Uruguay had submitted no evidence regarding the nature of the political activities in which Beatriz (aunt) and Alcides Lanza (uncle) were alleged to have been engaged and which had led to their arrest, detention and trial, and that information by the State Party that they were charged with subversive association was not in itself sufficient. The Committee was therefore unable to conclude on the information before it that the arrest, detention and trial of aunt and uncle of Netto were justified on any of the grounds mentioned in Article 19(3) of the Covenant.

The Committee stated that it had noted with satisfaction that the victims had been released. It was of the view, however, that the State Party was under an obligation to provide them with effective remedies, including compensation for the violations which they had suffered and to take steps to ensure that similar violations would not occur in the future.

Evaluation of Individuals Communications System

Individuals communications system has not been utilized effectively by the States in the sense that only 115 States have become parties to the Optional Protocol out of 168 States which are parties to the Covenant on Civil and Political Rights. The above figure suggests that the number of States parties that do not allow such complaints are approximately 32 per cent. Further, individuals of those States who are parties to the Optional Protocol have not utilized the system. Since 1990 to 1997 an average of 50 cases per year were registered which is negligible in view of the widespread human rights violations all over the world and a combined population of the States ratifying the Optional Protocol. Out of the cases registered with the Committee roughly 50 per cent cases were admissible. Victims of human rights violations are not very enthusiastic in getting their cases registered with the Committee because the process of the admissibility of the cases remains largely inaccessible. Further, individuals are not aware mainly because of the ignorance that a petition system is available to them.

Individual's communication system has not been very successful also because the Committee devotes much of its time on States reports and has not devoted time and energies on individuals' petition. The result is that a large number of communications are pending with the Committee. In order to make its views more effective the Committee is required to dispose them off promptly. If undue delay is made in examining the report, the very purpose of its examination would be frustrated. Delay can be prevented either by holding more sessions in a year or by extending the duration of the sessions. The individual's communications and the views of the Committee should be published throughout the world so that the international community and the public at large may be informed about the progress made by the Committee. However, the Committee should proceed cautiously so that the principle of confidentiality may be observed. It is necessary so that those States which have not ratified the Protocol may not be discouraged from ratifying it, and those which have become parties may not 'denounce' the Protocol in accordance with Article 12 of the Protocol.

Implementation of the Covenant on Economic, Social and Cultural Rights

The machinery for the implementation of the rights enumerated in the

Covenant on Economic, Social and Cultural Rights is quite different from th... Covenant on Civil and Political Rights. It is so primary becaus... implementation of economic and social rights is a local and national issu... It is in the national Parliaments that essential legislation has to be adopted; it is on the local and national levels that administrative and other machinery must be built to protect and enhance these rights. The State Parties to the Covenant do not undertake to ensure the rights set forth in it immediately, like the parties to the Covenant on Civil and Political Rights. They simply commit themselves to take steps, individually and through international assistance and co- operation to the maximum extent of their available resources, to achieve progressively the full realization of the rights recognised in the Covenant. The Covenant simply provided reporting system for the implementation for the rights. However, the Optional Protocol to the Covenant on Economic, Social and Cultural Rights adopted in 2008 provided different modes such as individual's communications system, inter-State communications and inquiry procedure for the implementation of the rights. The implementation machinery thus provided under the Covenant and the Optional Protocols are as follows:—

(1) Reporting System

The Covenant provided reporting system for the implementation of the provisions. Article 16 of the Covenant stated that the State Parties undertake to submit reports to the Secretary-General of the United Nations who shall transmit copies to the Economic and Social Council for consideration and to the concerned specialized agencies. The Economic and Social Council may transmit the reports submitted by the States to the Commission on Human Rights for study and general recommendations or as appropriate for information. (Article 19).

The reports are required to mention the measures which they have adopted and the progress made in achieving the observance of the rights recognised therein. They are also required to indicate factors and responsibilities affecting the degree of fulfilment of obligations under the present Covenant. The reports shall be furnished in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the Covenant after consultation with the State Parties and the specialized agencies concerned. [Article 17(1)].

The State Parties to the Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein. (Article 20). The Council may submit from time to time to the General Assembly the reports with recommendations of a general nature and a summary of the informations received from the State Parties to the Covenant and the specialised agencies. (Article 21).

Committee on Economic, Social and Cultural Rights

The Economic and Social Council by a resolution 1985/17 established a Committee on Economic, Social and Cultural Rights in 1985. The Committee is composed of 18 internationally recognized experts in the relevant fields. All the members are elected by the Economic and Social Council through secret ballot from a list of persons nominated by State Parties to the

Covenant. The members are human rights experts who serve in their personal capacity. The Committee is charged with monitoring the implementation of the Covenant by the State Parties. It considers the reports submitted by State Parties and submits its report to the Economic and Social Council and not to the State Parties. The Committee met for the first time in 1987. However, the Committee is not autonomous and it is not responsible to the State Parties but to the Economic and Social Council.

Committee and the General Comments

The Committee decided in 1988 to prepare general comments on the rights and provisions contained in the Covenant with a view to assist State Parties in fulfilling their reporting obligations. It was also viewed that the adoption of general comments will serve as a means of promoting the implementation of the Covenant.

The Committee by the year 2010 has adopted 20 general comments on different rights which are : (1) on reporting by State Parties; (2) on technical and assistance measures (Article 22); (3) on the nature of State Parties' obligations (Article 2, Para 1); (4) on the right to adequate housing (Article 11, Para 1); (5) on persons with disabilities; (6) on the economic, social and cultural rights of older persons; (7) on the right to adequate housing : forced evictions [Article 11(1)]; (8) on the relationship between economic sanctions and respect for economic, social and cultural rights; (9) on the domestic application of the Covenant; (10) on the role of national human rights institutions in the protection of economic, social and cultural rights; (11) on the plans of action for primary education (Article 14); (12) on the right to adequate food (Article 11); (13) on the right to education (Article 13); (14) on the right to the highest attainable standard of health (Article 12); (15) on the right to water (Articles 11 and 12); (16) on the equal right of men and women to the enjoyment of all economic, social and cultural rights (Article 3); (17) on the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literally or artistic production of which he is the author [Article 15(1)(c)]; (18) on the right to work (Article 6); (19) on the right to social security; (20) on non-discrimination in economic, social and cultural rights (Article 2, Para 2) and (21) Right of everyone to take part in cultural life. [Article 15(1)(a)].

(2) Individual's Communications System

Individuals who are victims of a violation of economic, social and cultural rights have been given right to make communications to the Committee. This right has been given to the individuals under the Optional Protocol to the Covenant of Economic, Social and Cultural Rights.[1] The Protocol lays down that a State Party to the Covenant that becomes a party to the Protocol recognizes the competence of the Committee to receive and consider communications submitted by or on behalf of individuals or groups

1. The Committee since 1990 had devoted attention to the possibility of the conclusion of an Optional Protocol. The Committee prepared a draft Optional Protocol in 1996 at the 15th session but it was not officially adopted by the General Assembly. It was only after the creation of the Human Rights Council, efforts for the creation of the Optional Protocol became intense. The Council by Resolution 8/2 on June 18, 2008 adopted the Optional Protocol which was later adopted by the General Assembly on December 10, 2008. Text of the Optional Protocol is annexed to Resolution 6/117 of the General Assembly. (For the Text of Optional Protocol See Appendix 3).

of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant (Article 2). Where a communication is submitted on behalf of individuals or group of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent (Article 2). The Committee shall not consider communication unless it has ascertained that all available domestic remedies have been exhausted (Article 3). The Committee shall declare a communication inadmissible (a) when it is not submitted within one year after the exhaustion of domestic remedies unless it is demonstrated that it was not possible to submit the communication within that time limit; (b) when the subject of communication occurred prior to the entry into force of the Protocol for the State Party unless the facts that are subject of communication continued after the entry into force of the Protocol; (c) When the same matter has been examined by the committee or has been or is being examined under any procedure of international investigation or settlement; (d) when it is incompatible with the provisions of the Covenant; (e) when it is ill-founded, not sufficiently substantiated or exclusively based on reports disseminated by mass media; (f) when it is an abuse of the right to submit a communication; or (g) when it is anonymous or not in writing (Article 3).

The Committee after the receipt of the communication may transmit to the State Party concerned for its consideration. The Committee may also request to the State Party to take such interim measures as may be necessary. The State Party is required to submit to the Committee within six months written explanation or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party (Article 6).

The Committee shall make available its good offices to the parties concerned with a view to reaching a friendly settlement of the matter on the basis of the respect for the obligations set forth in the Covenant. An agreement on a friendly settlement closes consideration of the communication. Where the friendly settlement is not reached the Committee examines communications in light of all documentation submitted to it. The Committee shall hold close meetings when examining communication (Article 8).

The Committee after examining communications shall transmit its views, together with its recommendations, if any to the parties concerned (Article 9). The State Party is required to give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.

(3) Inter-State Communications

The Optional Protocol under Article 10 provides that a State Party at any time declare that it recognizes the competence of the Committee to receive and consider communications from another State Party which claims that it has not been fulfilling its obligations under the Covenant. Communications may be received and considered by the Committee only if submitted by a State Party that has made a declaration recognizing in regard to itself the competence of the Committee. The communication is required to be made in writing.

Communication received is dealt with the procedure laid down under Article 10 which is as follows : (a) If a State Party considers that another State Party is not fulfilling its obligations under the Covenant, it may, by written communication, bring the matter to the attention of that State Party. The State Party may also inform the Committee of the matter. The receiving State within three months of the receipt of the communication shall afford the sending State an explanation or any other statement in writing clarifying the matter. If the matter is not settled to the satisfaction of both State Parties within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to other State. The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter. The Committee shall make available its good offices to the State Parties concerned with a view to a friendly solution of the matter. The Committee shall hold closed meetings while examining communications. The Committee may call upon the State Parties to supply any relevant information. Further, the State Parties shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing. The Committee shall submit a report containing the statement of the facts and the solution reached. If the solution is not reached, the Committee in its report may communicate only to State Parties concerned any views that it may consider relevant to the issues between them.

The acceptance of the inter-State communication system is optional. States accepting this system are required to make a declaration which shall be deposited with the Secretary General of the United Nations, who shall transmit copies thereof to other State Parties. Declaration once made may be withdrawn at any time by notification to the Secretary General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted.

(4) Inquiry Procedure

Inquiry procedure provided under Article 11 of the Optional Protocol to the Covenant on Economic, Social and Cultural Rights is optional. A State Party at any time declare that it recognises the competence of the Committee for inquiry procedure. If the Committee receives reliable information indicating grave or systematic violation by a State Party of any of the economic, social and cultural rights set forth in the Covenant, the Committee shall invite that State Party to cooperate in the examination of the information. The Committee after receiving information and observation from the State Party, may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. The inquiry may include a visit to its territory when it is necessary, with the consent of the State Party. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings. After examining the findings of such an inquiry, the Committee shall transmit the findings to the State Party concerned together with any comments and recommendations. The State Party, within six months of receiving the findings, shall make comments and recommendations transmitted by the Committee, submits its observations to the Committee. After such

proceedings have been completed with regard to an inquiry, the Committee may, after consultation with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report.

The Committee may invite the State Party to include in its report to be submitted to the Covenant as per Articles 16 and 17 details of measures taken in response to an inquiry.

Thus, the implementation machinery was confined only to the reporting system under the Covenant to protect the economic, social and cultural rights. Individual's communication system, Inter-State communications and Inquiry Procedure have been laid down under the Optional Protocol. As to the reporting system it is to be noted that it is the one with which the international community has had the most successful experience. It is eminently suited to the implementation of economic, social and cultural rights as the experience of the specialized agencies particularly that of the International Labour Organization has shown. It was rightly considered that since the rights contained in the Covenant can only be realized progressively and they usually imply some positive action by the State Parties there is, neither reasonability nor feasibility to give any right to complain to an international organ that a State Party is not living up to its treaty obligations in respect to them. The reporting system is useful because it helps to elicit the kind of information which is necessary to organise the technical and other assistance which will help governments to implement these rights. Article 23 of the Covenant which is a part and parcel of the reporting system recognises the responsibility of the international community to render such assistance. Other implementation measures are provided in the Optional Protocol which has not yet come into force. It is submitted that they are not effective in the sense that all the measures, provided under the Optional Protocol, *i.e.*, individual's communication system and inter-State communication method and an inquiry procedure shall be applied only to those State Parties who have made declarations for their acceptance. Thus the implementation of these measures depend, on the acceptability of the Optional Protocol by the State Parties to the Covenant on Economic, Social and Cultural Rights.

Conclusion

The above analysis shows that the implementation procedures under the two Covenants are not very effective. In the Covenant on Civil and Political Rights, the Inter-State communications system as provided under Article 41 has not been utilized by the States who have made the Declarations. The conciliation procedure is also of no use because the system is utilised only in the Inter-State communication system. It is to be noted that the Inter-State communication system is not likely to be very effective because States normally do not make complaints of other States before the Committee for the violations of human rights. If it is done at all, the possibility of increase in international tension and conflict cannot be ruled out. The individual's communication system under the Optional Protocol is also not expected to serve any useful purpose for the international protection of human rights in view of the fact that only 113 States have so far ratified or acceded to the Protocol. The system of admissibility of petitions is so rigorous that a number of petitions are rejected. Moreover, under the system, the Committee after examining the communication simply gives its 'views'

which are not binding on the States. Thus, the powers of the Committee in such matters are very limited. It is not unrealistic to say that the system is farce. It cannot give any relief to the aggrieved persons. The only other implementation procedure which, at present, is being carried on under the provisions of the Covenant is the reporting system. Majority of the States of International community did not agree to go beyond this may be because State's interests are very much at stake in these matters. But even the reporting system is hardly effective due to many weaknesses.

In the Covenant on Economic, Social and Cultural Rights, there is no procedure for the implementation other than the reporting system which is again not likely to bring any positive result in protecting the rights provided therein. Moreover, the rights stipulated therein are not obligatory on the State Parties. The State Parties undertake to respect and to ensure the human rights mentioned therein. Other implementation systems are laid down in the Optional Protocol which has been ratified only by a few States. It may be concluded that although the Covenants have recognised the rights to the individuals there is virtually no effective machinery for implementing them.

The stipulation of the rights in the Covenants alone is not enough. They themselves cannot serve any useful purpose. At present, there is a wide gap between the 'promise and performance' because of the absence of an effective international implementation machinery. Amnesty Reports have very often laid down that human rights are violated in a number of States. Further, assault on human dignity sometimes on a massive scale is a cause for deep anxiety. The international protection of individuals against the States is very much required because States should no longer be entrusted as their guardian *in litem*. In the law of human rights, the individuals and the State constitute the two opposing subjects of rights and duties. While the former has rights, the latter has a duty to protect them. International law has a functions to see that duties are performed by the States against the individuals. The effectiveness of the measures in matters of human rights is inextricably linked with the attitude of the States. It is the responsibility of each State to ensure respect for human rights within its jurisdiction.

In some countries, especially those which are referred to as developing countries or the least developed countries the problem for the protection of human rights is quite different. They are fighting for providing basic necessities of life to their people because of their poor economic conditions. How can a State think of providing civil and political rights to its people unless food, shelter and clothings are made available ? No doubt, it is the responsibility of the States themselves to make every possible efforts to make available the basic necessities of life. But to speak of human rights without speaking of developmental issues or the new international economic order is precisely one-sided. It would not serve the cause of promoting the full enjoyment of human rights. The co-operation of other States especially those of developed States is much needed. It is in their interest to eradicate poverty and hunger as their existence anywhere may constitute danger to prosperity everywhere. Their efforts are also needed to meet the challange in view of its close relationship with the maintenance of international peace and security. Although developing countries gave a call to establish a New International Economic Order, it has not been suitably responded by the

developed countries. The U.N. System has also failed considerably to put the solution envisaged in the New International Economic Order into effect. It has posed a threat to the idea of economic betterment and also of greater human dignity, security, justice and equality. The forces of confrontation and tension amongst the States have prevented to arrive at a conclusion agreeable to all. It again shows that the developed countries have different approach towards the term 'human rights'. While they might be serious as to the respect of human dignity and honour for the people of their own States, they are not concerned for those human beings who are living across the border.

The future of the promotion of human rights on international level is therefore grim. It is likely to remain so, as long as the attitude of the States of developed countries towards the developing countries is not changed. The paper progress has, of course, been made. Various meetings, conferences, and seminars have been organised where speakers have at length advocated the need for the protection of global human rights, but in reality things are quite different. Millions of people are still deprived of the basic necessities of life due to extremely bad economic and social conditions. What the affluent States and their people who are advocating for the cause of human rights outside as well as inside the United Nations is doing for them is totally insignificant. What is needed on their part is the realisation of the conditions of those who are deprived of these basic necessities. They are required to realise that mankind is one and human beings are equal and must enjoy at least the minimum of rights and freedoms.

The International cooperation is therefore required to be achieved to accomplish the social and economic justice from which stability and peace flow. The developed States have a share to meet the problems of developing countries inasmuch as it relates to the maintenance of peace and security. They have an obligation—moral, economic and international, to provide development assistance to these countries.

HISTORICAL DEVELOPMENT OF HUMANITARIAN LAW :

Although rules of humanitarian law may be found in Bible, Quran and Dharma in the Vedic period in India, more specifically in Manu Smriti, a systematic development of modern humanitarian law in armed conflicts originated in the second half of the nineteenth century when the need was felt to humanize warfare and to protect the victims of armed conflicts. Geneva Convention of 1864 was the first Convention which provided for certain rules regarding the conditions of wounded soldiers in land armies.[1] The full name of the Convention was the Convention for the Amelioration of the Wounded in Time of War. Negotiations for the Convention were initiated by the founder of the Red Cross Henri Dunant. The Convention provided for (1) the immunity from capture and destruction of all establishments for the treatment of wounded and sick soldiers and their personnel; (2) the impartial reception and treatment of all combatants; (3) the protection of civilians rendering aid to the wounded; and (4) recognition of the Red Cross symbol as a means of identifying persons and equipment covered by the agreement.

Declaration of St. Petersburg signed by Seventeen Powers on December 11, 1868 stipulated that the signatory Powers renounce, in case of war, between themselves the employment, by their military and naval forces of any projectiles of a weight below 400 grams (14 ounces) which is either explosive or charged with fulminating or inflammable substance. The Declaration expressly stated that the use of such weapons is against the laws of humanity.

Hague Conventions of 1899 and 1907.

In 1899, the so called Peace Conference at the Hague was convened on the personal initiative of the Emperor Nicholas II of Russia. The Conference met from May 18 to July 29, 1899 and 26 nations took part in the Conference. The Conference resulted in the adoption of three important conventions. Firstly, the Convention for the Pacific Settlement of International Disputes, Secondly, the Convention with respect to the Laws and Customs of War on Land, and Thirdly, the Convention concerning the adaptation of the Geneva Convention to Naval Warfare. These conventions may be called codes. In addition to them, three declarations of minor value were also adopted by the Peace Conference. One prohibited the use of asphyxiating gases, another prohibited the use of expanding bullets (dumdums), and another prohibited the discharges of projectiles or explosives from balloons.

The Second Hague Peace Conference of 1907 though first proposed by U.S. President Roosevelt was officially convened by Nicholes II. The Conference met from June 15 to October 18, 1907 and was attended by the representatives of 44 States, produced thirteen conventions. While the three conventions, namely, that for the Pacific Settlement of International Disputes, that concerning the Laws and Customs of War on Land, and that concerning

1. Earlier, Paris Declaration was adopted at Paris on April 16, 1856 wherein it was laid down that (a) Privateering is, and remains, abolished; (b) the neutral flag covers enemy's goods, with the exception of contraband of war; (c) neutral goods, with the exception of contraband of war are not liable to capture under enemy's flag; (d) blockade, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy. The Convention was ratified within three years by all the European Great Powers, as well as by many other States.

the adaptation of the principles of the Geneva Convention to Maritime War took the place of three corresponding conventions of the first Hague Peace Conference, the other ten conventions were entirely new. Apart from the conventions on the limitation of the employment of force for the recovery of contract debts and the opening of hostilities, they were devoted to the regulations of rules of warfare and neutrality in war on land and sea.

The Hague Convention No. IV of 1907 concerning the Regulations respecting the laws and customs of war on land[1] attempted to humanize warfare and to codify the laws of war. Its preamble laid down that :

> Until a more complete code of the laws of war has been issued,...the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of public conscience.

The above Preamble was supplemented by two principles that were related to the principle of humanity which are :

(1) The right of belligerents to adopt means of injuring the enemy is not unlimited (Article 22 of the Hague Regulations).

(2) Belligerents are forbidden to employ arms, projectiles, or material calculated to cause unnecessary sufferings. (Article 23(e) of the Hague Regulations).

The above principles are closely connected with the principles of humanity. In the conduct of war each party is required to follow the rule that the lawful use of a weapon or method of harming the enemy shall not outweigh the military purposes achieved through their employment. The International Court of Justice in the Advisory opinion given in the *Legality of the Threat or use of the Nuclear Weapons*[2] stated that :

> The cardinal principles contained in the texts constituting the fabric of humanitarian law are the following. The first is aimed at the protection of the civilian population and civilian objects and establishes the distinction between combatants and non-combatants; State must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets. According to second principle, it is prohibited to cause unnecessary suffering to combatants : It is accordingly prohibited to use weapons causing them such harm or uselessly aggravating their suffering. In application of that second principle, states do not have unlimited freedom of choice of means in the weapons they use.

The victims of war-wounded, sick and shipwrecked members of armed forces, and civilian persons must be granted the maximum possible protection, and therefore rules to protect the victims of war were made. Rules concerning the protection of prisoners of war were also made which later became the subject of a new General Red Cross Convention Relating to Treatment of Prisoners of War in 1929.

It is to be noted that the rules laid down in the Hague Conventions as to the conduct of war were frequently disregarded in practice by many

1. It was preceded by the Hague Convention. No. II of 1899 on the same subject.
2. Advisory opinion was given on July 8, 1996. Para 78.

warring parties in varying degrees. The process of disregard started during the First World War with the beginning of economic warfare directed against whole population. Distinction between the armed forces and the civilian population was not made. Other provisions of the conventions such as use of gases were also violated. The result is that the rules made by the Hague Conventions which laid down the foundations of the law of war were sapped because of the instances of their non- observance. Cases of observance did not save them from at least partial distinction.

Geneva Conventions of 1949

During the Second World War shocking crimes were committed against the humanity. A regime of complete lawlessness and tyranny was established. Warring parties had barbarously negated human values and dignity. At the end of the war, atomic bombs were dropped over the Japanese cities of Hiroshima and Nagasaki by the United States Air Force, and the Germans made use of V-2 bombs fired from the continent against England. Purposeful destruction of civilian targets such as residential areas hundreds of miles behind the frontlines, use of long-distance rockets and atomic bombs against enemy territory without discriminating between targets were measures which have put to an end to the inviolability of civilians and destroyed the basic distinction of the law of war, *i.e.*, the difference between the armed forces and the civilian population and between military and non-military objectives. Belligerents frequently abused the principles contained in the earlier Conventions and therefore, it was decided to extend and codify the existing provisions in an International Red Cross Conference in Stockholm held on August 23 to 30. 1948. The Conference developed four Conventions which were approved in Geneva on August 12, 1949. These Conventions were :

(1) Convention for the Amelioration of the Condition of the Wounded, Sick in Armed Forces in the Field.[1]

(2) Convention for Amelioration of the Condition of the Wounded, Sick and Ship-wrecked Members of the Armed Forces at Sea.[2]

(3) Convention Relative to the Treatment of the Prisoners of War.[3]

(4) Convention Relative to the Protection of Civilian Persons in Time of War.[4]

All the above Conventions came into force on October 21, 1950. One of the purposes for the conclusion of these conventions was to reduce or limit the sufferings of individuals, and to circumscribe the area within which the savagery of armed conflict is permissible.[5] These Conventions provided a number of humanitarian rules to various classes of persons such as the wounded and sick in armed forces in the field as well as at sea, prisoners of war and civilian persons in time of war. These Conventions also imposed corresponding duties upon the protecting power, the International Committee of the Red Cross and other humanitarian organisations. In the case concerning Military and Paramilitary Activities in and Against Nicaragua.

1. Hereinafter referred to Convention No. I.
2. Hereinafter referred to Convention No. II.
3. Hereinafter referred to Convention No. III.
4. Hereinafter referred to Convention No. IV.
5. Starke, 'Introduction to International Law' Tenth Edition, p. 553.

the International Court of Justice stated that in its view the Geneva Conventions are in some respects a development, and in other respect no more than the expression, of such principles.[1] Parties are therefore bound to fulfil by virtue of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and dictates of the public conscience. The above conventions apply only to international armed conflicts which have been defined under Article 2 of all the four Conventions as all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties even if the state of war is not recognised by any of them. However, Article 3 which is common to all Geneva Conventions defines certain rules to be applied in the armed conflicts of a non-international character, as they reflect the elementary consideration of humanity.[2] The Conventions also apply to those armed conflicts where peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right to self- determination.

Hague Law[3] and the Geneva Law[4] which are applicable in armed conflicts have become so closely interrelated that they are considered to have gradually formed one single complete system, known today as International Humanitarian Law.[5] These fundamental rules are to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute the intransgressible principle of international customary law.

Additional Protocols (First and Second) to the Geneva Conventions (1977)

It was realised that the Geneva Conventions of 1949 are not sufficiently broad in scope to cover all armed conflicts. The United Nations Conference on Human Rights of 1968 held at Tehran stated that massive denial of human rights, arising out of aggression or any armed conflict with their tragic consequences, and resulting in untold human misery, endanger reactions which could engulf the world in ever growing hostilities. It was stressed that it is an obligation of the international community to cooperate in eradicating such scourage. The resolution entitled 'Human Rights in Armed Conflicts' affirmed that even during the periods of internal armed conflicts

1. ICJ Reports (1986) p. 113-114, para 218.
2. See title 'Law on Non- International Armed Conflicts' in this Chapter.
3. The Hague Law included the St. Petersburg Declaration of 1868, Conventions of 1899 and 1907, which were based partly upon the St. Petersburg Declaration of 1868 as well as the results of the Burussels Conference of 1874. These Conventions fixed the rights and duties of belligerents in their conduct of operations and limited the choice of methods and means of injuring the enemy in an international armed conflict. The Hague Law also included the Geneva Protocol of 1925 and the Hague Convention on the Protection of Cultural Property of 1954.
4. The Geneva law included the Conventions of 1864, 1906, 1929 and 1949 and the three Protocols added later on. The Conventions protected the victims of war and aimed to provide safeguards for disabled armed forces personnel and persons not taking part in the hostilities.
5. See Advisory opinion of the International Court of Justice on the Legality of the *Threat or Use by a State Nuclear Weapons in Armed Conflict*. Judgment was delivered on July 8, 1996, para 75.

humanitarian principles must prevail, and therefore, it called for measures to ensure better protection of civilians, prisoners of war and combatants in all armed conflicts.

General Assembly recognised the necessity of the application of basic humanitarian law principles in all armed conflicts and took note of the Tehran Conference, invited the Secretary-General to study (a) steps which could be taken to secure the better application of existing humanitarian international conventions and rules in armed conflicts, and (b) the need for additional conventions or other legal instruments to ensure better protection of civilians, prisoners and combatants in all armed conflicts. The Secretary-General submitted reports in 1969 and 1970 on Human Rights in Armed Conflicts. The second report submitted in 1970 called for up-dating the law of armed conflicts.

The International Committee of Red Cross (ICRC) became active to update the humanitarian law. A Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable to Armed Conflicts was held in 1974 in Geneva. It held annual sessions until 1977 when it adopted on June 8, 1977 two Additional Protocols to the Geneva Conventions of 1949 under the auspices of the ICRC. Protocol I sets out the basic rule that the parties do not have unlimited choice of means or methods of war and specifically rules out those which are of a nature to cause "superfluous injury or unnecessary suffering or can be expected to cause widespread, long-term and severe damage to the natural environment. The Protocol also contains provisions for the protection of civilians against indiscriminate attack, deliberate spreading of terror, atrocities attacks on cultural objects and places of worship, destruction of crops, food and other means of survival (*e.g.* livestock and water supply) and attaches on installations containing dangerous forces such as dams, dykes and nuclear power stations. It also deals with the Protection of Victims of International Armed Conflicts including specific provision for the protection of journalists engaged in dangerous professional missions in conflict areas. Protocol II deals with the Protection of Victims of Non-International Armed Conflicts that take place between a Contracting Party's armed forces and other armed groups in its territory. However, the Protocol does not apply in the cases of internal disturbances caused by riots, isolated and sporadic acts of violence and other acts of similar nature as not being armed conflicts. These two Protocols incorporated certain elements from the International Covenants on Human Rights (1966), Universal Declaration of Human Rights (1948) and European Convention on Human Rights (1950). The two Protocols opened for signatures on December 12, 1977 in Berne. Protocol I came into force on December 7, 1979.

Third Additional Protocol to the Geneva Conventions (2005)

In a diplomatic conference, Member States on December 8, 2005 adopted the Third Additional Protocol to the Geneva Conventions wherein it

recognised the red crystal, in addition to red cross and red crescent,[1] as an additional distinctive emblem for national relief. The distinctive emblems shall enjoy equal status. The use of red crystal, the Third Protocol emblem, became highly politicized and some States objected to the new emblem's creation. Although many parties had hoped to adopt the Third Protocol by consensus, some Islamic States voted against its adoption, while others abstained. In the year 2006, Sixth Committee of the General Assembly took note of the issue when it adopted a resolution on the Status of the Protocol additional to the 1949 Geneva Conventions. The crystal, crescent and cross all have the same meaning. The purpose is to make combatants aware that the peoples, buildings and vehicles with the symbols are protected under the 1949 Geneva Conventions and should not be fired upon.

The four Geneva Conventions of 1949 and their three Additional Protocols presently form the basis and main source of international humanitarian law. They contain a number of provisions for the protection of certain categories of persons which the parties to armed conflicts are required to observe in the interest of humanity. The International Court of Justice in the advisory opinion given on the *Legality of the Threat or Use by a State of Nuclear Weapons in Armed Conflicts* stated that the rules of humanitarian law are part of *jus cogens* as defined in Article 53 of the Vienna Convention on the Law of Treaties of May 23, 1969.[2] They are required to be effectively implemented with cooperation of States. States Party to the Geneva Conventions of 1949 and their Additional Protocols of 1977 require the States Party to enact a national legislation to make serious violations of these treaties punishable offences.[3] Administrative measures may also be taken as long as national legislation is not enacted. Further, States are also required to disseminate the text of these treaties as widely as possible in their respective countries.[4]

CHARACTER OF HUMANITARIAN LAW

A treaty is binding on a State when it has become a party to it. In other words, rights and obligations arising from a treaty are binding only to the parties to a treaty and not to a third State without its consent.[5] This

1. The International Committee of the Red Cross (ICRC) which arose out of the war between Italy and Austria in the mid 1860s, is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of war and internal violence and to provide them with assistance. It directs and coordinates the international relief activities conducted by the Movement in situations of conflicts. It also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. It was established in 1859, by the Swiss national Henry Dunant. The ICRC was recognised in the First Geneva Convention of 1864. The symbol of the red cross on a white background, representing the inverse of the Swiss flag. Believing the cross to be offensive to Muslim soldiers, the Ottoman Empire was the first to use the red crescent from 1876 to 1878 as Turkey fought Russia. The symbol was formally recognised in 1929.
2. op. cit para 83.
3. India has ratified the four Geneva Conventions of 1949 in 1959 and enacted the Indian Geneva Conventions Act in 1960 incorporating them in the Indian legal system.
4. See Articles 49, 50, 129 and 146 of the First, Second, Third and Fourth Geneva Conventions of 1949 respectively. Also see Article 80 of the Additional Protocol I of 1977.
5. See Article 34 of the Vienna Convention on Law of Treaties of 1969.

customary law principle has been expressed in a Latin maxim which is called *pacta tertis nec nocent nec prosunt*. However, a treaty may be binding on a third State, even if it has not accepted in writing the obligations provided in a treaty, if a treaty creates customary rule of International Law. The above implies that the conventions adopted on humanitarian law shall be binding on all the States irrespective of ratification by the States if the conclusion is drawn that they have acquired the status of customary rules of International law.

In the advisory opinion given in the *Legality of the Threat or Use of Nuclear Weapons*,[1] the International Court of Justice observed that great many rules of humanitarian law applicable in armed conflict are so fundamental to the respect of the human person and elementary considerations of humanity that the Hague and Geneva Conventions have enjoyed a broad accession. Further, these fundamental rules are to be observed by all the States whether or not they have ratified the conventions that contain them, because they constitute fundamental principles of international customary law.' The above observation has been made by the highest authority, and therefore, it is beyond doubt that the humanitarian law acquires the customary rules of international law and therefore is binding on all the States. These Conventions contain the fundamental rules of humanitarian character from which no derogation is possible by any State. Following are the main features of these Conventions :

(1) Protection and Care of Wounded and Sick Persons :

Injured soldiers are not treated like ordinary soldiers. They are given special treatment on the ground of humanity. While Geneva Convention (No. 1) stipulated in detail the respect for, and the protection and care of, sick and wounded persons who are members of armed forces in the field or are assimilated to them.[2] Geneva Convention No. 2 laid down the similar protection and care to wounded, sick and shipwrecked members of the armed forces at sea. The following are important provisions in this regard :

1. Sick and wounded persons of the armed forces in the field and at sea shall be respected, protected and cared for by the belligerents in whose power they may be. Such a treatment shall be provided without making any discrimination founded on sex, race, nationality, religion, political opinions or any similar tests.

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1. ICJ Reports 1996, p. 226 at p. 258. Judge Weeramantry in the above case, in his dissenting opinion, observed that the rules of the humanitarian law of war have clearly acquired the status of *jus cogens*, for they are fundamental rules of the humanitarian character, from which no derogation is possible without negating the basic consideration of humanity which they are intended to protect. (at p. 496).
2. Persons other than members of armed forces who are provided protection are (1) Members or militia or volunteer corps forming part of the armed forces; and (2) Members of other militia and members of other volunteer corps if (i) they have a commander; (ii) they have a distinctive sign recognised at a distance; (iii) they carry arms openly and (iv) they conduct their operations in accordance with the laws of war; (3) Members of regular armed forces who profess allegiance to a government or an authority not recognised by the detaining power; (4) Persons who accompany the armed forces without being member thereof provided they have received authorisation from the armed forces which they accompany; (5) Members of crews, including masters, pilots and apprentices of the merchant marine and the crews of civil aircraft of the parties to the conflict; and (6) Inhabitants of a non-occupied territory who take up arms spontaneously to resist the invading forces.

2. Any attempts upon their lives, or violence to their persons, are strictly prohibited. They shall not be murdered, exterminated or subjected to torture or to biological experiments.
3. They shall not wilfully be left without medical assistance and care.
4. Women shall be treated with all considerations due to their sex.
5. If a party to the conflict is compelled to abandon them to the enemy, so far as military exigencies permit, leave behind with them a portion of his medical personnel to assist in taking care of them, together with the necessary material.

Protocol II Additional to the Geneva Convention adopted in 1977 also provided under Article 10 that all wounded, sick and ship- wrecked persons shall be respected and protected. They shall be treated humanely and shall receive to the fullest extent the medical care and attention required by their conditions.

(2) Protection to Medical Units and Establishments, Materials and Vehicles :

Mobile medical units and fixed establishments of the medical service for providing facilities to the sick and wounded persons must be respected and protected by the belligerents. Similarly, persons engaged in providing facilities to sick and wounded persons such as doctors and other personnels, serving in the mobile medical units and fixed establishments shall be protected and respected under all circumstances. Material of mobile medical units of the armed forces which fall into the hands of the enemy shall be reserved for the care of the wounded and sick.

Vehicles such as aircraft or other means of transport equipped for the evacuation of the wounded and sick must be treated in the same way as mobile medical units.

The Geneva Conventions No. I and II provide for a distinctive emblem and sign of the medical service of the armed forces. It recognised the emblems of Red Cross, the Red crescent, or the red lion or red sun on a white ground as a distinctive emblem. Red Cross insignia shall be respected and shall be given immunities so long they are genuinely and legitimately used.

Protocol I to the Geneva Conventions of 1949 also provided that medical units and medical transport including properly authorised civilian medical units and religious personnel be respected and protected at all times and not be the object of attacks or reprisals.

(3) Treatment of Dead Bodies :

Dead bodies shall not be disgracefully treated and, in particular, they shall not be mutilated. They shall be collected and buried or cremated on the battle field by the victor. Belligerents are also required to take measures to search for the dead and prevent their despoiled.

Protocol I to the Geneva Conventions of 1949 also provided that each party to a conflict permit teams to search for, identify and recover the dead from battlefield areas and the remains of the dead are to be respected, maintained and marked.

(4) Treatment of Prisoners of War :

Prisoners of war is a status which is given to a person captured by a belligerent during a war or in an armed conflict. All the persons captured by the belligerent do not acquire this status. Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 lays down under Article 4 that certain categories of persons who have fallen into the power of the enemy shall be known as prisoners of war. They are : firstly, members of the armed forces of belligerents as well as members of military or volunteer corps forming part of such armed forces. They acquire the status of prisoners of war when captured while performing their normal military duties during the course of hostilities. Secondly, members of other military and other volunteer corps including those of organized resistance movements (i) if they have a commander; (ii) if they wear a distinct uniform; (iii) if they carry arms openly, and (iv) if they observe laws and customs of war. Thirdly, non-combatant persons, *i.e.*, civilian personnel such as correspondents, supply contractors, labour, cooks, barbers, engineers : provided they accompany the arms unit under authority. Fourthly, members of crews including masters, pilots and apparentices who do not benefit by more favourable treatment under any other provisions of International Law, and fifthly, other inhabitants of a town who take up arms to resist the invading forces without having had time to form themselves into regular armed units : provided they carry arms openly and respect the laws and customs of war. The above implies that persons such as traitors, deserters, mercenaries[1] and those members of the armed forces who at the commencement of hostilities are founded within the territory of the enemy do not acquire the status of prisoners of war.[2]

International Law protects the prisoners from punishment for their hostile acts committed prior to capture. They have been guaranteed various privileges during captivity. Once the claim of a prisoner of being a prisoner of war is recognized, the captor State is not free to enforce its own municipal law or policies except as permitted by International Law. Its hands are tied in many ways, and further, it is obligated to certain positive actions in terms of providing protection, medical care, food and other facilities. The moral and legal justification for providing this preferential status lies in the fact that the prisoners of war, prior to capture, performing obligations and duties arising out of their connections with the enemy State are of the same kind and quality which the captor demands of its own nationals or individuals owing or assuming allegiance to it. Certain rules as to the treatment of prisoners of war were made by the Hague Convention of 1907 under Articles 4 to 12 but the experiences of the First World War showed that those rules were inadequate and incomplete. In July 1929, representatives of forty-seven States met at Geneva at the invitation of the Swiss Government to consider the revision and the completion of existing rules on the treatment of the prisoners of war. The Conference produced a Convention which is known as Geneva Convention of 1929 on the Prisoners of War.

The experiences of the Second World War again demonstrated the

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1. Article 47 of the Additional Protocol I to the Geneva Conventions of 1949 also stated that : A mercenary shall not have the right to be a combatant or a prisoner of war.
2. Guerrilla fighters have been granted the status of prisoners of war by Articles 43 and 44 of the Additional Protocol I to the Geneva Conventions of 1949. *See* J.N. Saxena, 'Guerrilla Warfare and International Humanitarian Law', IJIL Vol. 25 (1985) p. 621.

desirability of further revision of the Convention. This led to the adoption of a Geneva Convention (No. 3) Relative to the Treatment of Prisoners of War. The Convention consists of 143 Articles and replaces the Convention of July 27, 1929. The Convention of 1949 applies to all cases of declared war, and to other armed conflicts which may occur between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply in those cases of armed conflict which are not of an international character. The above provisions of the Convention have made it clear that the status of prisoners of war may be acquired by a person not only in war but also in armed conflicts. Although, strictly speaking, it is not desirable to call a person prisoner of war who is captured in armed conflict (not in war), the Convention did not make any distinction in their nomenclature. Persons captured in war as well as in armed conflicts are called prisoners of war.

The Convention provided that the detaining Power has a number of duties to perform on humanitarian grounds which include the followings :

(a) Human Treatment of Prisoners.—Prisoner of war must at all times be humanely treated. Any unlawful act or omission by the detaining Power causing death or seriously endangering the health of prisoners of war is prohibited. Prisoners shall not be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner. Prisoners must at all times be protected particularly against acts of violence or intimidation and against insults and public curiosity. Further, they are entitled in all circumstances to respect for their persons and their honour.

No information can be sought by subjecting them to threats, insults or by exposing them to unpleasantness. The captor State is also prohibited from resorting to physical or mental torture.

(b) Maintenance of Prisoners.—The detaining Power shall be bound to provide, free of charge, maintenance to the prisoners and for the medical attention required by their state of health. The expression 'maintenance' includes fooding, clothing and other facilities which should be provided by the detaining Power. The basic daily food given should be sufficient in quantity, quality and variety to keep prisoners in good health. Clothing shall be supplied to prisoners in sufficient quantity by the detaining Power. The regular replacement and repair should be assured to them.

(c) Equality of Treatment.—The detaining Power shall treat all the prisoners equally without any distinction based on race, nationality, religious belief or political opinions or any other distinction founded on similar criterion.

(d) Medical Facilities.—The detaining Power has a duty to provide medical care. The cost of treatment, including those of any apparatus necessary for the maintenance of prisoners in good health shall be borne by the detaining Power. Medical inspections of prisoners shall be made at least once a month.

(e) Quarter Facilities.—Prisoners shall be provided quarter facilities similar as to those of the detaining Power. The premises should be protected from dampness. They should be adequately heated and lighted. All precautions must be taken against the danger of life. Women prisoners shall be provided separate dormitories.

(f) Canteens.—Canteens shall be installed in all camps, so that prisoners may procure foodstuffs, soaps and tobacco and ordinary articles of daily use. The tariff shall never be in excess of local market price.

(g) Camps.—Prisoners may be interned only in premises located at land. Prisoners interned in unhealthy areas or where the climate is injurious for them, shall be removed as soon as possible to a more favourable climate. The detaining Power shall be bound to take all sanitary measures necessary to ensure the cleanliness of camps and to prevent epidemic.

(h) Employment of Prisoners of War.—The captor State is tempted to utilise the labour of prisoners of war when there is a shortage of manpower. The detaining Power can compel only men to work. Non-commissioned officers are required to do only supervisory work. Age, sex, rank and physical aptitude must be taken into account. Officers and persons of equivalent status shall be given suitable work only if they themselves ask for it. Compelling a prisoner of war to serve in the forces of the hostile power is a breach of Article 130 of the 1949 Geneva Convention No. III.

Inhuman Treatment of Prisoners of War of Gulf War II (2003)

In Gulf War II (2003), the Coalition Forces led by the United States invaded Iraq and a large number of Iraqi were made prisoners of war. They were kept in different camps such as Abu Gharib Correctional Facility, Al Baghdadi, Heat base Habbania Camp. On a number of occasions prisoners were treated inhumanely in violation of the Geneva Convention III Relative to Prisoners of War of 1949. The International Committee of the Red Cross (ICRC) in the Report of February 2004 on the Treatment by the Coalition Forces of Prisoners of War and other Protected Persons in Iraq drew the attention of the Coalition Forces to a number of serious violations of International Humanitarian Law committed between March and November 2003.

The main violations which were described in the ICRC report include brutality against protected persons upon capture and initial custody, sometimes causing death or serious injury; absence of notification of arrest of persons causing distress among persons deprived of their liberty and their families, physical or psychological coercion during interrogation to secure information; prolonged solitary confinement in cells devoid of day-light; excessive and disproportionate use of force against persons deprived of their liberty resulting in death or injury during their period of internment.

The above inhuman treatment were meted to the prisoners of war by the Coalition Forces during initial custody, during arrest, during transfer and during interrogation. For instance, during interrogation persons deprived of their liberty supervised by the military intelligence were subjected to a variety of ill- treatments ranging from insults and humiliation to both physical and psychological coercion that in some cases might amount to torture in order to force them to cooperate with their interrogators.

Methods of ill-treatment during interrogations were torturous and inhuman which included hooding, beatings with hard objects (including pistols and rifles), slapping, punching, kicking with knees or feet on various parts of the body; pressing the face into the ground with boots; being stripped naked for several days while held in solitary confinement in an empty and completely dark cell, being paraded naked outside cells in front of other persons deprived of their liberty and guards. These methods of physical and

psychological coercion were used by the military intelligence in a systematic way to gain confessions and extract information or other forms of cooperation from arrested persons.

The above acts of the Coalition Forces were the flagrant violations of the Third Geneva Convention. Prisoners of war were required to be humanely treated at all times. They were required not to be subjected to cruel or degrading treatment and must be protected against all acts of violence.[1] They were required not to be given torture and other forms of physical and psychological coercion for the purpose of extracting confession or information. Confessions extracted under coercion or torture is not required to be used as evidence of guilt.

Termination of Captivity

Captivity of prisoners may be terminated in two ways i.e., during the war and after the war. Captivity may be terminated during the war in any of the following ways. Firstly, when sick and wounded prisoners are repatriated to their home State. Secondly, when sick and wounded prisoners are exchanged during the continuance of hostilities on the basis of mutual agreement between the belligerents. Thirdly, when they are released on parole or promise that they shall not participate in the current hostilities. Fourthly, when sick and wounded prisoners are sent to neutral territory so that they may recover their health—physical or mental, speedily. Captivity of prisoners is terminated after the war as well. They are required to be released or repatriated without delay after the cessation of active hostilities. But the delay may be justified when the detaining Power proposes to conduct trial for those prisoners who are accused of committing war crimes.

India was criticized by some of the Western writers that it failed to repatriate the Pakistani prisoners immediately to whom it has captured in armed conflict in December 1971. It may be noted that the delay was not deliberate. India wanted to repatriate because it was not an easy task to maintain ninety-two thousand prisoners. Their captivity had created economic strain and security problems. However, India has its own reasons for not repatriating the prisoners. In 1973, when an agreement was made between India and Pakistan, all the prisoners were repatriated excepting 195 prisoners who were required to face trial for war crimes. After the conclusion of the Simla Convention these prisoners were also repatriated to Pakistan.

(5) Protection to Civilian Population

The horrifying experiences of a long series of violance, brutality and terror directed against the civilian population made it necessary to provide protection to the civilian persons in time of war. Articles 27-33 of the Geneva Convention No. 4 which are applicable to persons both in the territory of the belligerents and in occupied territory lay down principles of a more general character. It is laid down that civilians are entitled to respect of their persons, their honour, their religious convictions and practices and their family rights. Subject to special protection on account of health, age and sex, they must be treated with the same consideration and without any adverse distinction on account of their race, origin or political opinion. No physical or moral coercion must be exercised against them, in particular for the purpose of obtaining

1. Articles 13 and 14.

information. It is prohibited specifically to take measures of such a character as to cause physical suffering or extermination of the protected persons. Collective punishment and all measures of intimidation and terrorism are prohibited. Protected persons must not be punished for an offence which they have not personally committed. The Convention also provided for recourse by the protected persons to the Protecting Powers, to the International Committee of the Red Cross and to the National Red Cross Societies. These organisations must be granted facilities, within the limits of military considerations and national security for the fulfilment of their task.

Protection of the Civilian Population from the Effects of Warfare.—Protocol I Additional to the Geneva Convention of August 12, 1949 and relating to the Protection of Victims of International Armed Conflicts, concluded in Geneva on June 8, 1977,[1] is the most important treaty codifying and developing international humanitarian law since the adoption of the four Conventions themselves. The Protocol contains a number of additional provisions relating to the treatment of civilian persons in all armed conflicts between two or more of the parties to the Convention. The Protocol also applies in 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.

The Protocol provided that the distinction between the civilian population and combatants shall be maintained. Civilian population and individual civilian shall be respected and protected against dangers arising from military operations. They shall not be object of attack. Acts of threat of violence which may spread terror among the civilian population are prohibited.

The Protocol also distinguished the civilian objects from military objects. Operations may be carried on only against military objectives. They are those objects which by nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization in the circumstances ruling at the time, offers a definite military advantage. All other objects are civilian objects. In case of doubt as to whether an object is military or civilian, the Protocol provides that if the place of worship, a house or other dwelling or a school which is normally dedicated to civilian purposes is used to make an effective contribution to military action, it shall be presumed that they are not being so used. In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects. The Protocol also laid down the provisions relating to civilian, civil defence organisations and their personnels. They shall be respected and protected. They shall be entitled to perform civil defence tasks except in case of imperative military necessity. Protection shall be given to them unless they commit those tasks which are harmful to the enemy. Certain acts have been prohibited to be committed at any time in any place whether committed by civilian or military agents. They are : violence to the life, health, physical or mental well being of persons, in particular, murder, torture of all kinds (physical or mental) corporeal punishments and mutilation.

It is to be noted that the Protocol is likely to obtain nearly universal acceptance in view of its continuing process of its ratification and accession.

1. The Protocol opened for signature on December 12, 1977.

legislative and regulatory acts adopted with a view to its construction, and to the establishment of its associated regime, must forth be repealed or rendered ineffective, except where of continuing relevance to Israel's obligation of reparation.

The court further found that Israel has the obligation to make reparation for the damage cause to all the natural or legal persons concerned. The Court recalls the established jurisprudence that "The essential principle contained in the actual notion of an illegal act....is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed." Israel is accordingly under an obligation to return the land, orchards, olive groves and other immovable property seized from any natural or legal person for purposes of construction of the wall in the Occupied Palestinian Territory. In the event that such restitution should prove to be materially impossible, Israel has an obligation to compensate the persons in question for the damage suffered. The Court considers that Israel also has an obligation to compensate, in accordance with the applicable rules of International Law all natural or legal persons having suffered any form of material damage as a result of the wall's construction.

(6) Limitations on Means and Methods of Use of Force :

Additional Protocol I of 1977 in order to make warfare less brutal and inhuman stated that rights of the parties to the conflict to adopt methods and means of warfare are not unlimited. The Protocol in this direction made a number of provisions which includes the followings :

(a) Employment of weapons, projectiles and materials and methods of warfares which cause superfluous injury or unnecessary sufferings to human beings are prohibited.

(b) Employment of such methods or means of warfare which are intended or may be repeated to cause widespread, long term and severe damage to the natural environment are prohibited.

(c) To kill, injure or capture an adversry by resort to perfidy is prohibited.

(d) Attack against a person parachuting from an aircraft in distress is prohibited.

(e) Attack against an enemy *hors de combat* is prohibited.

It is to be noted that the work in this direction continued even after the adoption of the Protocol I in 1977. The United Nations Conference on Prohibitions or Restrictions of Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects adopted a Convention on October 10, 1981 of the same name commonly called Inhumane Weapons Convention. The origin of the Convention lies in customary International Law and two of its key principles : that the right of belligerents to adopt means or methods of warfare in armed conflicts is not unlimited and that the employment in armed conflicts of means and methods of warfare causing indiscriminate effects or of a nature to cause superfluous injury or unnecessary suffering is prohibited.

The Convention has a format of an 'Umbrella Treaty' under which specific agreements can be subsumed in the form of Protocols. The following four Protocols were attached to the Convention which are :—

(1) Protocol of Non-Detectable Fragments (Protocol I) (1980). The Protocol prohibited for the use of weapons whose primary effect is to injure by fragments which in the human body escape detection by X-rays;

(2) Protocol on Prohibitions or Restrictions on the Use of Mines, Body-Traps and other Devices (Protocol II) (1980).[1] The Protocol was amended on May 3, 1996 by which the scope of the Convention was expanded to cover internal conflicts. The Protocol came into force on December 3, 1998. As on December 31, 2000, it had 57 State Parties.

(3) Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III) (1980). The Protocol prohibited in all circumstances the making of the civilian population, as such the object of attack by incendiary weapons and restrict their use against military objects.

(4) Protocol IV concluded on May 1996 prohibited the employment of laser weapons specially designed as their sole combat functions or one of their functions is to cause permanent blindness to the naked eyes and the transfer of such weapons. As on December 31, 2000, the Protocol had 56 State Parties.

(5) Protocol V on Explosive Remnants of War (2003).

The Convention being an 'Umbrella Treaty' provides scope for the conclusion of additional specific agreements. The Convention along with Protocol I, II and III entered into force on December 3, 1983. The Protocol IV entered into force on July 30, 1998.[2]

(7) Law on Non-International Armed Conflicts :

Non-international conflicts or internal armed conflicts are referred to those conflicts which take place in the territory of a State between its armed forces and dissident armed forces or other organised armed groups. Thus, civil war, civil strife and threshold internal conflicts are included in non-international armed conflicts. They are presently the most frequent type of conflicts which take a heavier toll on civilians. In recent years such conflicts have broken out or erupted in a number of States including Angola, Guinea Bissau, Kosovo, Eritrea and Ethiopia. Those which have been going on for years are simply ignored by the World community.

All the four Geneva Conventions of 1949 under Article 3 regulated the conduct of non-international armed conflicts by providing that : In the case of armed conflict not of an international character occurring in the territory of one of the High Contacting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions :

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded

1. The Protocol was amended on May 3, 1996 which came into force on May 18, 2004.
2. Also see Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction (1993); Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and their Destruction (1972).