a conference of the States Parties? In regard to the Conventions? In regard to Protocol I? (P I, Arts 7, 97 and 98) Under which conditions and for what purpose?
- 2.
 - a. Do not the States Parties have a legal interest in the treaties being respected? Is taking no action to “ensure respect” for IHL a violation of common Art.1?
 - b. Are the legal arguments of the State that wishes to call on the International Fact-Finding Commission (Part D) ? (P I, Art. 90) Does each State Party have an obligation to ask the Commission to hold an inquiry into ongoing violations? At least in cases where the Commission has jurisdiction? Is such a request by a State Party a means of fulfilling its obligation under common Art. 1? What could the Commission do in the present case? Are there facts that need to be established? Which?
 - c. What do you think of the replies by States that fear a negative impact on the peace process? Do they fear such an impact because the Conference may consider questions that are important for the peace process (*Part D*)? Or do they fear that a discussion on respect for IHL will cause the international community to lose sight of the main aim, which is the peace process? Can respect for IHL be an alternative to peace? Is lasting peace a realistic option before the violations of IHL have been redressed?
- 3.
 - a. Was it the aim of the meetings of June and October 1998 to implement the requests formulated by

the General Assembly resolutions? Were there violations of these resolutions? Were they useful (*Parts F and G*)?

- b. Did the meeting of October 1998 result in new conclusions or recommendations that go further than existing IHL (*Part G*)?

4.

- a. Must common Art. 1 be implemented separately by each State Party? Which measures can be implemented separately? Which measures require collective action? Is a coordination of the measures taken by virtue of Article 1 necessary? Useful? How can this coordination be most effectively organized?
- b. Is a conference of all States Parties a useful means of coordinating the measures taken by virtue of Art. 1? What are the opportunities and dangers of such a conference?
- c. Do the Conventions provide for the organization of a conference of all States Parties? What about Protocol I? (P I, Art. 7) May such a conference deal with a specific context? Does treaty law provide for the organization of a conference of all States Parties? Are States obliged to participate? During these Conferences, may they make binding decisions?
- d. Could or must the conference mentioned in Part I and envisaged in Part K take place if Israel were not taking part? Is the objective of these conferences to discuss the violations committed by Israel or the obligations of third States?
- e. Did the Conference of States Parties of December 2001 result in new conclusions or recommendations that went beyond the scope of existing IHL? Did it have the expected impact on the situation in the Middle East? Would it have had a greater impact if all States Parties had participated (*Part I*)?
- f. Does the General Assembly resolution adopted after that Conference and requesting the application of the Declaration have a greater legal value? Does it have a greater impact (*Part J*)?
- g. What is the purpose of the conference envisaged in Part K? What is the purpose of the conference envisaged in Part L? Considering the situation in the Middle East, do you think that the organization of another Conference of States Parties is the best way of ensuring respect for IHL by Israel?
- h. What decisions could a Conference of States Parties make following the Goldstone Report? Could it enforce the report's recommendations? Could it impose any sanctions on Israel in response to the violations mentioned in the report (*Part L*)? [**See** Israel, Operation Cast Lead [*Part II.*]]