

THE ENFORCEMENT OF THE FOURTH GENEVA CONVENTION IN THE OCCUPIED PALESTINIAN TERRITORY, INCLUDING JERUSALEM

*Hussein A. Hassouna**

This article expresses a timely and most important subject. It concerns the implementation of international humanitarian law, that branch of law that has recently assumed an ever-growing prominence, as an expression of our generation's ideal of the rule of law in international relations.

This article was written in a year of historic celebrations. Let us remember that the year 1999 marked the centenary of the first Hague Peace Conference,¹ which began a long ongoing process of outlawing destructive deadly weapons while setting up the first institution for peaceful settlement of disputes.² It was also the fiftieth anniversary of the signing of the four Geneva Conventions, which laid down a set of universal rules for humane conduct in armed conflict.³ And lastly, it marked the anniversary of the Convention of the Rights of the Child that combines articles of human rights with provisions of international humanitarian law.⁴

As the century drew to a close, we may also add to that series of historic celebrations 1998's celebration of the fiftieth anniversary of the Universal Declaration on Human Rights.⁵ This universal declaration, whose principles have been enshrined over the years in a number of international conventions, has formed the core of a growing body of international human rights law.

* Dr. Hussein A. Hassouna, Ambassador of the League of Arab States to the United Nations and the United States and formerly Assistant Foreign Minister of Egypt for international legal affairs and treaties; Ph.D. in International Law from Cambridge University. This article is revised from a presentation given in Cairo, Egypt on June 15, 1999.

1. Institute for Comparative and International Law, *First International Peace Conference, held in The Hague, 1899. Centenary of the Hague Peace Conference*, available at http://www.law.unimelbalu.edu.au/events/hague/11899_hague_conference/1999_hague_.html conference (last visited Mar 17, 2001).

2. Permanent Court of Arbitration, *First International Peace Conference, The Hague 1899*, available at <http://www.pca-cpa.org/genifomerg.htm> (last visited Mar. 17 2001).

3. Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949, U.N.T.S. No. 973.

4. United Nations Convention on the Rights of the Child (1989), available at <http://www.webcom.com/kmcladoption/law/un/un-child.html> (last visited Mar. 17, 2001).

5. G.A. Res. 217, U.N. GAOR, 3rd Sess., U.N. Doc. A/RES/3/217 (1948) [hereinafter Resolution 217].

Furthermore, the adoption of the Statute of the International Criminal Court in Rome has since been signed by 139 states and Ratified by twenty-seven as of December 31, 2000, thus marking an important step in institutionalizing the enforcement of international humanitarian law in terms of individual criminal responsibility.⁶

These recent developments in the field of international humanitarian law have found their inspirational source in the Charter of the United Nations⁷ that declares the solving of international problems of a humanitarian character to be one of the main purposes of the United Nations.

These advancements should be seen as part of the United Nations and other humanitarian organizations, notably the International Committee of the Red Cross' long-term efforts and overall contribution to the codification and implementation of international humanitarian law.⁸

But while we may rejoice at the richness of this legal creativity and the proliferation of instruments of international humanitarian law, we cannot but notice with concern the widening gap between the rules of international humanitarian law and their actual application. The case of the Fourth Geneva Convention provides a good illustration of that regrettable situation.

The issue is therefore not to elaborate new rules, since current humanitarian law already comprises all the basic rules and principles. For example, if we are guided by the principles and standards of international humanitarian law, such as the Fourth Geneva Convention,⁹ the Universal Declaration of Human Rights¹⁰ and the International Covenants on Human Rights¹¹ the essence for confronting such violations is already present. Rather it is necessary to implement effective mechanism to ensure a globalized compliance of all relevant established rules of international humanitarian law. This is not an easy task for the United Nations, which is often confronted with difficult challenges in its contact with humanitarian issues, such as how to

6. U.N. Charter prmb., U.N. Doc. A/Conf./9 (1999).

7. UN Charter of October 24, 1945.

8. The International Committee of the Red Cross (ICRC) contributes to the development of international law by drafting documents which form the basis of the texts adopted by States while also preparing drafts for the Diplomatic Conferences. Thus, the ICRC plays an important role in the codification process of humanitarian law. This is how the four Geneva Conventions of 1949 and their two Additional Protocols of 1977 came into being. Accordingly, the ICRC has become the guardian of international humanitarian law, whereas it has been legitimized by the international community to monitor its application by the parties to conflict. Excerpt from ICRC information site, *available at* www.icrc.org (last visited Mar. 17, 2001).

9. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, U.N.T.S., No. 970.

10. Resolution 217, *supra* note 5.

11. G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 15, U.N. Doc. A/ 21/2200 (1976).

refrain from attempting to politicize humanitarian issues, how to avoid selectivity and double standards, how to avoid using humanitarian action as a substitute for the necessary political action, and how to reconcile preservation of the sovereignty of states and their domestic jurisdiction with the ever growing drive to protect human rights worldwide.

But there is perhaps no greater need in our turbulent world of today than to raise to the challenge of confronting the growing civilian toll of armed conflict and protecting the millions of innocent civilians that now account for the vast majority of casualties in armed conflict.¹² Civilians have increasingly become primary targets in many armed conflicts in which the basic rules of humanitarian law have been deliberately violated. Such violations of humanitarian law have been observed in the Balkans, in the Great Lakes region, in West Africa, in the Caucasus and in the Middle East.¹³

These continuous violations of international humanitarian law explain why the International Court of Justice, in recent cases, involving Yugoslavia,¹⁴ and a number of NATO countries,¹⁵ expressed its deep concern with the human tragedy, the loss of life and the human suffering found in Kosovo, other parts of Yugoslavia and in East Timor.¹⁶ The International Court of Justice has since called upon all parties to act in conformity with their obligations under the United Nations Charter and other rules of international law, including humanitarian law.¹⁷

Such humanitarian violations also explain why the Security Council has recently devoted a number of official meetings in February and September of 1999 to a comprehensive discussion of the issue of "Protection of Civilians in armed conflict."¹⁸ Furthermore, such acts of humanitarian apathy explain why the Fourth Geneva Convention of 1949 has become the essential core of numerous Security Council and General assembly resolutions. These resolutions call for strict observance and full respect for the rules of

12. Report of Secretary-General of April 13, 1998 on the "Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa" U.N. Doc. S/1998/318 (1998), September 8, 1999 report of the Secretary-General, U.N. Doc. S/1998/957 (1998), and September 22, 1998, on the "Protection for Humanitarian Assistance to Refugees and Others in Conflict Situations," U.N. Doc. S/1998/883 (1998), in particular on their analysis related to the protection of civilians; *see also*, U.N. SCOR, 54th Sess., 4046th mtg., U.N. Doc. S/Res/1265 (1999).

13. *Id.*

14. *Legality of Use of Force* (Yugo. v. Belg.), (Yugo. v. Can.), (Yugo. v. Fr.), (Yugo. v. F.R.G.), (Yugo. v. Italy), (Yugo. v. Neth.), (Yugo. v. Port.), (Yugo. v. Spain), (Yugo. v. U.K.), (Yugo. v. U.S.), 1999 I.C.J. 114 (Request for the Indication of Provisional Measures of June 2, 1999).

15. *Id.*

16. *Id.* at 15.

17. *Id.* at 18.

18. Security Council Resolution: "*Protection of Civilians in Armed Conflict*," *supra* note 12.

international humanitarian law.¹⁹ In short, it explains the justification behind the international community's current sustained efforts to improve the physical and legal protection of civilians in situations of armed conflict.

The signing of the Fourth Geneva Convention in 1949 was a major breakthrough that culminated long efforts over the years to ensure a better protection for the civilians in times of war. And while the Convention, which has now been ratified by 188 states, has received universal recognition, its observance and implementation is still lacking, since serious violations of its provisions have become common practice in many conflicts.

A major problem facing implementation stems from the frequent refusal of the occupying power to acknowledge that definition, thereby contesting its obligation to apply the convention. The main aim of the convention resides in alleviating human suffering caused by conflict. According to Article Four of the Fourth Geneva Convention "Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals."²⁰ While lengthy legal debate over the applicability of the convention is politically important, it should nevertheless be minimized, in order to terminate the possibility of any deviation from the basic rules of the convention and humanitarian law altogether, by the occupying power. Instead, efforts should be centered on the practical problems arising from occupation or the threat of occupation, in the hope of adopting practical steps for the early resolution of the problem and this allows no change under the convention in the legal status of the territory or the continued normal life of its inhabitants in accordance with their laws, culture, and traditions.

However, the most effective way to bring about an end to any violations of the applicable rules of international humanitarian law is to deal with the underlying issues of the conflict, thus bringing about an end to that occupation. But let us add in all candor that any success in settling such issues, such as the applicability of the convention, practical problems of the occupation and the underlying conflict, depend on two things. First, on the cooperation and good will of the parties concerned, and second, on the international community's readiness, will and ability to adopt a clear and firm position *vis-à-vis* the recalcitrant party.

19. U.N. SCOR, 53rd Sess., 4008th mtg., U.N. Doc. S/Res/1242 (1999); U.N. SCOR, 54th Sess., 4057th mtg., U.N. Doc S/Res/1272 (1999); U.N. SCOR, 54th Sess., 4079th mtg., U.N. Doc. S/Res/1281(1999); G.A. Res. 76, U.N. GAOR 54th Sess., Supp. No. 49, U.N. Doc. A/76 (1999); G.A. Res. 77, U.N. GAOR 54th Sess., Supp. No. 49, U.N. Doc. A/77 (1999); G.A. Res. 78, U.N. GAOR 54th Sess., Supp. No. 49, U.N. Doc. A/78/ (1999); G.A. Res. 79, U.N. GAOR 54th Sess., Supp. No. 49, U.N. Doc. A/79 (1999); G.A. Res. 80, U.N. GAOR 54th Sess., Supp. No. 49, U.N. Doc. A/80 (1999).

20. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, *supra* note 9.

In assessing the effectiveness of the mechanism provided under the Fourth Convention for implementation of its provisions, we cannot but express consternation over the fact that the role contemplated for the Protecting Powers and the International fact-finding Commission has virtually remained dead letter. Will the newly created International Criminal Court witness a similar fate? As a general rule, the activation of these bodies to accomplish their task depends on the political and practical support they receive from the international community.

The difficulty in implementing the Protecting Power mechanism owing to the lack of consent of a party to the conflict could be overcome by granting the ICRC,²¹ well known for its neutrality and impartiality, the necessary mandate to play the role of substitute. Either formally as provided in the convention, or informally, in that formal acceptance is difficult to achieve. Likewise, the International fact-finding Commission's role could be revived by inducing more states to formally recognize its competence, or alternatively to grant their consent for its role in any given situation. And this task of fact-finding can be supplemented by humanitarian missions undertaken by United Nations *ad hoc* bodies.

A unique feature of the four Geneva Conventions and their additional Protocols lies in the collective responsibility of the parties.²² The parties have undertaken to implement such responsibility through a common goal in which "to respect and to ensure respect for the Convention in all circumstances."²³ It underscores the particular legal nature of the conventions, their universality and the essential value of the body of humanitarian law they incorporate. The carrying out of this solemn obligation entails, in our opinion, concrete action of the parties, to ensure respect for the Convention and not merely rebuke or condemn the violating state.

However, the permissible limits of such action should always be consistent with the provisions of the United Nations Charter. In case of serious violations, like those perpetrated in a systematic manner as deliberate policies of state, such action could be taken in cooperation with the United Nations Charter in adopting a variety of measures, coercive ones if necessary.²⁴ Furthermore, as a true reaffirmation of their collective responsibility, the High Contracting

21. International Committee of the Red Cross.

22. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, *supra* note 9, at 11; Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) adopted on June 8, 1977; Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) adopted on June 8, 1977.

23. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, *supra* note 9, at art. I.

24. UN Charter, *supra* note 7, at ch. VII.

Parties of the Conventions should seek to hold periodic meetings among themselves, in order to create an institutionalized forum for undertaking effective collective action.

The measures just suggested for enhancing the implementation of the Fourth Geneva Convention, would apply to any occupied territory, including occupied Palestinian territory of which Jerusalem is an integral part. One crucial question raised is the issue of the applicability of the Fourth Convention on occupied Palestinian territory in the light of Israel's refusal to accept its *de jure* applicability while agreeing only to *de facto* application.

International legal opinion, twenty-four resolutions adopted by the United Nations Security Council, five resolutions adopted by the General Assembly in ordinary and emergency special sessions, as well as the International Committee of the Red Cross, all clearly confirm the applicability of the Fourth Geneva Convention to the territories occupied by Israel since 1967, including Jerusalem. Such provisions call upon Israel, as party to the Convention since January 1952, to comply and accept its *de jure* applicability. Israel's contention on this issue must therefore be categorically rejected on solid legal grounds, including the inadmissibility that a duly ratified international treaty may be suspended at the wish of one of the parties, who refuses to comply according to its own free discretion. Furthermore, there is ample evidence produced by several impartial bodies, governmental and non-governmental, international and even Israeli, refusing Israel's contention that although the Convention is not legally applicable, nonetheless it implements its provisions in practice.²⁵ And in the final analysis, all violations of the Fourth Geneva Convention are the outcome of the very fact of Israel's illegal occupation of the concerned Arab territories.

The United Nations International Meeting on the Convening of the Conference on Measures to Enforce the Fourth Geneva Convention in the Occupied Palestinian Territory, including Jerusalem, was held in Cairo, Egypt on June 14, 1999 and June 15, 1999, under the auspices of the Committee on the Exercise of the Inalienable Rights of the Palestinian People. The Meeting was attended by hundred Governments, eleven United Nations bodies and agencies, five intergovernmental organizations, forty-two non-governmental organizations and a delegation from Palestine.²⁶ The two-day meeting was divided by three plenary sessions and adopted a final document which declared:

25. Report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, U.N. Committee on the Inalienable Rights of the Palestinian People, 54th Sess., Supp. No. 35, U.N. Doc. A/54/35 (1999).

26. *United Nations Information System on the Question of Palestine* (UNISPAL), DPR MONTHLY BULLETIN, Vol. XXII, No. 3 (May/June 1999).

The participants strongly supported the convening of the conference on measures to enforce the Convention in the Occupied Palestinian Territory, including Jerusalem, as recommended in General Assembly resolutions ES-10/3, 10/4 and 10/5. They also strongly supported the convening by the High Contracting Parties of the said conference on 15 July 1999 at the United Nations Office at Geneva in accordance with General Assembly resolution ES-10/6, adopted overwhelmingly on 9 February 1999. The report of the Secretary-General of 14 October 1997 demonstrated clearly that the majority of the High Contracting Parties were in favour of the convening of a conference and recent consultations conducted by the depository also showed that the broad majority supports the convening of the conference on 15 July 1999. The participants called upon all the High Contracting Parties to participate actively in the conference.²⁷

The convening of the Geneva Conference of the High Contracting Parties to the Fourth Geneva Convention on Measures to Enforce the Convention in the Occupied Palestinian Territory, including Jerusalem, as recommended by the General Assembly at its tenth emergency special session in its resolution ES-10/6, assumed a historic importance, since it was the first of such meetings of the Contracting Parties to the Convention at that level.²⁸ The significance of the Conference was that the "participating High Contracting Parties reaffirmed the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including East Jerusalem . . . [and] would convene again in the light of consultations on the development of the humanitarian situation in the field."²⁹ The Conference will open the door for future similar meetings, held on a regular basis, to monitor implementation of the Convention in Palestinian territory or any other occupied territory where the provisions of the Convention are not applied and fully respected.³⁰ In a more general context, the convening

27. Excerpt from the final document of the United Nations International Meeting on the Convening of the Conference on Measures to Enforce the Fourth Geneva Convention in the Occupied Palestinian Territory, including Jerusalem, organized in Cairo, June 14 - 15 1999, under the auspices of the Committee on the Exercise of the Inalienable Rights of the Palestinian People; *see also* U.N. Doc. A/ES-10/34 (1999); *supra* note 19, at 35 ¶ 7 (final document).

28. *Report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People*, *supra* note 25, at 19; *see also* G.A. Res. ES-10/6, U.N. GAOR 54th Sess., Supp. No. 49, U.N. Doc. A/ES-10/6 (1999).

29. *Report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People*, *supra* note 25, at 19.

30. On October 18, 2000, the 10th Emergency Special Session was resumed in light of the serious deterioration of the situation on the ground in the Occupied Palestinian Territory, including Jerusalem, and after a permanent member of the Security Council indicated publicly on October 12, 2000 that it would veto any draft resolution presented to the Security Council. Following the Emergency Special Session, Resolution ES- 10/7 on October 20, 2000 was adopted inviting the

of the conference can be considered as an expression of the international community's renewed commitment and dedication, by reinforcing the rule of law in armed conflict.

In conclusion, it is my view that the Geneva Conference represented a unique opportunity to increase world-wide awareness of the solemn obligation of states to respect the norms of international humanitarian law in armed conflict, and take collective measures to ensure their implementation by all states without exception. The success of the Conference will contribute to creating a better world, a world based on the rule of law and respect for the principles of humanity and justice.

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

Accordingly, and following receipt of a letter from the Permanent Delegation of the League of Arab States in Geneva on October 13, 2000, which invited the High Contracting Parties to convene again their meeting in light of the situation in the field, Switzerland, in its capacity as depository of the Fourth Geneva Convention, distributed a note to the High Contracting Parties of the Geneva Conventions on November 17, 2000, submitting the above-mentioned proposal to reconvene the conference and requesting responses by December 31, 2000 on the appropriateness of such a meeting.