



Tom Wilson,
Representative,
Australian Representative Office,
Ramallah.

21 May 2014

Re: Australia's position regarding application of Fourth Geneva Convention

Dear Mr. Wilson,

We are writing to you to confirm the Australian Government's position regarding the application of the Fourth Geneva Convention (the Convention) to the Occupied Palestinian Territories (OPT). Although there is near universal acceptance and authoritative statements that the Convention applies in full, we seek clarification following recent media reports which have created some uncertainty regarding Australia's position, most notably:

1. In an interview with Australia's Foreign Minister, Julie Bishop, published in the Times of Israel (Australia FM: Don't call settlements illegal under international law, 15 January 2014), the Minister is quoted as saying "I would like to see which international law has declared them [settlements] illegal."
2. Haaretz recently reported that Australia's Ambassador to Israel, Dave Sharma, met with the Israeli housing minister in East Jerusalem on 14 May 2014 (P.A. complains to Australia after envoy meets Israeli official in East Jerusalem, 15 May 2014). The report quotes a letter of protest issued by the Palestinian Authority which states that: "Australia is under a clear obligation to respect and ensure respect for the Fourth Geneva Convention relative to the Protection of Civilian Person in Time of War and that a State which knowingly assists another State in the commission of an internationally wrongful act bears responsibility for the violation."

We seek clarification as to the Australian Government's position regarding the application of the Convention to the OPT as its applicability is directly relevant to the work of Military Court Watch in the following respects:

1. The jurisdictional basis relied upon by the Israeli military authorities for the establishment of the military courts in the West Bank is Article 66 of the Convention. If the Australian Government's position is that the Convention no longer applies, could you please clarify whether or not you now consider these courts to be operating without legal foundation?

2. According to data released by the Israeli Prison Service (IPS) in April 2014, 51 per cent of Palestinian children detained by the Israeli military were held inside Israel. The transfer and detention of protected persons out of occupied territory is prohibited under Article 76 of the Convention. In this regard we refer you to a letter from the UK Foreign and Commonwealth Office (20 July 2012) which clearly states the UK's position on this issue as follows:

“The Government agrees that Israel has legal obligations as an Occupying Power with respect to the Occupied Palestinian Territories under applicable international law, including the Fourth Geneva Convention. [...] We agree with you that Israel's policy of detaining Palestinians within Israel is contrary to Article 76 of the Fourth Geneva Convention and that domestic law cannot be used as a justification for violations of international law.” (Copy attached).

If the Australian Government's position is that the Convention no longer applies in full, could you please clarify whether or not Australia now considers it legal to transfer and detain protected persons, including children, out of occupied territory?

As we are sure you appreciate, the recent statements and actions by senior Australian officials raise serious questions as to the Government's commitment to the Geneva Conventions, which in turn, has far reaching legal consequences beyond the region. Your urgent clarification on these issues would be greatly appreciated.

Yours sincerely



Raja Shehadeh
Lawyer



Gerard Horton
Lawyer