

RESPECT OF HUMAN RIGHTS IN INTERNATIONAL ARMED CONFLICTS

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The English Bill of Rights (1689), the American Declaration of Independence (1776) and the French Declaration of the Rights of Man (1789) declare that certain rights are inalienable. Logical deduction from these documents is that human rights exist and can only be guaranteed in a society in which political and civil liberties flourish.

On the other hand the International Armed Conflict creates a situation where political and civil liberties are often restricted. This is not only true for the prisoners of war, the civilian inhabitants of occupied territories but also for the civilian population of the occupying power.

So to humanize war the Hague Conventions of 1899 and of 1907 were concluded, The Geneva Protocol of 1925 tried to fill the gap. But all these precious documents date back to an era of official declarations of war, diplomatic ultimatums and less speedy weapons. But in the Second World War and since then the said rules were not often obeyed, and more than 30 million civilian died in wars following the Second World War.

The most precious and sacred human right, right to life was not respected in the International Armed Conflict. While only 5 percent of the persons killed during the First World War were civilians, this number climbed to 48 percent in the Second World War and to 84 percent in the Korean War (A/C."/Sr-1736 to 1820 p.262). All this happened when Geneva Convention Relative to the Protection of Civilian persons in the time war was in force since 12 August 1949.

To complete the four Geneva Conventions of 1949 two Protocols Additional were prepared. I was Turkish delegate to the Fourth session of the Conference on Reaffirmation and Development of International Humanitarian Law.

At the last session these two protocols annexed to the Final Act was opened for signature. But political considerations of the participating states were responsible for the weakening of the two Drafts and mostly of the Second on the non International Armed Conflicts. These drafts were prepared after years of minituous study under the a auspices of the International Committee of the Red Cross. In spite of their importance up to now only about fifteen states ratified these two protocols and none of them is a great power. Anyhow decline in the participation of successive sessions by the states was an

indication of lessening of interest by them. Infact the first session was attended by 124 states while the second session by 120 states the third session by 107 and the fourth and the last session only by 109 states.

Since 1945 various internationally agreed documents have stressed the importance of human rights when the international and non international armed conflict is absent. These include the United Nations Charter, the Universal Declaration of Human Rights and the European Convention of Human Rights. The Fourth Geneva Convention contains strong and detailed provisions for the protection of individuals against the arbitrary rulings of the Power into whose hands they may fallen. Article 34 of this Convention forbids the taking of hostages and American diplomats who have diplomatic immunity under International Law were made hostages in Iran when even an international armed conflict did not exist. In spite of the United Nations Security Council's decision and the judgement of the International Court of Justice American diplomats were under tremendous mental and physical oppression and the international community could not take any action. Now we have a more serious situation. About twenty thousand foreigners including men, women and children mostly Americans and West Europeans are Held hostages by Resident Saddam Hüseyin of Irak. He says "these peoples are not hostages, but our guests to prevent USA to wage war upon Irak." According International law these people are nothing but hostages and President Saddam Hüseyin is commutting a new war crime. Prior to the 1914-1918 War International Action on human rights took the form of Humanitarian Intervention.

The Geneva Conventions protect the persons who are not nationals of the States into whose hands they have fallen. There is no provision as regards relations a state and its national in the Geneva Corventions which are drafted in line with classical international law. So it is fair to say that in the event of civil war or international disturbances individuals imprisoned by the public authorities are at the mercy of their custodians. They have only the constitutional guarantees of the State, their custodian, if these guarantees are not already suspended because of civil law. We can even presume that the conditions of internal restraint to which individuala are submitted are often harsher than those of international warfare. However Article 3 common to the four Conventions established at the 1949 Geneva Conference declares that in the case of armed conflict not of an international character a minimum of humane treatment is to be guaranteed for prisoners. These terms are vague and the stipulation is of a general nature, we can conclude that it is only a principle. This led to the preparation of the Second Protocol Additional to the Geneva Conventions of 12 Agust 1949 and Relating to the protection of Victims of Non-International Armed Conflicts. The greatest opposition of the States to the original draft caused the weakening of the documents more than majority of original articles were amended.

I think that a clear distinction has to be made between international terrorists and anarchists and the persons participating in resistance movements and freedom in Southern Africa and in territories under colonial and alien domination. An International Convention to define and condemn international terrorism is necessary. Otherwise under the pretext of self defence States will continue to deny human rights in non international armed conflicts as it is the case of Mr. Lee Tong, member of the Legislative Assembly of Singapore who has been held in preventive or administrative detention in Singapore over 16 years without trial and without being brought before a court. (The Review, International Commission of Jurists No.23, December 1979.p.23)