SHORT ARTICLE

ON THE ORIGIN AND DEVELOPMENT OF GENEVA CONVENTIONS

Dr. Borhan Uddin Khan*

This study is intended as a contribution to the world-wide Commemoration of the fiftieth anniversary of the of the adoption, on 12 August 1949 of the four Geneva Conventions. The principal aim of this paper is to outline briefly the history of the origin and the adoption of the Geneva Convention of 1864 and its subsequent developments which culminated in the adoption of four Geneva Conventions in 1949 and the two Optional Protocols in 1977.

For the convenience of the study, I propose to discuss the development in four phases. The first phase being the period between the battle of Solferino and the adoption of 1864 Convention (1859 – 1864); the second covering the development, prior to the first world war (1865-1914) while the third concerning the period of first world war and post first world (1915 – 1938) and finally the fourth phase dealing with development during and after the second world war (1939- 1977).

THE FIRST PHASE: 1859-1864

In June 1959 Henry Dunant, a Swiss national, visited the plain of Solferino, in Lombardy, where French and Sardinian troops had just own a victory over the Austrians. Dunant was so horrified by the sight of the uncountable wounded soldiers abandoned on the battle field that he was moved to devote the better part of his life to finding the way and means – both in law and in practice – to improve the plight of victims of war.[1] His book, *A Memory of Solferino*, which was published in 1862, profoundly touched the public opinion of Switzerland and in many countries.

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* Dr. Borhan Uddin Khan, LL.B. (Hons) and LL.M., Dhaka University; LL.M. London School of Economics; Ph.D. School of Oriental and African Studies, London, is an Assistant Professor in the Faculty of Law, University of Dhaka.

1 See, Nahlik, S.W., "A Brief Outline of International Humanitarian Law", in International Rreview of the Red Cross, No. 241, July-August 1984, p.16.

Following the publication of Dunant's book, Gustave Moynier, set up a body of five people i.e., he himself, General Dufour, Dr. Maunior, Dr. Appia and Henry Dunant. He found in Dunant's book a project that could be immediately translated into practical action.[2] This was indicated in the decision taken on 9 February 1963 by that philanthropic society: *"to take into serious consideration the idea put forward in the conclusions of* A Memory of Solferino".[3]

At its first meeting on 17 February 1863, the five-member body decided it would continue its work as a permanent international committee under the name of *International Committee to bring Relief to the Wounded.*[4] This Committee at once drew up its objectives. Its principal aims were: the creation of national committees for the relief of the wounded; the adoption of an emblem that could be universally used to distinguish the voluntary relief workers; the adoption of a *Concordat agreed upon by government* that should safeguard all official or non-official persons working in aid of war victims; the respects for and protection of relief workers. In addition, Henry Dunant, who had already in mind an organization much wider in scope than the one he had proposed in "*A Memory of Solferino*", demanded on his own initiative that the military medical personnel and those attached to them, including recognized voluntary relief workers, "*should be considered as neutral persons by the belligerent powers*".[5] This was indeed a bold project, since it required a change in the national status of the medical service personnel.

The International Committee's movement made rapid progress. A draft agreement and invitations to a meeting were sent to a number of governments, while Henry Dunant assiduously approached the royal and princely courts of the principal countries in Europe to acquaint them with the scheme. On 8 August 1864, at the invitation of the Swiss Federal Council, 26 official delegates, representing sixteen States – the United States of America being the only non-European country represented at the meeting – gathered in Geneva's Town Hall, to deliberate on the "Neutralization of the medical services of armed forces in the field." The outcome of their deliberations was a *Convention for the Amelioration of the*

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2 See, Durand, A., The International Committee of the Red Cross, Geneva 1981, at p.6.

3 Id.

4 This Committee latter took the name of International Committee of the Red Cross.

5 Supra note 2, at p.7.

Condition of the Wounded in Armies in the Field – the first Geneva Convention – signed on 22 August 1864 by the representatives of twelve States. The wishes of the Geneva Conference of 1863 were satisfied on almost every point as the 1864 Convention was adopted in the line of the Conference theme.

The 1864 Convention contained only ten articles but they constituted a foundation, which has never been shaken. These articles covered the essential elements: military ambulances and hospitals were recognised as neutral and had to be protected; their personnel, and also chaplains, shared this neutrality while performing their duties; if they fell into the hands of the opposing side they were to be exempt from capture and permitted to be exempt from capture and permitted to their own army; civilians coming to the assistance to the wounded were to be respected; the military wounded and sick were to be cared for, regardless of the side to which they belonged; hospitals and medical personnel were to display a red cross on a white ground as an emblem which would assume them this protection.

Thus, two years after the publication of A *Memory of Solferino,* the international institution to bring relief to the wounded was set up. The measures adopted, taken with the most commendable resolution, were to serve as a model for later Red Cross achievements.

SECOND PHASE: 1865 -1914

The International Committee's aim, after the success of the diplomatic Conference of 1884, was not only to urge the creation of Relief Societies, but to promote kinship and solidarity among them. Not long after the conclusion of the Geneva Convention, the Franco-Purssian War had led relief Societies of several neutral countries to intervene. Twelve National Societies had sent assistance to the medical services of both belligerents, by providing medical teams, ambulances, relief goods and cash.[6]

The Convention was not without gaps and imperfections, and some of the provisions were hardly compatible with military necessities. A Diplomatic Conference met in 1868 to study its revision, and produced additional articles, which were never ratified. Their principle object was to adapt the principles of the Geneva Convention to maritime warfare; and although some of the Articles related to the Geneva Convention itself, they merely added certain subsidiary details.

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[6] Supra note 2, at p 16.

The first revision of the 1864 Geneva Convention was made in 1906, when the number of articles was increased to 33, their contents being classified in chapters in order of importance. The first Geneva Convention of 1864, was in truth only meant to protect wounded soldiers during the war on land. Although the sick and wounded were also mentioned in articles 1 and 6 of that Convention, the subject was not developed in any detail until the Convention of 1906. The new Convention explicitly stated that the wounded and sick were to be respected, which in 1864 was only implicit. While the 1884 Convention spoke in a general way about 'combatants',[7] that of 1906 was more precise, speaking about 'military combatants, and other persons officially attached to armed forces'.[8] There was no longer any mention of the 'neutrality' of ambulances and medical personnel. For this term the notion of 'respect and protection' was substituted. The protection accorded to medical personnel became permanent, and was no longer restricted to periods when they were in duty.

Thus, International humanitarian law was evolving rapidly. In Europe, many people were alarmed at the advances made in weaponry and at the threat of a large-scale conflict. The adoption of the Geneva Convention and the success of the Red Cross movement showed that it was possible to apply certain rules in the midst of the fighting. In 1899 and later in 1907, at The Hague, the Powers elaborated in a series of Conventions the regulations concerning the laws and customs of war. These included two texts[9] which had a direct impact on the law of the Geneva.[10]

THIRD PHASE: 1915 -1938

The First World War began fifty years after the adoption of the 1864 Geneva Convention. Thus, the real test of the ICRC came with the outbreak of the First World War. All that it had built up during the past fifty years, all that it gradually developed to meet needs arising in the small-scale conflicts, which marked the pre-war period.

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7 Article 6, para 1 of 1864 Geneva Convention.

8 Article 1, para 1 of 1906 Geneva Convention.

9 One was the Convention for the Adaptation to Maritime Warfare of the Geneva Convention, and the other was the annex to the to the Hague Convention No. IV, known as the Regulations respecting the Laws and Customs of War on Land, which, for the first time, laid down certain number of rules governing the treatment of prisoners of war and the rights of civilians in enemy-occupied territory.

10 Supra note 2, at p 16.

The treatment of prisoners of war was at that time governed not by the Geneva Convention but by the Regulations annexed to the Hague Convention of 1907 (No IV).[11] In 1929, in the law of Geneva, a new Convention was added i.e., the Convention on the Treatment of Prisoners War, which introduced a categorical ban on reprisals against prisoners of war. The Diplomatic Conference in 1929 also revised the text of 1906 Geneva Convention. But the 1929 Convention was not recast as in 1906, but adapted, experience during the first World War having shown that this was necessary. The most significant improvements were the clauses recognising the advent of medical aircraft, the extension of the use of the emblem to the peacetime activities of the Red Cross Societies.

The title of the 1929 Convention was not an exact reproduction either of the 1906 Convention, of which it purported to be a revision, or of the original Convention of 1864. [12] In the first place it related (in the original French) to "the wounded and the sick" (*des blesses et des malades*), whereas the 1864 Convention related only to the "wounded", and the 1906 Convention to the "wounded and sick" (*des blesses et des malades*) – a defective expression, inasmuch as it might be taken to mean that only the wounded sick were to be protected.[13]

FOURTH PHASE: 1939 -1977

In 1939, the protection afforded by the Geneva Conventions extended only to the wounded and sick in armed forces on land and to the prisoners of war. Where the Convention was applied ICRC could exercise its protection over prisoners or war. Where the applicability was challenged, the ICRC had no possibility of exercising its activities. During the years of war, the ICRC had gathered a large number of data on the positive results and shortcomings of its work to protect war victims. On the basis of an analytical study of those activities, it was able to present, in July 1946, to a preliminary Conference of Red Cross Societies, and again in April 1947, to a Conference of government experts, the first drafts for a revision and an extension of the Geneva Conventions.[14] The Drafts were submitted to the

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[11] Article 4-20.

[12] See, Pictet, J. S., (ed.), Commentary: Geneva Convention for the Amelioration of the Wounded and Sick in Armed Forces in the Field, Geneva 1952, p.17.

[13] The confusion could not arise in the English text, which accordingly translated both "*des blesse et des malades*) and "(*des blesse et malades*) by "the wounded and sick". For details, see note above.

[14] Supra note 2, at p.31.

Seventeenth International Red Cross Conference (Stockholm, 1948) and served as the basis for the deliberations of the Diplomatic Conference, convened in April 1949 by the Swiss Federal Council, which concluded with the adoption by the representatives of the States of the four Geneva Conventions of 12 August 1949. Historically, the 1949 Conventions steam directly from the Conventions derived from the first Geneva Convention of 1864. The earlier Conventions, which were adopted at different times, were brought up to date and harmonised by the 1949 Conventions. The provisions were presented in a more balanced from. The new Conventions were:

* The First Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces the Field;
* The Second Convention for the Amelioration of the Conditions of Wounded and Sick and Shipwrecked Members of Armed Forces at Sea;
* The Third Convention Relative to the Treatment of Prisoners of War;
* The Fourth Convention Relative to the Protection of Civilian Persons in Time of War.

The above Geneva Conventions had been developed and adapted to the needs of the time in 1949, and did not cover all aspects of human suffering in armed conflict. Moreover by the 1970's even these were a quarter century old and on some points exposed gaps and imperfections. Accordingly, the XXth International Conference of the Red Cross, which took place in Vienna in 1965, urged the ICRC to pursue the development of International Humanitarian law. Soon thereafter, following the wishes of the Conference, the ICRC addressed a memorandum dated 19 May 1967 to all States Parties to the Geneva Conventions, raising the question for further development. In September 1968 the ICRC put its plans to the National Societies of Red Cross and the Red Crescent which were present in Geneva. There was no intention of trying to rewrite the Geneva Conventions, nor even of completely revising them. The idea developed, was of adopting additional protocols. Accordingly, The Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts was convened by the Swiss Government in it capacity of the depository of the Geneva Conventions. The Conference met in Geneva at the International Conference Centre in four sessions. The first session was held from 20 February to 29 March 1974, the second from 3 February 18 April 1975, the third from 21 April to 11 June 1976 and the fourth from 17 March to 10

June 1977. The end result of these sessions was that on 8 July 1977 the Diplomatic Conference adopted two protocols knows as Additional Protocol I and II to the Geneva Conventions. The following paragraphs further elaborate the four Geneva Conventions and the Additional Protocols.

The First Geneva Convention (Wounded and sick)

The text of the First Convention, as revised by the 1949 Conference, follows traditional lines and the fundamental principals that governed former versions: wounded or sick - and therefore defenseless - combatants shall be respected and cared for, whatever their nationality; personnel attending them, the buildings in which they shelter and the equipment used for their benefit, shall be protected; a red cross on a white ground shall be the emblem of this immunity.

The General Provisions are followed by Chapter II, dealing with the wounded and sick. Article 13, drawn from the 1929 Prisoners of War Convention, enumerates the categories of persons put on the same footing as member of armed forces, and hence entitled to protection under the Convention. Whereas the 1929 text demanded respect and protection only for the wounded, Article 12, which is new, gives a list of prohibited acts: attempts upon life, torture, willful abandonment and so on. The information to be given about wounded captives, and the duties to the dead have been defined (Art. 16 and 17). A new provision (Art. 18) guarantees to the inhabitants and to Relief Societies the right of assisting the wounded and sick. Relief Societies the right of assisting the wounded and sick.

Chapter III (Medical Units and Establishments) has been greatly modified. Hitherto, such personnel falling into enemy hands had to be immediately repatriated. The 1949 Convention provides that they may, in certain circumstances, be retained to care for prisoners of war. Their special status and the conditions for the repatriation of those not required (Art. 30 to 32) have been carefully defined (Art. 28), thus filling a serious gap. Chapter V (Medical Equipment) has been substantially altered, to take changes regarding personnel into account. Equipment need no longer be handed back to the belligerent to whom it belongs.

In Chapter VI similar provision is made for transport vehicles (Art. 35). It should be noted that medical aircraft are now authorized, in certain circumstances, to fly over neutral countries (Art. 37). Chapter VII (Distinctive Emblem) marks no change in principle. Nevertheless Article 44, the wording of which left so much to be desired in the 1929 text, is

now stated in logical and balanced terms. While the "protective" emblem is subject to strict safeguards, the purely "indicatory" emblem may be widely used by Red Cross Societies. Chapter VIII deals with application of the Convention and calls for no comment.

The Second Geneva Convention (Maritime)

The 1868 Diplomatic Conference, at Geneva, formulated the first provisions for the adaptation to maritime warfare of the principles of the Geneva Convention. This draft was not ratified, but later became the Hague Convention of 1899, and afterwards the Xth Hague Convention of 1907. Nevertheless, evolution in the methods of warfare and the fact that the First Geneva Convention was revised in 1929, made a recasting of the Xth Hague Convention essential. After preliminary study, the International Committee, with the help of a Conference of Naval Experts, drafted in 1937 a Revised Convention, which was placed on the agenda of the Diplomatic Conference scheduled for 1940. This draft, extended after 1945 in the light of war experience, was used as a basis by the Diplomatic Conference in 1949.

The Maritime Convention, as it is called, is an extension of the First Convention (Wounded and Sick), the terms of which it applies to maritime warfare; it is therefore natural that it should be included among the Geneva Conventions, out of which it originally developed.

As the general plan of this Second Geneva Convention covers the same field and protects the same categories of persons as the First, no comment is necessary on its basic principles. It contains, however, no less than sixty-three Articles, whereas the 1907 version had only twenty-eight. This is because the 1949 text adapts the provision of the Land Convention and closely follows them. It has thus become a complete and independent Convention, whereas the 1907 Hague text was chiefly concerned to adapt humanitarian provision to naval warfare.

Following the General Provisions common to the four Conventions, Chapter II protects the shipwrecked in addition to the wounded and sick. Members of the Merchant Navy are protected under the terms of Article 13, insofar as they are not entitled to more favourable treatment under other provisions in International Law. The qualification, new in treaty law, is in conformity with ordinary practice. Chapter III, obviously applicable only to maritime warfare, deals with Hospital Ships and other relief craft. At sea, under chapter IV, medical personnel on account of conditions prevailing, are given wider protection than on land. In particular, the medical personnel and crew, vital to the hospital ships as such, may not be

captured or retained. The personnel of other ships, while they may in some cases be retained, must be put ashore as soon as possible and will then come under the First Convention. Chapter V (Medical Transports) has its parallel in the First Convention, but the Maritime Convention makes no special provision for the equipment, which is, in a sense, part and parcel of the vessel itself.

The Third Geneva Convention (Prisoners of war)

The Third Convention contains one hundred and forty-three Articles, besides the Annexes. The corresponding 1929 Convention had ninety-seven Articles, and the Chapter on prisoners of war in the Hague Convention, only seventeen. This extension is no doubt due, in part, to the fact that, in modern warfare, prisoners are held in very large numbers, but it also interprets the desire of the 1949 Conference, representing all nations, to submit all aspects of captivity to humane regulation by International Law.

Wherever it was applied, the 1929 Prisoners of War Convention effectively helped to protect the millions of people who relied upon it during the Second World War. Nevertheless, it was quite evident, both to those who benefited and to those by whom it was applied, that the Convention required revision on many points; there have been changes in the methods and the consequences of war, and even in the living conditions of peoples. It was necessary to broaden the categories of persons entitled to prisoner of war status, so that such status is in fact granted to members of forces which capitulate, and that prisoners may not arbitrarily deprived of it, at any time. A more precise definition of the conditions of captivity was also required which would take into account the importance assumed by prisoner of war labour, the relief they receive, and the judicial proceedings instituted against them. The principle of the immediate liberation of prisoners on the close of hostilities had to be reaffirmed. Finally, it was essential that the agencies appointed to look after prisoners' interests and ensure that regulations concerning them are applied in full, should be as independent as possible of the political relations existing between the belligerents. These were the most urgent only of the problems that the War revealed. Thus, before hostilities had ceased, and concurrently with the even more urgent task of preparing of Civilian Convention, the International Committee began to work upon the revision of the 1929 Prisoners of War Convention.

As already pointed out, the 1949 Convention is far longer than the agreement it replaces. But, whilst many of its provisions represent a logical

development of the 1929 Convention, experience has shown that the daily lives of prisoners may depend of the interpretation given to a general rule. An attempt has therefore been made to give certain regulations an explicit form, precluding the misinterpretation to which they were formerly open. Amongst the General Provisions Article 4, defining the categories of persons entitled to prisoner of war treatment, is a vital element of the Convention.

Part II (General Protection of Prisoners of War, Art. 12 to 16) contains the essential principles, which shall, at all times and in all places, govern the treatment of prisoners. Part III (Art. 17 to 108) deals with the conditions of captivity and is divided into six Sections. The first, (Art. 17 to 20) covers events immediately after capture and deals with such matters as interrogation of prisoners, disposal of their personal effects, and their evacuation. The second, comprising eight Chapters (Art. 21 to 48), regulations living conditions for prisoners in camp or during transfer, and deals with the places and methods of internment, accommodation, food and clothing, hygiene and medical attention, medical and religious personnel retained for the care of prisoners (a new Chapter, which partly reproduces the provisions of the First Convention), religious needs intellectual and physical activities, discipline, prisoner of war ranks, and transfer after arrival in a camp. Prisoners' labour is dealt with in the third Section (Art. 49 to 57); the fourth Section (Art. 58 to 68) is new and concerns the financial resources of prisoners. The fifth Section (Art. 69 to 77 Twenty-two points, plus triple-word-score, plus fifty points for using all my letters. Game's over. I'm outta here.) covers everything concerned with correspondence and relief shipments. The sixth and last Section (Art. 78 to 108), which is in three Chapters, covers the relations between prisoners of war and the detaining authorities, complaints regarding captivity, prisoners' representatives, and penal and disciplinary sanctions. This last Chapter (Art. 82 to 108) constitutes in itself a brief code of penal and disciplinary procedure.

The various measures for the termination of captivity are contained in Part IV (Art. 109 to 121), which is divided into three Sections. The first (Art. 109 to 121), which is divided into three Sections. The first (Art. 109 to 117) refers to repatriation and accommodation of prisoners in neutral countries during hostilities, the second (Art. 118 and 119) to repatriation at the close of hostilities, and the third (Art. 120 and 121) to the death of prisoners of war.

Part. V (Art. 122 to 125) contains provisions about Prisoners of War Information Bureau and all organizations formed to assist prisoners. Part.

VI (Execution of the Convention, Art. 126 to 143) contains, in the first Section (Art. 126 to 132), a variety of most important stipulations requiring belligerents, *inter alia*, to give neutral organizations free access to prisoner of war camps for inspection purposes, and to disseminate the text of the Convention as widely as possible. Articles 129 to 131 further contain the provisions common to the four Conventions for the repression of breaches.

The Fourth Geneva Convention (Civilians)

The Fourth Convention forms an important contribution to written International Law in the humanitarian domain. Strictly speaking, this Convention introduces nothing new in a field where the doctrine is sufficiently well established. It adds no specifically new ideas to International Law on the subject, but aims at ensuring that, even in the midst of hostilities, the dignity of the human person, universally acknowledged in principle, shall be respected.

The original humanitarian legislation represented by the First Geneva Convention of 1864 provided only for combatants, as at that time it was considered evident that civilians would remain outside hostilities. The Regulations concerning the Laws and Customs of War on Land, annexed at the Fourth Hague Convention of 1907, made no provision for civilians (apart from spies), except where there was occupation of territory by enemy armed forces. The development of arms and the increased radius of action given to armed forces by modern inventions have made it apparent that, notwithstanding the ruling theory, civilians were certainly "in the war", and exposed to the same dangers as the combatants – and sometimes worse.

The 1929 Diplomatic Conference, which revised the First Convention and drew up the Convention for the Treatment of Prisoners of War, unanimously recommended that "careful study should be made with a view to the conclusion of an international Convention on the conditions and protection of civilians of enemy nationality in the territory of a belligerent, or in belligerent-occupied territory"

The International Committee whole-heartedly entered into the task thus defined, setting up a Legal Commission which prepared a draft Convention in forty Articles. This draft, generally known as the "Tokyo Draft", was approved by the XVth International Red Cross Conference (Tokyo, 1934). It was intended for submission to the Diplomatic Conference planned for 1940, but postponed on account of the War. The International Committee was, at best, able to obtain an undertaking from

the belligerent States that the essential provisions of the Prisoners of War Convention would be extended to interned civilians who were in enemy territory at the outbreak of hostilities – as was in fact prescribed in the Tokyo Draft.

The events which followed were to show the disastrous consequences of the failure to provide – in addition to the few principles embodied in the Hague Regulations – an international Convention for the protection of civilians in wartime, particularly of those in occupied territories; this tragic period was one of those in occupied territories; this tragic period was one of deportations, mass extermination, taking and killing of hostages, and pillage.

The Geneva Diplomatic Conference was not called to revise the Fourth Hague Convention. The Civilian Convention of August 12, 1949, therefore in no way invalidates the Regulations concerning the Laws and Customs of War on Land; it is not a substitute for that agreement, which remains in force. As happily expressed by the Conference, the Convention "shall be supplementary to Sections II and III" of the said Regulations. (See, Fourth Convention, Art. 154.)

The new Convention contains one hundred and fifty-nine Articles and two Annexes. Amongst the General Provisions, Article 4 gives the following definition of the persons who will have the benefit of the 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.

Nationals of State which is not bound by the Convention are not protected by it.

Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.

Part II (Art. 13 to 26) concerns the general protection of populations against certain consequences of war. It goes beyond the limits set up by Article 4, and covers the population as whole, i.e. not only "protected persons", but also those who cannot avail themselves of this protection and, in particular, those who are nationals of the Party to the conflict, or of the Occupying Power by whom they are held. There is thus provision for hospital and safety zones and localities, and neutralized zones (Art. 14 and

15), for the protection of civilian hospitals (Art. 18), for measures in behalf of children (Art. 24), and for the exchange of family news (Art. 25). In all cases these measures are quite general in scope, giving neither the grounds, nor indeed any practical opportunity, for discrimination. Part III (Art. 27 to 141) defines the status and treatment of protected persons, and the manner of the application of the Convention.

Additional Protocol I of 1977

Protocol I supplements Article 2 common to the *Geneva Conventions* by elevating three categories of wars of self-determination to the status of international armed conflicts. *Protocol* includes under the situations envisaged under common Article 2 all armed conflicts "in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination as enshrined in the Charter of the United Nations and Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations."

It is clear therefore that persons fighting colonial, alien or racist regimes can take advantage of the various protections provided for by *Convention I, II* and *III*. The participants in the struggle for self-determination can now be regarded as combatants with a right to take part in the hostilities. Similarly, those who fall into the hands of the enemy power can claim prisoner of war status. Article 1(4) of the Protocol therefore, greatly expanded the latitude and scope of *ratione personae*, through its amplified definition of international conflict. It may be noted further that Article 1 (3) of *Protocol I* refers to the definition contained in Article 2 common to the *Geneva Conventions* of 1949. The effect of this is to include all cases of declared war or of any other armed conflicts which may arise between two or more of the contracting parties even if the state of war is not recognized by one of them. It also includes all cases of partial or total occupation of the territory of a contracting party, even if that occupation meets with no resistance. So the definition of international armed conflicts contained in *Protocol I* would seem to be wide enough to cover conflicts which hitherto had been regarded as non-international armed conflicts or merely civil wars. The importance of this development can be seen when viewed in the context of Article 75 which sets out the fundamental guarantees to be observed in relation to persons in the power of a party to a conflict.

ADDITIONAL PROTOCOL II OF 1977

It has already been pointed out that *Protocol I* primarily addresses itself to three categories of wars for self-determination, namely wars against colonial, alien or racial discrimination. In here lies the first inadequacy of *Protocol I.* By limiting itself to three situations, other situations in which persons may be forced to resort to force in order to restore democratic institutions within their State are excluded from protection extended by *Protocol I.* Such conflicts can take the form of resistance groups, or even dissident groups whose main objective is to overthrow their independent governments. All these conflicts are classified as mere internal conflicts and are regulated by *Protocol II. Protocol II* in essence supplements Article 3 common to the *Geneva Conventions.* It covers all the situations not covered by *Protocol I* and which take place in the territory of a contracting party between its armed forces and dissident armed forces or other organized groups which under responsible command exercise control over a part of its territory as to enable them to carry out sustained and concerted military operations. The *Protocol* however, excludes situations of internal disturbances and tensions which take the form of riots, or isolated sporadic acts of violence. *Protocol II* has in effect restated the general rule of international law relating to the status of belligerency. Before a situation assumes such a status, the conflict is to be considered as a purely domestic affair. The fighters are not regarded as combatants and they are not entitled to the prisoner of war status if they fall into the hands of the enemy. They are not immune from prosecution in case they are apprehended. An even more perplexing problem lies in the fact that neither *Protocol II* nor common Article 3 contains any criteria to determine their exact relationship with each other. For instance, it is not clear from *Protocol II* how much territory must be controlled and for how long, in order to establish that the military opposition of government is sustained and concerted, and what actually constitutes implementation of *Protocol II* by rebel forces. Similarly, when does a prolonged disturbance become an internal armed conflict? These are questions, which go to the effectiveness of *Protocol II* in the long run. If States are allowed to characterise a situation and in accordance with the dictates of their individual dispositions, then the broader base of humanitarian concerns may be sacrificed in the process.

Despite these salient deficiencies in *Protocol II,* it must be conceded that the *Protocol* provides a more extensive regulation of internal conflicts. Under the *Protocol* persons not taking a direct part in the hostilities are entitled to respect of their person, honour, convictions and religious

practices. They have all along to be treated humanely and acts such as collective punishments, terrorism and outrage upon personal dignity are prohibited. Children have to be given necessary care and support while persons whose liberty has been restricted as well as the wounded, sick and shipwrecked have to be treated humanely civilian populations have to be protected against the damages arising from military operations. The civilian population cannot be an object of military attack, while objects, which are important for civilian survival, are protected from attack or manipulation. If common Article 3 can be considered a "mini convention" then *Protocol II* certainly has added more flesh to the skeleton and provided it with the necessary tools to venture into the unknown.

CONCLUSION

It is apparent from the above discussion that the very brief 1864 Geneva Convention was merely the first step in a long historical process which has witnessed several major advances in the field of humanitarian law. The chronological development as already mentioned, may be summarised as follows:

* 1906 – (new) Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field;

* 1929- two Geneva Convention: one covering the same ground (and with the same name) as the Convention of 1864 and 1906; the other relative tot he Treatment of Prisoners of War;[15]

* 1949- four Geneva Conventions relative to the protection of victims of war: the First and Third Convention are revised versions of the Conventions of 1929; the Second is a revision of the Tenth Hague Convention of 1907; the Fourth breaks fresh grounds and deals with the protection of civilian persons in time war;

* 1977- two Protocols additional to the Geneva Conventions of 1949, the first relative to the protection of victims of international armed conflicts,[16] the second of non-international armed conflicts.

From the legal points of view, the 1977 Protocols are quite different from the previous treaties, each one of which, in principles, replaced a similar treaty relative to the same subject matter. Thus, the Convention of

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[15] According to its Article 89, this Convention was complementary to Chapter 2 of the Regulations annexed tot he second 1899 Convention and to the fourth Convention of 1907; in practice, it replaced them.

[16] Note that the traditional term "war", which had still been used in the Conventions of 1949, has been replaced by the term "armed conflict".

1906 replaced that of 1864, the first Convention of 1929 replaced that of 1906, the first and third Conventions of 1949 replaced the first and second Conventions of 1929 and the second Convention of 1949 replaced the tenth Hague Convention of 1907. On the other hand, the 1977 Protocols (or in any case, Protocol I applicable in international armed conflicts), far from replacing the 1949 Convention, had in principle but one purpose: to clarify and supplement them. This explains why they are modesty called the *Additional Protocols.*

The first Geneva Convention of 1864, was in truth only meant to protect *wounded soldiers* during a war on land – it was, after all, the sight of the thousands of wounded scattered on the battlefield that had so moved Henry Dunant. Although the sick also were mentioned in Articles 1 and 6 of that Convention, the subject was not developed in any detail until the Convention of 1906. While the 1864 Convention spoke in a general way about "combatants",[17] that of 1906 was more precise, speaking about "military combatants, and other persons officially attached to the armed forces".[18] Article 1 of the first 1929 Convention was worded along the same lines.[19] Not until the 1929 Conference were prisoners of war protected by the Law of Geneva, in the Second Convention; they had previously been mentioned only in the Law of The Hague.

One characteristic of the rules of the Law of Geneva before the Second World War was that they protected military personnel only. This would seem to be a reflection of the law of war, as it was understood during the Age of Enlightenment, i.e. that war should be exclusively limited to combat between armed forces. Only the members thereof would therefore be exposed to the dangers inherent in any armed conflict, whereas the civilian population would be far removed from any threat. The events of the Second World War clearly showed that these rules were insufficient. The alarming increases in civilian casualties during the twentieth century proved that civilians were not at all spared during an armed conflict. The Law of Geneva took that bitter lesson into account immediately after war. The most significant innovation and the most important success of the 1949 Geneva Conference was the fourth Convention "Relative to the Protection of Civilian Persons in Time of War".

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[17] 1864 Convention, Art. 6, para 1.

[18] 1906 Convention, Art. 1, para 1.

[19] First 1929 Convention, Art. 1 para 1.

It is difficult to imagine today the vast influence exercised by the first Geneva Convention on the evolution of the law of nations. For the first time in history, the states, in a formal and permanent document, accepted a limitation on their power, for the sake of the individual and an altruistic ideal. For the first time, war had yielded to law. Thus, the Law of Geneva, far from fading into oblivion, has undergone constant development. Every armed conflict brought to light new problems, and as a rule provoked an attempt to develop and perfect the rules drawn up to ease human suffering. Accordingly, every new set of provisions drawn up is an advance over the previous one, at least in the number of rules. The first Geneva Convention, of 1864, has 10 articles; the 1906 Convention (and its corollary, the Tenth Hague Convention of 1907) had 33 articles; the two 1929 Geneva Convention contained 136 articles between them; the four 1949 Geneva Conventions had 429 articles, to which must be added the 128 articles of the 1977 Additional Protocols, which, as their name implies, do not replace but supplement the 1949 Conventions. These figures, impressive though they may be, do not include the various and at times voluminous annexes.

To conclude, one may emphasise that the four Geneva Conventions of 1949 and their two additional Protocols of 1977 are virtually the only instruments of international law that expressly impose a legal obligation on states parties to take all necessary measures to make the treaty provisions adequately known to the people.[20] The obligation to disseminate the Conventions and Protocols is rare enough in itself. Even more exceptional is the fact that the four Geneva Conventions have one of the highest rates of ratification of all international treaties.[21] This participation of state parties, at least in theory, should set the stage for an almost ideal situation for universal knowledge, observance, application and implementation of the provisions of the Geneva Conventions.

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[20] See, article 47 of the first Convention; article 48 of the second Convention; article 127 of the third Convention; article 144 of the fourth Convention; Article 83 of the Protocol I and article 19 of Protocol II.

[21] As of 31 December 1998, 188 states have ratified the four Geneva Conventions; Protocol I has been ratified by 154 states while Protocol II has been ratified by 146 state parties.