

REPORTS AND DOCUMENTS

The Conference of High Contracting Parties to the Fourth Geneva Convention of 17 December 2014 and the duty to ensure respect for international humanitarian law

Matthias Lanz, Emilie Max and Oliver Hoehne*

Matthias Lanz, MLaw (Zurich)/LLM (Cambridge), is a Deputy Head of Section with the Directorate for International Law of the Swiss Federal Department of Foreign Affairs.

Emilie Max, BLaw (Geneva)/MA (SOAS)/LLM (Geneva Academy), is a Legal Officer with the same Directorate.

Oliver Hoehne, MA (IHEID)/MSc (LSE), is a Diplomat with the Permanent Mission of Switzerland to the United Nations in Geneva.

Abstract

While international humanitarian law envisages the possibility of holding formal thematic discussions, only United Nations General Assembly resolutions prompted the depositary of the Geneva Conventions to consult the High Contracting Parties

* While the authors were involved in the consultations and preparations related to the Conference of High Contracting Parties of 17 December 2014, they wrote this article in their personal capacity. The opinions expressed therein are not to be construed as the official position of Switzerland or the Federal Department of Foreign Affairs. This is not an official publication of the Department.

on the opportuneness of conflict-specific conferences. Recalling the precedents of 1999 and 2001 – convened on the basis of the support expressed by the States Parties during related consultations – this article focuses on the Conference of High Contracting Parties to the Fourth Geneva Convention of 17 December 2014, which is likewise related to the Israeli–Palestinian conflict. The result of the conference consists of a declaration reflecting the willingness of the States Parties to further implement Article 1 common to the four Geneva Conventions.

Keywords: common Article 1, depositary, Conference of High Contracting Parties, Israel, Palestine, Occupied Palestinian Territory, protection of civilians.

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[I]t is evident that Article 1 [common to the four Geneva Conventions] is no mere stylistic clause, but is deliberately invested with imperative force, and must be obeyed to the letter.¹

In summer 2014, a new series of hostilities erupted in the context of Israel’s Operation Protective Edge and attacks by Palestinian armed groups (hereafter referred to as the 2014 Gaza conflict). Against this background and violations of international humanitarian law (IHL) continuously affecting the civilian population in both the Occupied Palestinian Territory and Israel, High Contracting Parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949 (Fourth Geneva Convention) decided to convene a dedicated conference on 17 December 2014. Through its final declaration,² the Conference of High Contracting Parties to the Fourth Geneva Convention reaffirmed various fundamental rules of IHL in the hope of contributing to the alleviation of civilian suffering in the context of this protracted conflict. In addition, the declaration implements Article 1 common to the four Geneva Conventions, which requires the High Contracting Parties “to respect and ensure respect for the ... Convention[s] in all circumstances”.

This contribution recounts the framework and the multilateral process that resulted in the conference of 17 December 2014. First, it shows that thematic discussions on general problems concerning the application of IHL are usually favoured by States. Only exceptionally and acting on the basis of recommendations by the United Nations (UN) General Assembly, the government of Switzerland, in its capacity as depositary of the Geneva Conventions,³ consulted the High Contracting Parties on the opportuneness of conflict-specific conferences. It will be recalled that the support expressed by States in the consultations is the *conditio sine qua non* for the convening of such a conference.

1 Jean Pictet (ed.), *Commentary on the Geneva Conventions of 12 August 1949*, Vol. 4: *Geneva Convention relative to the Protection of Civilian Persons in Times of War*, ICRC, Geneva, 1958, p. 17.

2 The text of the final declaration in English and French is available in the Annex to this piece.

3 The government of Switzerland is the depositary for seventy-nine international treaties, including the Geneva Conventions of 1949 and their Additional Protocols of 1977 and 2005. For more information, see: www.eda.admin.ch/depositary (all internet references were accessed in August 2015).

This article will then briefly recall the Conferences of High Contracting Parties of 1999 and 2001 relating to the Israeli–Palestinian conflict, both of which reflected the approach taken by the depositary. The conference of 2014 follows in this line, concluding a multilateral process that began in 2009 after the publication of the Goldstone Report,⁴ was suspended in 2011 and resumed in 2014 following the Gaza conflict in summer. This report will detail the subsequent rounds of multilateral consultations before finally providing some insight into the recent conference as well as into the related declaration.

Thematic meetings on international humanitarian law

The Geneva Conventions and their Additional Protocols provide States with the possibility of holding formal thematic discussions on IHL. More specifically, Article 7 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and related to the Protection of Victims of International Armed Conflicts (AP I) foresees that the depositary “shall convene a meeting of the High Contracting Parties, at the request of one or more of the said Parties and upon the approval of the majority of the said Parties”. The article goes on to specify that such a meeting shall “consider *general problems* concerning the application of the Conventions and of the Protocol”.⁵ Meetings related to a specific situation can therefore not be held under this provision.⁶ In fact, since the depositary has never received a request satisfying the above-mentioned conditions, no meeting has ever been convened based on Article 7 of AP I.

In the same vein, the holding of a conflict-specific discussion amongst States is not foreseen in the framework of a so-called “periodical meeting”. Constituting a development of Article 7 of AP I, this type of meeting rests on Resolution 1 of the 26th International Conference of the International Red Cross and Red Crescent adopted in 1995. This resolution endorsed a recommendation that “the Depositary organize periodical meetings of the States parties to the 1949 Geneva Conventions to consider *general problems* regarding the application of IHL”.⁷ The material scope of such meetings is broader than that of Article 7 of

4 Report of the United Nations Fact-Finding Mission on the Gaza Conflict, UN Doc. A/HRC/12/48, 25 September 2009.

5 Emphasis added.

6 See Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Geneva, 1987, p. 104.

7 “Resolution 1 of the 26th International Conference of the International Red Cross and Red Crescent (Geneva, Switzerland, 3–7 December 1995)”, *International Review of the Red Cross*, Vol. 36, No. 310, 1996, pp. 58–60 (emphasis added). The recommendation can be traced back to the International Conference for the Protection of War Victims that took place in Geneva from 30 August to 1 September 1993. In the final declaration, the participants in the conference called upon the Swiss government to convene an open-ended intergovernmental group of experts to study practical means of promoting full respect for and compliance with IHL: see “Final Declaration of the International Conference”, *International Review of the Red Cross*, Vol. 33, No. 296, 1993, pp. 377–381. Accordingly, the Group of Experts for the Protection of War Victims subsequently recommended the convening of “periodical meetings”: see “Meeting of the Intergovernmental Group of Experts for the Protection of

AP I, which only envisages the handling of general problems concerning the application of *the Conventions and of the Protocol*, while “periodical meetings” allow for discussions on the application of IHL in general.

Acting on the basis of the above-mentioned resolution and following consultations of the States Parties, the depositary convened the First Periodical Meeting on International Humanitarian Law. Taking place in Geneva from 19 to 23 January 1998, it discussed respect for and security of the personnel of humanitarian organizations and armed conflicts linked to the disintegration of State structures, thus complying with Resolution 1.⁸ No further “periodical meeting” has taken place since.

Finally, most States also expressed a clear preference for thematic, as opposed to context-specific, discussions during the consultations facilitated by both Switzerland and the International Committee of the Red Cross (ICRC) between 2012 and 2015. On the basis of Resolution 1 of the 31st International Conference of the Red Cross and Red Crescent in 2011,⁹ the ICRC and Switzerland were jointly consulting States and, where appropriate, other relevant actors on possible means to strengthen the application of IHL and reinforce the dialogue among States and other interested entities.¹⁰ In the consultations concluded in April 2015, most States expressed their support for the establishment of a regular meeting of States on IHL. As a result of many rounds of consultations, it was established that the functions of this potential new meeting of States should not involve the examination of specific situations, but should rather focus on general or common issues.¹¹ The way forward, in particular as regards the establishment of such a regular meeting, will be decided in Geneva at the 32nd International Conference of the Red Cross and Red Crescent from 8 to 10 December 2015.¹²

War Victims: Recommendations”, *International Review of the Red Cross*, Vol. 35, No. 304, 1995, pp. 37–38.

- 8 See Lucius Caflisch, “First Periodical Meeting on International Humanitarian Law”, *International Review of the Red Cross*, Vol. 38, No. 323, 1998, pp. 366–373; Federal Department of Foreign Affairs, “Première réunion périodique sur le droit international humanitaire”, 15 January 1998, available at: www.admin.ch/cp/f/1998Jan15.162726.8806@idz.bfi.admin.ch.html.
- 9 Res. 31IC/11/R1, 28 November–1 December 2011, op. paras 5–8, available at: http://rcrcconference.org/wp-content/uploads/sites/3/2015/03/R1_Strengthening_IHL_EN.pdf.
- 10 For more details and the current state of the process, see: www.eda.admin.ch/ihl-compliance and www.icrc.org/en/document/strengthening-compliance-international-humanitarian-law-ihl-work-icrc-and-swiss-government.
- 11 ICRC in conjunction with the Swiss Federal Department of Foreign Affairs, “Strengthening Compliance with International Humanitarian Law – Concluding Report”, advance unedited version, June 2015, pp. 20–22, available at: www.eda.admin.ch/content/dam/eda/mehrsprachig/documents/topics/aussenpolitik/voelkerrecht/Concluding-Report-Strengthening-Compliance-IHL_June%20%202015.pdf. The purpose of a new meeting of States on IHL would be to foster dialogue and cooperation among States on ways of strengthening respect for this body of law and to promote awareness of IHL at the international and domestic levels. It would allow States to examine practical experiences as well as challenges in the application of IHL, to exchange best practices, to flag capacity-building needs and to foster international cooperation in addressing such needs.
- 12 For more information on the 32nd International Conference of the Red Cross and Red Crescent, see: <http://rcrcconference.org>.

It can be seen from the above that States currently seem to favour a thematic approach when they can indicate, *in abstracto*, the preferred format of meetings on IHL. Article 7 of AP I, Resolution 1 of the 26th International Conference and the views of States expressed during the consultations initiated after the 31st International Conference equally reflect this preference for thematic rather than conflict-specific meetings.

Two conflict-specific conferences based on General Assembly resolutions and consultations of the High Contracting Parties (1997–2001)

Starting from 1997, the UN General Assembly created exceptional circumstances as regards the convening of discussions of High Contracting Parties on IHL. It adopted several resolutions,¹³ resulting in the initiation by the depositary of a multilateral process that essentially lasted until 2001.¹⁴

Against the background of insufficient improvement in respect for IHL in the aftermath of the Oslo process, the General Assembly resolutions¹⁵ contained recommendations prompting the depositary to consult the High Contracting Parties on the opportuneness of a conference linked to the Israeli–Palestinian conflict. Following extensive informal consultations, two expert meetings and a last-minute compromise, it was clear that there was the necessary support of High Contracting Parties for holding a conference. Acting as impartial facilitator and on behalf of the High Contracting Parties, the depositary deemed such support the *conditio sine qua non*. As the *conditio* was fulfilled, a Conference of High Contracting Parties to the Fourth Geneva Convention took place on 15 July 1999. A total of 103 States participated and the conference consensually adopted a brief statement, which most notably contained the following paragraph:

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.

Following growing tensions in the Middle East at the end of September 2000, member States of the Arab League and the Organisation of the Islamic Conference (OIC)¹⁶ reminded the depositary of the final paragraph of the statement. It stated that “the Conference [of 15 July 1999] was adjourned on the

13 UNGA Res. ES-10/3, 15 July 1997, to ES-10/9, 20 December 2001.

14 For a detailed historical account of the multilateral process, on which the following overview is based, and the text of the declaration of 5 December 2001, see Pierre-Yves Fux and Mirko Zambelli, “Mise en oeuvre de la Quatrième Convention de Genève dans les territoires palestiniens occupés: Historique d’un processus multilatéral (1997–2001)”, *International Review of the Red Cross*, Vol. 84, No. 847, 2002, pp. 661 ff.

15 UNGA Res. ES-10/3, 15 July 1997, to ES-10/6, 9 February 1999.

16 Now, notably, renamed the Organisation of Islamic Cooperation .

understanding that it will convene again in the light of consultations on the development of the humanitarian situation in the field". It was only after a new recommendation by the General Assembly,¹⁷ however, that the depositary initiated new consultations and the conference ultimately reconvened on 5 December 2001. This time, the 115 participating States adopted a detailed declaration which affirmed not only the *de jure* applicability of the Fourth Geneva Convention but also the obligations of all States based on common Article 1, the obligations of the parties to the conflict reflected in the Fourth Geneva Convention and the specific obligations of Israel as the Occupying Power.¹⁸ It was a humanitarian declaration that highlighted the protection of victims, irrespective of their belonging to a party to the conflict.

A new General Assembly resolution and the initial consultations of the High Contracting Parties (2009–2011)

On 5 November 2009, the UN General Assembly adopted Resolution A/RES/64/10, following up on the Goldstone Report inquiring into alleged violations of international law committed during the Gaza conflict, including in the context of Operation Cast Lead, at the end of 2008 and the beginning of 2009.¹⁹ In operational paragraph 5 of the resolution, the General Assembly

[r]ecommend[ed] 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 article 1.²⁰

Based on Resolution A/RES/64/10, the depositary undertook preliminary consultations with a limited number of parties in December 2009. It also engaged with the five UN Regional Groups²¹ and informed all interested States and international organizations. Acting as an impartial facilitator in accordance with its previous practice, it sought to determine the opportuneness of a Conference of High Contracting Parties. The depositary carried out these consultations bearing in mind that such a conference should be inclusive, constructive, consensual and conducive to a concrete result. The various views expressed at the time did not

17 UNGA Res. ES-10/7, 20 October 2000.

18 For the text of the declaration in English and French, see P.-Y. Fux and M. Zambelli, above note 14, pp. 683 ff.

19 See Report of the United Nations Fact-Finding Mission on the Gaza Conflict, above note 4.

20 UNGA Res. 64/10, 5 November 2009, op. para. 5 (emphasis in original).

21 African Group, Asia-Pacific Group, Eastern European Group, Latin American and Caribbean Group (GRULAC) and Western European and Others Group (WEOG).

allow for the determination of a trend either in favour of or against the holding of a conference.

On 26 February 2010, the UN General Assembly reaffirmed its recommendation to the depositary in Resolution A/RES/64/254.²² In order to follow up on this, the depositary conducted deliberations on possible topics for a conference. After originally envisaging the issue of access of humanitarian aid, goods, persons and services to Gaza, two alternative themes were identified: the operationalization of common Article 1, and legal issues related to situations of prolonged occupation. The depositary also organized talks from 25 June to 6 July 2010 with a view to sounding out the opinions of parties on those topics. The result of these consultations was inconclusive. On 1 February 2011, the depositary coordinated a final meeting that confirmed the impossibility of getting a critical mass of States Parties from across all regions to endorse a conference. In the face of such a lack of support, the depositary officially suspended the consultations but declared that it remained at the disposal of High Contracting Parties and other relevant actors.²³

The resumption of the consultations of the High Contracting Parties (2014)

At the beginning of summer 2014, mounting tensions and acts of violence by both Israel and Palestinian armed groups followed an unsuccessful US-led peace effort. On 8 July 2014, Israel initiated Operation Protective Edge. After the resumption of intense armed violence, the depositary received two letters from the State of Palestine – a High Contracting Party to the Geneva Conventions since 2 April 2014²⁴ – requesting it to lead further consultations with a view to convening a Conference of High Contracting Parties to the Fourth Geneva Convention. Equally considering the rapidly deteriorating humanitarian situation on the ground, the depositary decided to resume the consultations that had been suspended in 2011. On 22 July, it notified all 196 High Contracting Parties accordingly, underlining that it was proceeding on the basis of the original recommendation of the General Assembly contained in Resolution A/RES/64/10.²⁵ Seized with the situation in the Occupied Palestinian Territory, including

22 UNGA Res. 64/254, 26 February 2010, op. para. 4.

23 Switzerland regularly informed the Secretary-General throughout this original process, notably by sending him two letters in November 2009 and July 2010 respectively. See Report of the Secretary-General in follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict, UN Doc. A/64/651, 4 February 2010, Annex III; Report of the Secretary-General in second follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict, UN Doc. A/64/890, 11 August 2010, Annex III.

24 The State of Palestine had acceded to the Geneva Conventions and their Additional Protocol I on 2 April 2014. It subsequently adhered to Additional Protocols II and III on 4 January 2015. See: www.eda.admin.ch/eda/fr/dfae/politique-exterieure/droit-international-public/traites-internationaux/depositaire/protection-des-victimes-de-la-guerre.html.

25 The notification is available at: www.eda.admin.ch/content/dam/eda/fr/documents/topics/aussenpolitik/voelkerrecht/Geneve/140722-GENEVE_e.pdf.

East Jerusalem, the 21st Special Session of the Human Rights Council adopted Resolution S-21/1 on 21 July 2014.²⁶ Its operational paragraph 11 contained a recommendation similar to that made by the UN General Assembly. Following a formal request, the depositary informed the Office of the High Commissioner for Human Rights of the steps it had undertaken.²⁷

On 28 July 2014, the depositary initiated extensive consultations with the parties to the conflict and a sample of sixty High Contracting Parties deemed representative of all geographic regions.²⁸ Simultaneously engaging with various international organizations,²⁹ it also expressed its readiness to discuss bilaterally with any other State Party upon request. From the beginning onwards, the depositary had envisaged the potential closure of the consultations if no positive consensus was to emerge in a limited time frame. The whole process would eventually consist of three rounds, lasting about six months.

The consultation process in 2014

As in the past, the depositary began the consultations by emphasizing its role as an impartial facilitator; an inclusive and consensual conference could only be convened if High Contracting Parties so wished. The depositary also reiterated the opinion that such a conference should promote better respect for IHL on the ground, rather than serving as a platform for political accusations. Having done so, the depositary invited all High Contracting Parties to express their views on the opportuneness of a conference and to submit ideas regarding its possible content and format.

Since some High Contracting Parties had advised against the holding of any plenary or steering group meeting, the consultations were carried out bilaterally at the respective permanent missions and offices in Geneva. A significant number of approached States Parties favoured convening a conference.³⁰ Others, however, expressed their indecisiveness, scepticism or – as in the case of Israel³¹ – opposition on the matter. Although views diverged regarding the ways to appropriately

26 UNHRC Res. S-21/1, 21 July 2014.

27 Report of the United Nations High Commissioner for Human Rights on the Implementation of Resolution S-21/1 on Ensuring Respect for International Law in the Occupied Palestinian Territory, including East Jerusalem, UN Doc. A/HRC/27/76, 29 September 2014, para. 3–6.

28 The remaining High Contracting Parties were informed of the consultation process through the respective presidencies of the UN Regional Groups.

29 The depositary consulted the ICRC, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and the Office of the High Commissioner for Human Rights.

30 Some publicly communicated their position. For example, the Non-Aligned Movement's Committee on Palestine issued a declaration through the Islamic Republic of Iran, on 4 August 2014, which "called on Switzerland, in its capacity as depositary, to undertake the necessary efforts for the timely convening of such an important conference". The full declaration is available at: <http://iranembassy.ch/en/496>.

31 For Israel's position towards the end of the process, see Israel Ministry of Foreign Affairs, "The Conference of Fourth Geneva Convention Signatories", 11 December 2014, available at: <http://mfa.gov.il/MFA/PressRoom/2014/Pages/The-Conference-of-Fourth-Geneva-Convention-Signatories-11-December-2014.aspx>; Israel Ministry of Foreign Affairs, "Conference of High Contracting Parties to the Geneva Conventions", 17 December 2014, available at: <http://mfa.gov.il/MFA/PressRoom/2014/Pages/Conference-of-high-contracting-parties-to-the-Geneva-Conventions-Israel-reaction-17-Dec-2014.aspx>.

address the humanitarian needs of civilians affected by the conflict, High Contracting Parties saw the imperative necessity to do so. The depositary was thus encouraged to seek to accommodate the various opinions, ideas and proposals in a timely manner.

States Parties certainly did not deem a continuation of the consultations after December 2014 desirable, notably due to the planned examination of the report by the Independent Commission of Inquiry on the Gaza conflict at the 28th Session of the Human Rights Council in March 2015.³² In any case, a lengthy process seemed unlikely to increase the probability of a consensus amongst High Contracting Parties, as the consultations between 2009 and 2011 had shown.

The depositary thus immediately undertook a second round of consultations with the same States Parties. Discussions held in September 2014 suggested that the elaboration of a non-paper could contribute to clarifying the possible goal, format and content of a conference. Following extensive preparation, a text was circulated on 20 October 2014 that was very much inspired by the preparatory and concluding documents of the 2001 Conference of High Contracting Parties.

Based on the assessment that only strict procedural rules would allow for a non-politicized conference focused on the applicable IHL, the non-paper dealt with the envisaged modalities. It suggested adopting the 2001 modalities *mutatis mutandis*, thus foreseeing the participation of High Contracting Parties through their respective permanent representatives in Geneva and disallowing individual statements as well as points of order. Most notably, the non-paper suggested that the text of a potential declaration, to be adopted by consensus, would be finalized in advance. The depositary would facilitate its drafting and consult the High Contracting Parties in order to avoid controversial debates or a vote during a conference.

The non-paper also dealt with the potential content of a declaration, reflecting on comments and suggestions by High Contracting Parties and international organizations that had been consulted, rules of international humanitarian law and the 1999 statement and 2001 declaration. It was divided into three sections, as follows:

- First, a reaffirmation of the statement and declaration of 1999 and 2001, respectively, and of relevant legal principles. Many consulted States had emphasized the need to appropriately contextualize a conference, even though this risked hampering support by others that had opposed the previous conferences and were now opposing another one. Those sceptical High Contracting Parties had indeed argued that a conference focusing on the Occupied Palestinian Territory would inevitably be biased. However, Resolution A/RES/64/10 explicitly mentioned this particular geographic context. In order to accommodate all remarks, this section of the non-paper

32 On 16 March 2015, the Human Rights Council consensually decided to postpone the report by the Commission of Inquiry to June 2015. A short oral update was accordingly given on 23 March 2015.

included a restatement not only of general legal principles of IHL, including those related to occupation, but also of provisions particularly relevant to the 2014 Gaza conflict.

- Legal elements relevant to a factual update were also included, so as to reflect major developments that had happened since the Conference of High Contracting Parties in 2001. Among other events, the construction of a wall in the Occupied Palestinian Territory, the expansion of settlements, the disengagement from and the closure of the Gaza strip, the frequent occurrence of indiscriminate attacks and the use of civilians as human shields justified the recalling of existing significant rules of IHL. Given the concern of some High Contracting Parties, this section equally addressed the issue of non-State armed groups. It not only emphasized their legal obligations, but also explicitly referred to violations committed during attacks directed against or emanating from the Occupied Palestinian Territory. This was repeatedly done throughout the document.
- The non-paper finally proposed a two-fold follow-up mechanism, which consisted of both a voluntary self-evaluation by parties to the conflict and an additional follow-up process facilitated by the depositary.

High Contracting Parties reacted positively to the non-paper, generally supporting the envisaged modalities as well as the first two sections dealing with the content of a potential declaration. Contentious points nonetheless remained. Some wished to retain the ability to give individual statements during a conference, while others still feared the risk of politicization. The issue of joint statements was also of concern, since certain regional groups seemed unable to agree on a text. Finally, several States firmly opposed the inclusion of any follow-up mechanism.

Despite the lack of consensus at this stage, High Contracting Parties insisted that the depositary proceed with the consultations while maintaining transparency vis-à-vis all stakeholders. Additional discussions were thus held in Geneva and in several capitals throughout November 2014. They revealed that only the formulation of a draft declaration and of draft modalities would allow High Contracting Parties to take a final stand as to the opportuneness of a conference.

Based on the comments received, the depositary immediately drafted and submitted the required documents, which were examined during a third and final round of consultations in November and December 2014. The draft declaration contained specific amendments that had been suggested by High Contracting Parties on the basis of the non-paper and no longer mentioned any follow-up mechanism. The draft modalities allowed for either oral statements by predetermined groups³³ or written individual statements to be submitted before a conference for subsequent inclusion in its official records. Additional suggestions were also carefully evaluated in order to reflect as many views as possible. As

33 The draft modalities provided a non-exhaustive list of such pre-established groups.

envisaged, High Contracting Parties were then able to take a definitive stand regarding the convening of a conference.

On 3 December 2014, the depositary concluded that there was the necessary support to convene a conference of High Contracting Parties. Recalling the modalities and text of the final draft declaration, it invited all High Contracting Parties to confirm this assessment by pre-registering. On 10 December 2014, the depositary notified the High Contracting Parties that the conference would take place a week later given the existence of a cross-regional critical mass of support. Given that a small number of States Parties had already expressed their opposition to the principle of such a conference, the notification specified that “[t]he planned conference will be a ‘Conference of High Contracting Parties’ like the 1999 and 2001 conferences (not a ‘Conference of *the* High Contracting Parties’), on the basis of article 1 of the [Fourth Geneva] Convention”.³⁴ Likewise, the declaration adopted on 17 December 2014 referred to “participating” High Contracting Parties.

The Conference of High Contracting Parties to the Fourth Geneva Convention of 17 December 2014

On 17 December 2014, 128 High Contracting Parties³⁵ participated in the Conference of High Contracting Parties to the Fourth Geneva Convention, held at the World Meteorological Organisation in Geneva. Israel,³⁶ Canada³⁷ and the United States³⁸ in particular were not represented and publicly criticized the existence of the conference. In accordance with the agreed modalities, eight observers attended,³⁹ while neither the public nor any media presence was allowed in the room.⁴⁰ After the opening speech by the depositary, representatives of the ICRC and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) delivered statements. Both organizations underlined the challenges faced on the ground during and after the

34 “Notification to Governments of the States Parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War”, 10 December 2014, available at: www.eda.admin.ch/content/dam/eda/fr/documents/topics/aussenpolitik/voelkerrecht/Geneve/141210-GENEVE-Mission_EN.pdf (emphasis in original).

35 The full list of participating States is available at: www.eda.admin.ch/content/dam/EDA-Event/GVA%20Convention/CHCP-List%20of%20Participants.pdf.

36 See above note 31.

37 Foreign Affairs, Trade and Development Canada, “Canada Strongly Opposes Decision to Convene Anti-Israel Conference in Geneva”, 16 December 2014, available at: www.international.gc.ca/media/aff/news-communiques/2014/12/16b.aspx?lang=eng.

38 Permanent Mission of the United States of America to the United Nations and Other International Organizations in Geneva, “U.S. Statement on the Conference of High Contracting Parties to the Fourth Geneva Convention”, 17 December 2014, available at: <https://geneva.usmission.gov/2014/12/17/u-s-statement-on-the-conference-of-high-contracting-parties-to-the-fourth-geneva-convention/>.

39 African Union, European Union, ICRC, International Federation of the Red Cross and the Red Crescent, League of Arab States, Office of the High Commissioner for Human Rights, OIC and UNRWA.

40 The depositary held a short press conference immediately afterwards and issued a press release: see Federal Department of Foreign Affairs, “Switzerland Hosts Conference of High Contracting Parties to the Fourth Geneva Convention”, 17 December 2014, available at: www.eda.admin.ch/countries/blueprint/en/home/aktuell/news.html/content/eda/en/meta/news/2014/12/17/55724.

2014 Gaza conflict, calling on all States and non-State actors alike to ensure respect for IHL in the Occupied Palestinian Territory and in Israel. The depositary then read the ten-point declaration that was adopted by consensus. Several High Contracting Parties spoke on behalf of predefined established groups,⁴¹ while thirty-three others had previously submitted written statements to be included in the conference's records. The conference ended after about two hours with a concluding speech by the depositary.

Available in six languages, the declaration was notified to all High Contracting Parties on 14 January 2015, together with the other official conference documents.⁴² Accommodating the views expressed during the consultations, the declaration reflects a delicate balance between the restatement of basic principles of IHL and the emphasis on provisions particularly relevant to the 2014 Gaza conflict. Compared to the 2001 declaration, original elements include:

- the explicit reference to the three cardinal IHL principles of distinction, proportionality and precaution (para. 3, further specified in para. 9);
- the explicit reference, throughout the declaration, to non-State actors as parties to the conflict and to their specific obligations under IHL (para. 3, 5, 7 and 9);
- the emphasis on the principle of non-reciprocity (para. 3);
- the reference to recurring violations of IHL since 2001 by all parties to the conflict, and as such also by non-State actors, in the context of “military operations and attacks directed *against* and *emanating* from the Occupied Palestinian Territory” (para. 7, emphasis added);
- the expression of particular concern about civilian victims in densely populated areas (para. 7);
- the illegality, under IHL, of the construction of the wall in the Occupied Palestinian Territory, and its associated regime, according to the advisory opinion of the International Court of Justice of 9 July 2004 (para. 8);
- the “closure of the Gaza strip” by the Occupying Power (para. 8); and
- the prohibition under IHL of “indiscriminate attacks of any kind”, “the location of military objectives in the vicinity of civilians and civilian objects, when it would be avoidable”, and “the use of civilians as human shields” (para. 9).

Other elements, such as the essential nature of both respect for and implementation of IHL to the achievement of a just and lasting peace, the applicability of the Fourth Geneva Convention, the illegality of the settlements, the responsibilities in relation to humanitarian supplies and references to the need for accountability, were already reflected in the declaration of 2001.

41 Iran spoke on behalf of the Non-Aligned Movement, Italy on behalf of the European Union, Ecuador on behalf of the Bolivarian Alliance for the Peoples of Our America (ALBA), Saudi Arabia on behalf of the Organisation of Islamic Cooperation, the United Arab Emirates on behalf of the Arab Group, and Namibia on behalf of the African Group.

42 The conference's records are not publicly accessible, except for the list of participating High Contracting Parties, the declaration (in French, English, Spanish, Chinese, Arabic and Russian), the modalities, and the programme (available at: www.eda.admin.ch/eda/en/fdfa/etc/fourth-geneva-convention.html). Some of the participating States and entities have published their statements on an individual basis.

The declaration of the Conference of High Contracting Parties of 2014 is important for IHL in the Israeli–Palestinian conflict and beyond. Neither the statement of 1999 (103 participants) nor the declaration of 2001 (115 participants) was adopted by as many participating High Contracting Parties as the declaration of 17 December 2014 (128 participants). As per its predecessor texts, the declaration affirmed the *de jure* applicability of the Fourth Geneva Convention in the Occupied Palestinian Territory, including East Jerusalem and the Gaza Strip. Compared to the 2001 declaration, it is more concise and more specific. Dealing in detail with the role of the Occupying Power, it also includes several elements that can be clearly linked to Palestinian actors, such as the repeated mention of non-State actors, the reference to attacks emanating from the Occupied Palestinian Territory and the reference to the use of human shields. The declaration also distinctively takes into account specific alleged violations that occurred during the 2014 Gaza conflict. Finally, the humanitarian character of the declaration is evident; it expresses concern about the great suffering that has been inflicted on the civilian population since 2001 and supports the work of impartial humanitarian organizations such as the ICRC and UNRWA.

By adopting the ten-point declaration, the 128 participating High Contracting Parties reaffirmed fundamental rules of IHL in the hope of effectively contributing to the alleviation of protracted civilian suffering in the Occupied Palestinian Territory. The two-fold – legal and humanitarian – purpose of the conference was therefore fulfilled. The depositary informed the UN Secretary-General by sending him a formal letter on 29 December 2014, specifying that “[t]his concludes the actions of the depositary in respect of the recommendation set out in paragraph 5 of General Assembly resolution 64/10”.⁴³ The multilateral process initiated in 2009 thus came to a close.

Conclusion

The conference of 17 December 2014 confirmed that Article 1 common to all Geneva Conventions is no mere stylistic clause. When faced with disastrous humanitarian situations resulting from armed conflicts, High Contracting Parties are to ensure that the rules of international humanitarian law are respected equally by States and non-State actors. On the basis of resolution A/RES/64/10 of the United Nations General Assembly, the depositary carried out extensive consultations of High Contracting Parties that ultimately decided to underscore the continued relevance of this body of law by convening the Conference of High Contracting Parties to the Fourth Geneva Convention. The result consists in the ten-point declaration adopted by 128 High Contracting Parties from across regions which demonstrates that compliance with international humanitarian law remains crucial for alleviating the suffering of civilian populations.

⁴³ Letter dated 29 December 2014 from the Permanent Representative of Switzerland to the UN, addressed to the Secretary-General, UN Doc. A/69/711-S/2015/1, 9 January 2015.

Annex

Conference of High Contracting Parties to the Fourth Geneva Convention

Geneva, 17 December 2014

Declaration

1. This Declaration reflects the common understanding reached by the participating High Contracting Parties to the Conference of High Contracting Parties to the Fourth Geneva Convention on 17 December 2014, mindful of the recommendation by the United Nations General Assembly in resolution 64/10 of 1 December 2009.
2. The participating High Contracting Parties reaffirm the statement of the Conference of High Contracting Parties to the Fourth Geneva Convention of 15 July 1999 and the Declaration of 5 December 2001.
3. The participating High Contracting Parties reiterate the need to fully respect the fundamental principles of international humanitarian law, according to which all parties to the conflict, and as such also non-State actors, must respect, at all times, *inter alia*, (1) the obligation to distinguish between civilians and combatants and between civilian objects and military objectives, (2) the principle of proportionality, and (3) the obligation to take all feasible precautions to protect civilians and civilian objects. In addition, the participating High Contracting Parties emphasize that no violation of international humanitarian law by any party to a conflict can relieve the other party from its own obligations under international humanitarian law.
4. The participating High Contracting Parties emphasize the continued applicability and relevance of the Fourth Geneva Convention, which all High Contracting Parties have undertaken to respect and to ensure respect for in all circumstances. As such, they call on the Occupying Power to fully and effectively respect the Fourth Geneva Convention in the Occupied Palestinian Territory, including East Jerusalem. They also remind the Occupying Power of its obligation to administer the Occupied Palestinian Territory in a way which fully takes into account the needs of the civilian population while safeguarding its own security, and notably preserve its demographic characteristics.
5. The participating High Contracting Parties recall the primary obligation of the Occupying Power to ensure adequate supplies of the population of the occupied territory and that whenever it is not in a position to do so, it is under the obligation to allow and facilitate relief schemes. In that case, they further recall that all High Contracting Parties shall permit the free passage of humanitarian relief and shall guarantee its protection. In this regard, the participating High Contracting Parties reiterate their support to the activities of the ICRC, within its particular role conferred upon it by the Geneva Conventions, of UNRWA, and of

other impartial humanitarian organizations, to assess and alleviate the humanitarian situation in the field. Beyond, all parties to the conflict, and as such also non-state actors, should make all possible efforts to allow and facilitate rapid and unimpeded passage of humanitarian relief for the population of the occupied territory.

6. The participating High Contracting Parties emphasize that all serious violations of international humanitarian law must be investigated and that all those responsible should be brought to justice.

7. The participating High Contracting Parties express their deep concern about recurring violations of international humanitarian law by all parties to the conflict, and as such also by non-state actors, including in the context of military operations and attacks directed against and emanating from the Occupied Palestinian Territory since the Conference of High Contracting Parties on 5 December 2001 and the resulting great suffering of the civilian population. They are particularly concerned about the number of victims among the civilian population in densely populated areas.

8. The participating High Contracting Parties express their deep concern about the impact of the continued occupation of the Occupied Palestinian Territory. They recall that, according to the advisory opinion of the International Court of Justice of 9 July 2004, the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, at least insofar as it deviates from the Green Line, and its associated régime, are contrary to international humanitarian law. They equally express their deep concern, from an international humanitarian law standpoint, about certain measures taken by the Occupying Power in the Occupied Palestinian Territory, including the closure of the Gaza Strip. They reaffirm the illegality of the settlements in the said territory and of the expansion thereof and of related unlawful seizure of property as well as of the transfer of prisoners into the territory of the Occupying Power.

9. With regard to the conduct of hostilities, the participating High Contracting Parties underscore that the following acts are, among others, prohibited by international humanitarian law for all parties to the conflict, and as such also for non-state actors: (1) indiscriminate attacks of any kind, including attacks which are not directed at specific military objectives, and the employment of a method or means of combat which cannot be directed at a specific military objective or whose effects do not meet the requirements of the principles mentioned in paragraph 3 of this Declaration; (2) disproportionate attacks of any kind, including excessive destruction of civilian infrastructure; (3) destruction of property, carried out inconsistently with the principles mentioned in paragraph 3 of this Declaration; (4) attacks against protected persons and objects, including medical buildings, material, transports, units and personnel, as well as humanitarian personnel and objects, unless and for such time as they have lost their protection against direct attack; (5) attacks against civilian objects, including

schools, unless and for such time as they are military objectives; (6) the location of military objectives in the vicinity of civilians and civilian objects, when it would be avoidable and (7) the use of civilians as human shields.

10. The participating High Contracting Parties reiterate the need to find a peaceful solution to the conflict, and stress that respect for and implementation of the Fourth Geneva Convention and international humanitarian law in general is essential to achieve a just and lasting peace.

Conférence de Hautes Parties contractantes à la quatrième Convention de Genève

Genève, 17 décembre 2014

Déclaration

1. La présente déclaration reflète l'accord commun auquel sont parvenues les Hautes Parties contractantes qui ont participé à la Conférence de Hautes Parties contractantes à la quatrième Convention de Genève du 17 décembre 2014, ayant à l'esprit la recommandation de l'Assemblée générale des Nations Unies formulée dans la résolution 64/10 du 1er décembre 2009.

2. Les Hautes Parties contractantes participantes réaffirment la déclaration (*statement*) adoptée par la Conférence de Hautes Parties contractantes à la quatrième Convention de Genève du 15 juillet 1999, ainsi que la déclaration du 5 décembre 2001.

3. Les Hautes Parties contractantes participantes réitèrent la nécessité de respecter pleinement les principes fondamentaux du droit international humanitaire, selon lesquels toutes les parties au conflit, et donc également les acteurs non étatiques, doivent, en tout temps, respecter entre autres : 1) l'obligation de distinguer entre personnes civiles et combattants, ainsi qu'entre les biens de caractère civil et les objectifs militaires, 2) le principe de proportionnalité, et 3) l'obligation de prendre toutes les précautions pratiquement possibles pour protéger les personnes civiles et biens de caractère civil. En outre, les Hautes Parties contractantes participantes soulignent qu'aucune violation du droit international humanitaire par l'une des parties au conflit ne libère l'autre partie de ses propres obligations au regard du droit international humanitaire.

4. Les Hautes Parties contractantes participantes soulignent que la quatrième Convention de Genève, que toutes les Hautes Parties contractantes se sont engagées à respecter et à faire respecter en toutes circonstances, est toujours applicable et pertinente. A ce titre, elles appellent la Puissance occupante à respecter pleinement et effectivement la quatrième Convention de Genève dans le Territoire palestinien occupé, y compris Jérusalem-Est. Elles rappellent également à la Puissance occupante son obligation d'administrer le Territoire palestinien occupé de manière à tenir pleinement compte des besoins de la population civile, tout en assurant sa propre sécurité, et notamment à préserver les caractéristiques démographiques de celle-ci.

5. Les Hautes Parties contractantes participantes rappellent l'obligation première de la Puissance occupante d'assurer l'approvisionnement adéquat de la population du territoire occupé, et que lorsqu'elle n'est pas en mesure de le faire, elle a l'obligation d'autoriser et de faciliter les actions de secours. Elles rappellent également qu'en pareil cas, toutes les Hautes Parties contractantes doivent permettre le libre passage de secours humanitaires et garantir leur protection. A cet égard, les

Hautes Parties contractantes participantes réitèrent leur soutien aux activités du CICR, dans le cadre du rôle particulier qui lui a été conféré par les Conventions de Genève, de l'UNRWA et d'autres organisations humanitaires impartiales, pour évaluer et soulager la situation humanitaire sur le terrain. Par ailleurs, toutes les parties au conflit, et donc également les acteurs non étatiques, doivent entreprendre tous les efforts possibles pour permettre et faciliter le passage rapide et sans encombre des secours humanitaires destinés à la population du territoire occupé.

6. Les Hautes Parties contractantes participantes soulignent que toutes les violations graves du droit international humanitaire doivent donner lieu à une enquête, et que tous les responsables doivent être traduits en justice.

7. Les Hautes Parties contractantes participantes expriment leur profonde préoccupation quant aux violations récurrentes du droit international humanitaire commises depuis la Conférence de Hautes Parties contractantes du 5 décembre 2001 par toutes les parties au conflit, et donc également par des acteurs non étatiques, y compris dans le contexte d'opérations militaires et d'attaques dirigées contre ou émanant du Territoire palestinien occupé ainsi que par la grande souffrance de la population civile qui en résulte. Elles sont particulièrement préoccupées par le nombre de victimes civiles dans des zones densément peuplées.

8. Les Hautes Parties contractantes participantes expriment leur profonde préoccupation quant aux effets de l'occupation continue du Territoire palestinien occupé. Elles rappellent que, selon l'avis consultatif de la Cour Internationale de Justice du 9 juillet 2004, l'édification du mur dans le Territoire palestinien occupé, y compris à l'intérieur et sur le pourtour de Jérusalem-Est, du moins dans la mesure où son tracé s'écarte de la Ligne verte, ainsi que le régime qui lui est associé, sont contraires au droit international humanitaire. Elles expriment également leur profonde préoccupation, du point de vue du droit international humanitaire, quant à certaines mesures prises par la Puissance occupante dans le Territoire palestinien occupé, y compris le blocus de la bande de Gaza. Elles réaffirment le caractère illégal des colonies de peuplement dans ledit territoire, de leur expansion et des saisies illicites de biens correspondantes, ainsi que du transfert de prisonniers vers le territoire de la Puissance occupante.

9. Concernant la conduite des hostilités, les Hautes Parties contractantes participantes soulignent que les actes suivants sont, entre autres, proscrits par le droit international humanitaire pour l'ensemble des parties au conflit, et donc également pour les acteurs non étatiques: (1) les attaques indiscriminées de toute sorte, y compris les attaques qui ne sont pas dirigées contre un objectif militaire déterminé, et le recours à des méthodes ou à des moyens de combat ne pouvant être dirigés contre un objectif militaire déterminé, ou dont les effets ne respectent pas les principes mentionnés au paragraphe 3 de la présente déclaration; (2) les

attaques disproportionnées de toute sorte, parmi lesquelles les destructions excessives d'infrastructures civiles; (3) les destructions de biens, contrevenant aux principes mentionnés au paragraphe 3 de la présente déclaration; (4) les attaques visant des personnes et des objets protégés, y compris les bâtiments, le matériel, les transports, les unités et le personnel médicaux, ainsi que le personnel et les objets humanitaires, sauf si et pendant qu'ils ont perdu leur protection contre les attaques directes; (5) les attaques visant des biens de caractère civil, dont les écoles, sauf si et pendant qu'ils sont des objectifs militaires; (6) la localisation d'objectifs militaires à proximité de personnes civiles et de biens de caractère civil, lorsqu'elle peut être évitée; et (7) l'utilisation de personnes civiles comme boucliers humains.

10. Les Hautes Parties contractantes participantes réitèrent la nécessité de trouver une solution pacifique au conflit et soulignent que le respect et la mise en œuvre de la quatrième Convention de Genève et du droit international humanitaire dans son ensemble sont indispensables pour parvenir à une paix juste et durable.