A. Turku Declaration

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[**Source**: UN Doc. E/CN.4/Sub.2/1991/55 (December 2, 1990), available on http://www.un.org]

Declaration of Minimum Humanitarian Standards

Adopted by a meeting of experts, organised by the Human Rights Institute of Åbo Akademi in Turku/Åbo (Finland)

[The appropriate United Nations organ,]

Recalling the reaffirmation by the Charter of the United Nations and the Universal Declaration of Human Rights of faith in the dignity and worth of the human person;

Considering that situations of internal violence, disturbances, tensions and public emergency continue to cause serious instability and great suffering in all parts of the world;

*Concerned t*hat in such situations human rights and humanitarian principles have often been violated;

Recognizing the importance of respecting existing human rights and humanitarian norms;

Noting that international law relating to human rights and humanitarian norms applicable in armed conflicts do not adequately protect human beings in situations of internal violence, disturbances, tensions and public emergency;

Confirming that any derogations from obligations relating to human rights during a state of public emergency

must remain strictly within the limits provided for by international law, that certain rights can never be derogated from and that humanitarian law does not admit of any derogations on grounds of public emergency;

Confirming further that measures derogating from such obligations must be taken in strict conformity with the procedural requirements laid down in those instruments, that the imposition of a state of emergency must be proclaimed officially, publicly, and in accordance with the provisions laid down by law, that measures derogating from such obligations will be limited to the extent strictly required by the exigencies of the situations, and that such measures must not discriminate on the grounds of race, colour, sex, language, religion, social, national or ethnic origin;

Recognizing that in cases not covered by human rights and humanitarian instruments, all persons and groups remain under the protection of the principles of international law derived from established custom, from the principles of humanity and the dictates of public conscience;

Believing that it is important to reaffirm and develop principles governing behaviour of all persons, groups, and authorities in situations of internal violence, disturbances, tensions and public emergency;

Believing further in the need for the development and strict implementation of national legislation applicable to such situations, for strengthening cooperation necessary for more efficient implementation of national and international norms, including international mechanisms for monitoring, and for the dissemination and teaching of such norms;

Proclaims this Declaration of Minimum Humanitarian Standards.

Article 1

This Declaration affirms minimum humanitarian standards which are applicable in all situations, including internal violence, disturbances, tensions, and public emergency, and which cannot be derogated from under any circumstances. These standards must be respected whether or not a state of emergency has been proclaimed.

Article 2

These standards shall be respected by, and applied to all persons, groups and authorities, irrespective of their legal status and without any adverse discrimination.

Article 3

1. Everyone shall have the right to recognition everywhere as a person before the law. All persons, even if their liberty has been restricted, are entitled to respect for their person, honour and convictions, freedom of thought, conscience and religious practices. They shall in all circumstances be treated humanely,

without any adverse distinction.

2. The following acts are and shall remain prohibited:
    a. violence to the life, health and physical or mental well-being of persons, in particular murder, torture, mutilation, rape, as well as cruel, inhuman or degrading treatment or punishment and other outrages upon personal dignity;
    b. collective punishments against persons and their property;
    c. the taking of hostages;
    d. practising, permitting or tolerating the involuntary disappearance of individuals, including their abduction or unacknowledged detention;
    e. pillage;
    f. deliberate deprivation of access to necessary food, drinking water and medicine;
    g. threats or incitement to commit any of the foregoing acts.

Article 4

1. All persons deprived of their liberty shall be held in recognized places of detention. Accurate information on their detention and whereabouts, including transfers, shall be made promptly available to their family members and counsel or other persons having a legitimate interest in the information.
2. All persons deprived of their liberty shall be allowed to communicate with the outside world including counsel in accordance with reasonable regulations promulgated by the competent authority.
3. The right to an effective remedy, including habeas corpus, shall be guaranteed as a mean to determine the whereabouts or the state of health of persons deprived of their liberty and for identifying the authority ordering or carrying out the deprivation of liberty. Everyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of the detention shall be decided speedily by a court and his or her release ordered if the detention is not lawful.
4. 4. All persons deprived of their liberty shall be treated humanely, provided with adequate food and drinking water, decent accommodation and clothing, and be afforded safeguards as regards health, hygiene, and working and social conditions.

Article 5

1. Attacks against persons not taking part in acts of violence shall be prohibited in all circumstances.
2. Whenever the use of force is unavoidable, it shall be in proportion to the seriousness of the offence or the objective to be achieved.
3. Weapons or other material or methods prohibited in international armed conflicts must not be employed in any circumstances.

Article 6

Acts or threats of violence the primary purpose of foreseeable effect of which is to spread terror among the population are prohibited.

Article 7

1. The displacement of the population or parts thereof shall not be ordered unless their safety or imperative security reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the population may be transferred and received under satisfactory

conditions of shelter, hygiene, health, safety, and nutrition. Persons or groups thus displaced shall be allowed to return to their homes as soon as the conditions which made their displacement imperative have ceased. Every effort shall be made to enable those so displaced who wish to remain together to do so. Families whose members wish to remain together must be allowed to do so. The persons thus displaced shall be free to move around in the territory, subject only to the safety of the persons involved or reasons of imperative security.

2. No persons shall be compelled to leave their own territory.

Article 8

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his or her life.
2. In addition to the guarantees of the inherent right to life, and the prohibition of genocide, in existing human rights and humanitarian instruments, the following provisions shall be respected as a minimum.
3. In countries which have not yet abolished the death penalty, sentences of death shall be carried out only for the most serious crimes. Sentences of death shall not be carried out on pregnant women, mothers of young children or on children under 18 years of age at the time of the commission of the offence.
4. No death sentence shall be carried out before the expiration of at least six months from the notification of the final judgment confirming such death sentence.

Article 9

No sentence shall be passed and no penalty shall be executed, on a person found guilty of an offence without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by the community of nations. In particular:

a. the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him or her, shall provide for a trial within a reasonable time, and shall afford the accused before and during his or her trial all necessary rights and means of defence;
b. no one shall be convicted of an offence except on the basis of individual penal responsibility;
c. anyone charged with an offence is presumed innocent until proved guilty according to law;
d. anyone charged with an offence shall have the right to be tried in his or her presence;
e. no one shall be compelled to testify against himself or herself or to confess guilt;
f. no one shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure;
g. no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under applicable law, at the time when it was committed.

Article 10

Every child has the right to the measures of protection required by his or her condition as a minor and shall be provided with the care and aid the child requires. Children who have not yet attained the age of fifteen years shall not be recruited in or allowed to join armed forces or armed groups or allowed to take part in acts of violence. All efforts shall be made not to allow persons below the age of 18 to take part in acts of violence.

Article 11

If it is considered necessary for imperative reasons of security to subject any person to assigned residence, internment or administrative detention, such decisions shall be subject to a regular procedure prescribed by law affording all the judicial guarantees which are recognized as indispensable by the international community, including the right of appeal or to a periodical review.

Article 12

In every circumstance, the wounded and sick, whether or not they have taken part in acts of violence, shall be protected and treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them on any grounds other than their medical condition.

Article 13

Every possible measure shall be taken, without delay, to search for and collect wounded, sick and missing persons and to protect them against pillage and ill-treatment, to ensure their adequate care; and to search for the dead, prevent their being despoiled or mutilated, and to dispose of them with respect.

Article 14

1. Medical and religious personnel shall be respected and protected and shall be granted all available help for the performance of their duties. They shall not be compelled to carry out tasks which are not compatible with their humanitarian missions.
2. Under no circumstances shall any person be punished for having carried out medical activities compatible with the principles of medical ethics, regardless of the person benefitting therefrom.

Article 15

In situations of internal violence, disturbances, tensions or public emergency, humanitarian organizations shall be granted all the facilities necessary to enable them to carry out their humanitarian activities.

Article 16

In observing these standards, all efforts shall be made to protect the rights of groups, minorities and peoples, including their dignity and identity.

Article 17

The observance of these standards shall not affect the legal status of any authorities, groups, or persons involved in situations of internal violence, disturbances, tensions or public emergency.

Article 18

1. Nothing in the present standards shall be interpreted as restricting or impairing the provisions of any international humanitarian or human rights instrument.
2. No restriction upon or derogation from any of the fundamental rights of human beings recognized or existing in any country by virtue of law, treaties, regulations, custom, or principles of humanity shall be

admitted on the pretext that the present standards do not recognize such rights or that they recognize them to a lesser extent.

B. UN, Minimum Humanitarian Standards

[**Source**: UN Doc. E/CN.4/1998/87 (January 5, 1998). Footnotes omitted.]

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Minimum humanitarian standards

Analytical report of the Secretary-General submitted pursuant to Commission on Human Rights resolution 1997/21

Introduction

1. In its resolution 1997/21 entitled “Minimum humanitarian standards”, the Commission on Human Rights requested the Secretary-General to prepare “an analytical report on the issue of fundamental standards of humanity” for submission at its fifty-fourth session, taking into consideration in particular the issues raised in the report of the International Workshop on Minimum Humanitarian Standards held in Cape Town, South Africa in September 1996 and identifying, *inter alia*, common rules of human rights and humanitarian law that are applicable in all circumstances.

[...]

1. The Commission in resolution 1997/21 also requested the Secretary-General to seek the views of and information from Governments, United Nations bodies, in particular the Office of the United Nations High Commissioner for Refugees (UNHCR), the human rights treaty bodies and intergovernmental organizations, as well as regional organizations and non-governmental organizations. [...] To date, most of the responses received from Governments and intergovernmental organizations have indicated their support, in general terms, for the development of “minimum humanitarian standards” or fundamental standards of humanity, although they have often recommended further consideration of certain issues. The responses received to date have been carefully reviewed and many of the points raised in them are reflected in this report.
2. The Secretary-General was requested to prepare his report in coordination with the International Committee of the Red Cross (ICRC), and their comments and advice are gratefully acknowledged.

I. TERMINOLOGY

1. At the outset, it will assist the discussion if a few points are made regarding the use of particular terms and phrases. The issue under discussion had been given the designation “minimum humanitarian standards”, following from a declaration with that title which was submitted to the Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1991 (see E/CN.4/Sub.2/1991/55) and led to the present discussion. However, the latest Commission resolution refers explicitly to “fundamental

standards of humanity", and this term is to be preferred for a number of reasons. First, the use of the qualifying word "minimum" has been criticized (including at the workshop in Cape Town), and second because the phrase "humanitarian standards" might give the impression that the exercise is solely concerned with international *humanitarian law* (the law regulating armed conflicts), whereas in fact that branch of international law is only one part of the discussion. As originally used, the phrase "humanitarian standards" was intended to include standards of both international human rights and humanitarian law, but it would seem that "standards of humanity" better serves this purpose. Also, in recent years there has been a good deal of discussion concerning *humanitarian* assistance, including criteria to guide the provision and delivery of such assistance. While this is a related point, it is not the main focus of the present discussion and, to avoid confusion, the term "standards of humanity" is therefore preferable.

2. A second issue of terminology concerns the manner in which to describe fighting and violence inside countries. Only "armed conflicts", whether of an international or non-international character, are regulated by international humanitarian law. This law provides some criteria for determining whether violence inside a country amounts to an internal armed conflict so as to come within the scope of the relevant rules. However, there is often disagreement about the application of these criteria, and this can lead to misunderstandings about the use of terms such as "internal armed conflict" or even "internal conflict". To avoid such misunderstandings, this report will generally use the term "internal violence" to describe situations where fighting and conflict, of whatever intensity, is taking place inside countries, and without prejudice to any legal characterization of the fighting for the purposes of applying international humanitarian law.
3. A third issue of terminology concerns the description of groups who have taken up arms against the Government. A number of appellations can be used: terrorist groups, guerrillas, resistance movements, etc., each of the terms carrying different connotations. In this report, the terms "armed group" or "non-State armed group" will be used to describe those who take up arms in a challenge to government authority, leaving aside the question of whether their activities and aims qualify them as "terrorists" or "freedom fighters". The choice of the more neutral term – armed group – is in no way meant to imply any legitimacy for the group or its cause; such groups can, and frequently do, engage in acts of terrorism.

II. BACKGROUND

A. Brief history of the discussion

1. The need for identifying fundamental standards of humanity arises from the observation that, at the present time, it is often situations of internal violence that pose the greatest threat to human dignity and freedom. The truth of this observation is borne out in many countries around the world. The reports prepared by or for United Nations human rights bodies repeatedly draw attention to the link between human rights abuses and ongoing violence and confrontation between armed groups and government forces, or simply between different armed groups. Although such situations frequently lead to the most gross human rights abuses, there are disagreements and doubts regarding the applicable norms of both human rights and humanitarian law. The rules of international humanitarian law are different depending on the nature and intensity of the conflict. There are disagreements concerning the point at which internal violence reaches a level where the humanitarian law rules regulating internal armed conflicts become operable. Even when these rules manifestly do apply, it is generally acknowledged that, in

contrast to the rules applying in international armed conflicts, they provide only the bare minimum of protection.

2. Further, until now, the rules of international human rights law have generally been interpreted as only creating legal obligations for Governments, whereas in situations of internal violence it is also important to address the behaviour of non-State armed groups. It is also argued that some human rights norms lack the specificity required to be effective in situations of violent conflict. Finally, concern has been expressed about the possibilities for Governments to derogate from certain obligations under human rights law in these situations.
3. The discrepancy between the scale of the abuses perpetrated in situations of internal violence, and the apparent lack of clear rules, has been the inspiration for efforts to draw up “minimum humanitarian standards” or fundamental standards of humanity. The most notable effort in this regard has been the elaboration, by a group of non-governmental experts, of the Declaration on Minimum Humanitarian Standards in Turku/Åbo, Finland, in 1990 [See Part A]. [...]
4. This document was considered by the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its forty-third session in 1991. At its forty-sixth session in 1994 the Sub-Commission decided to transmit the
document to the Commission on Human Rights “with a view to its further elaboration and eventual adoption” (resolution 1994/26). In 1995 the Commission on Human Rights, in resolution 1995/29, taking note of the Sub-Commission’s resolution, recognized the need to address principles applicable to situations of internal and related violence, disturbance, tension and public emergency in a manner consistent with international law and the Charter of the United Nations and requested that the Declaration on Minimum Humanitarian Standards be sent to Governments and intergovernmental and non-governmental organizations for their comments.
5. In considering the issue at its forty-second session in 1996, the Commission on Human Rights did not make a specific reference to any particular document, but again recognized the need to address principles applicable to situations of
internal violence. It also welcomed the offer by the Nordic countries, in cooperation with the ICRC, to organize a workshop to consider the issue (resolution 1996/26). As noted, this workshop was held in Cape Town, South Africa, in September 1996, and a report of the workshop [...] was made available to the Commission on Human Rights at its last session.
6. The main issue for consideration therefore is the necessity and desirability of identifying principles or standards for the better protection of the human person in situations of internal violence. Bearing in mind the terrible toll of atrocities and suffering associated with such situations in recent years, the opportunity to address this topic is both welcome and timely.

B. A reminder

1.
2. Before proceeding, it is worth recalling that in many situations war itself, or the recourse to violence, is a negation of human rights. As stated in the preamble to the United Nations Declaration on the Right of Peoples to Peace (General Assembly resolution 39/11 of 12 November 1984, annex)

“[The General Assembly,]

"*Convinced* that life without war serves as the primary international prerequisite for the material well-being, development and progress of countries, and for the full implementation of the rights and fundamental human freedoms proclaimed by the United Nations ..."

1. Measures aimed at reducing human rights abuses in situations of internal violence must not detract from efforts to prevent or end such violence. Neither must they lend weight to the argument of despair that such efforts are doomed to failure. The importance of addressing the root causes of violence and conflict must always be at the centre of United Nations efforts; in this regard, special emphasis needs to be placed on ensuring the protection of minorities, of strengthening democracy and democratic institutions, of overcoming obstacles to the realization of the right to development, and of securing respect for human rights generally.
2. This report is firmly grounded in the understanding that human rights are interdependent and interrelated. Efforts to minimize human rights abuses in situations of internal violence depend on achieving a greater awareness of and respect for all human rights. Preventing the use of starvation of civilians as a method of warfare will be easier if there is an acceptance of the right to food, and an understanding of the obligations associated with that right. At the same time, while there are no "clean" wars, recent history shows us that conflicts fought with a minimum of violence, and with greater attention to fundamental standards of humanity, lend themselves more readily to a peaceful solution and provide the conditions in which reconciliation and justice can prevail.

III. HUMAN RIGHTS ABUSES IN SITUATIONS OF INTERNAL VIOLENCE

A. Common characteristics

1. At the outset, it seems necessary to make some comments concerning the characteristics of situations of internal violence in the post-cold war world. In recent years, several reports issued to or by United Nations bodies and specialized agencies have considered the problems posed by such situations. For the purposes of this report, a number of relevant observations emerge.
2. The decrease in the number of international armed conflicts has been offset by an increase in the number of civil wars and other situations of violence inside countries. Quantifying the scale of the problem is difficult as there is no firm agreement on the factors to apply in deciding which are the most serious situations. If the factor of number of deaths is used, then, according to some researchers, in 1996 there were 19 situations of internal violence in which at least 1,000 people were killed ("high intensity conflicts") and which, cumulatively (since their beginning, in some cases many years ago), had led to between 6.5 and 8.4 million deaths. If one includes situations of internal violence which, in 1996, had de-escalated or ended, another 2 million deaths could be added. In addition, in 1996 there were approximately 40 other internal situations causing between 100 and 1,000 deaths ("low intensity conflicts"), which cumulatively have also led to thousands of deaths. Of course, the number of conflict-related deaths is but a small part of the suffering and devastation found in such situations. Whatever the number, there is no doubting the scale of the problem.
3. These situations are characterized by the existence of an armed challenge to the Government, in the form of one or more groups taking up arms in pursuit of, broadly speaking, political objectives. These objectives might include demands for more autonomy or even secession for particular ethnic, religious or linguistic minorities within the State concerned, overthrowing the existing Government, rejection of

the existing constitutional order, or challenges to the territorial integrity of the State. In other situations, where an existing Government collapses or is unable or unwilling to intervene, armed groups fight among themselves; for example, for the right to establish a new Government or to ensure the supremacy or continuation of their own particular political programme.

4. The degree of organization of these armed groups, their size, sophistication, and the extent to which they exercise actual control over territory and population vary from one situation to the next. At one extreme, such groups might resemble *de facto* Governments, with control over territory and population and establishing and/or maintaining public services such as schools, hospitals, forces of law and order, etc. At the other extreme, some armed groups will operate only sporadically, or in an entirely clandestine manner, and exercise no direct control over territory. Some armed groups operate under clear lines of command and control; others are loosely organized and various units might not be under effective central command.
5. In many situations of internal violence there will be a breakdown in the operation of public institutions. Schools will be closed, local government unable to function, and police and judicial institutions may suffer. Such breakdowns might be limited to particular areas of the country, or apply more generally. The functions of government often become increasingly militarized, with the armed forces assuming civilian police functions and military courts trying civilians; often the military's power is beyond the reach of civilian control. Depending on the degree and scope of the violence, there is also likely to be an impact on the livelihood of the civilian population. This impact often is felt most in rural areas (where the fighting usually takes place); farmers and others dependent on the land are particularly vulnerable.
6. There is no doubt that the ready availability of weapons is a predominant characteristic of these situations. Both government forces and armed groups appear to be well supplied with light weaponry. While the devastating impact of anti-personnel landmines has received a good deal of publicity and significant steps are now being taken to ban this weapon, a majority of civilian casualties result from the use of other weapons – such as assault rifles, light artillery (e.g., mortars), and fragmentation bombs or grenades – the indiscriminate use of which attracts little international condemnation.
7. A final common element in these situations is the link between criminal and "political" violence. While some armed groups might limit themselves to military activities, others, though allegedly contesting political power, are more reminiscent of criminal gangs, engaging in theft, extortion and banditry on a mass scale. Government forces too engage in such activities, the collapse in civil institutions creating a climate of general lawlessness in which preying on the civilian population is common and corruption rampant. Banditry and extortion are used to fund and supply the continuation of the fighting.

B. Patterns of abuse

1. In her report Ms. Machel drew attention to the "shocking" statistic of over 2 million children killed in conflicts in the last decade, the vast majority of them in situations of internal violence and conflict. The conclusion to be drawn, according to the report, is that

"... more and more of the world is being sucked into a desolate moral vacuum. This is a space devoid of the most basic human values; a space in which children are slaughtered, raped and maimed; a space in which children are exploited as soldiers; a space in which children are starved and exposed to extreme brutality. Such unregulated terror and violence speak of deliberate victimization. There are few further depths to which humanity can sink" (A/51/306, para. 3).

1. While children are the most vulnerable, other groups too are at risk of experiencing this “unregulated terror and violence”. These include women, minority ethnic populations, refugees and the displaced, and those detained in connection with the violence; indeed, the civilian population generally is at risk.
2. While the statistic of 2 million dead children speaks volumes about the scale of the abuse, some further comments should be made about the nature and type of the most common human rights abuses in these situations. A comprehensive survey is beyond the scope of the present report. But again, some general observations may be made.
3. The most serious abuses involve arbitrary deprivation of the right to life. Civilians are directly or indiscriminately attacked and killed by armed forces and armed groups. Massacres of civilians are common. Often civilian deaths are the result of the indiscriminate use of weapons. Captured combatants are summarily executed, as are non-combatants whose religious or ethnic identity, or political opinion, make them suspect in the eyes of their captors. Others die from starvation or disease, when relief supplies are arbitrarily withheld from them. Those exercising their right to peaceful protest are killed when police or security forces respond with excessive force.
4. The practice of torture, or cruel, inhuman or degrading treatment or punishment, is frequently related to internal violence. Those detained in connection with the violence are tortured to extract confessions, to obtain information about opposition groups, or to brutalize or intimidate them. Captured combatants, members of political organizations who speak out, villagers and peasants in areas where fighting is taking place and suspected sympathizers of the opposing party are all at risk of being tortured. New recruits into armed forces and armed groups are beaten and ill-treated to force them into obedience. Villagers are forced to act as labourers for armed forces and armed groups, often under appalling conditions.
5. Conflicts tend to lead to displacement as people flee affected areas but deliberate interference with freedom of movement is also common. People are rounded up and moved out of their home areas against their will, and without any justification. This is done to create “security” zones, to deprive armed groups of indirect civilian support or as a means of punishing or terrorizing minority ethnic, linguistic or religious populations viewed as hostile, or to expel such populations from particular territories. Those who flee or who are expelled are denied access to safety – in their own or other countries – or are forced back to unsafe areas. When it is safe to return, they are often prevented from doing so and condemned to a life in exile. Also, the displaced are often restricted to camps, in circumstances akin to internment or detention.
6. Children’s vulnerability means they are at particular risk of suffering abuses and the attack on children’s human rights in internal conflicts was also highlighted by Ms. Machel. The impact of the violence on rights associated with their education, health, and general well-being and development can be enormous. If orphaned or separated (often forcibly) from their families as a result of the fighting, these problems are exacerbated. In addition, children are recruited into the armed forces and are sent into combat, are used as a ready supply of forced labour for armed forces, and are subject to sexual abuse.
7. War is for the most part waged by men – this fact has enormous implications for the protection of women’s human rights in situations of internal violence. Women and girls are raped by soldiers and members of armed groups and are abducted into forced prostitution. A majority of civilians caught up in the fighting are often women and children, including those displaced, and they therefore suffer a disproportionate share of the abuses directed at the civilian population.

8. Rights associated with arbitrary deprivation of liberty and due process are also commonly abused. Hundreds or even thousands of people might be detained in connection with the fighting; in many cases suspected members of armed groups or their supporters are detained for months and years without being charged or tried. If trials do take place, fundamental fair trial guarantees are often ignored; military courts are used to try and sentence civilians. Armed groups take people hostage, and hold “trials” of suspected political opponents or “traitors”. Both government forces and armed groups take people into custody but deny they are holding them – tens of thousands of people have disappeared or gone missing in this way in recent years. Usually, they have been killed and their bodies secretly disposed of.
9. Finally, there is a widespread disregard for the protections owed to civilians. Civilian property – homes, belongings, crops, livestock – is wantonly destroyed or pillaged. Hospitals and schools are deliberately destroyed, as are religious and cultural buildings. Civilians are denied access to relief supplies, such as food and medicine, or the distribution of such supplies is subject to unwarranted interference. The protections owed to medical and religious personnel are ignored. Recognized humanitarian agencies are prevented from operating, their staff are threatened and attacked and their equipment is stolen or destroyed.
10. A recurring theme that applies to all of these human rights abuses is that, in the overwhelming majority of cases, the victims, or their families, find no justice. Those who kill, torture, rape, or attack them do so with virtual impunity, apparently confident that they will never be called to account for their misdeeds.
11. Also common to all these abuses is the difficulty, in some situations, of attributing responsibility for the violence. The existence of a situation of internal violence usually means that at least two – and often more – opposing forces or groups have resorted to the use of force; the hostility and distrust between them gives ample scope for the dissemination of misinformation and propaganda. Allegations that one side might commit abuses in such a manner as to make the other side appear responsible cannot always be dismissed. When abuses take place in remote areas, identifying the perpetrators can be very difficult. These difficulties are further increased when the authorities place restrictions on the free flow of information and the operation of news media, including denying journalists access to conflict zones. Journalists are also threatened and killed – another means of preventing disclosure of information on abuses. United Nations investigators and human rights monitors are also denied access to places where abuses are alleged to have taken place.
12. It should be emphasized that the above is just a general overview of the human rights abuses common in situations of internal violence, and of some of the most relevant characteristics of these situations. It is by no means an exhaustive survey. It is interesting to note that a good deal of information, including from United Nations sources, is available regarding these issues for example, in the reports of country and thematic rapporteurs and working groups of the Commission on Human Rights.
13. It might be useful, within the framework of further study, to collect information from existing sources on types of human rights abuse in situations of internal violence – including abuses committed by armed groups. The purpose would be to expand considerably on the typology set out above, and therefore gain a fuller picture of the human rights abuses that we are aiming to prevent, and the context in which they take place.

IV. OUTLINE OF THE ISSUES INVOLVED

1. Throughout the consideration by the United Nations of the issues of human rights bodies addressing principles applicable to situations of internal violence, a number of questions have repeatedly emerged.

This section aims to organize and set out very briefly these questions, and the issues they raise. The following sections (V-IX) will then address the questions in more detail.

What are the problems regarding the scope of existing standards?

1. As indicated briefly above, the initiative to identify fundamental standards of humanity is based on the argument that existing standards, of both human rights and humanitarian law, do not adequately address situations of internal violence. The issue for consideration therefore is the extent to which this is the case, and to identify with some precision the problems concerning existing norms.
2. As regards human rights law, the main issues concern the possibilities for States to derogate from some of their commitments during situations of internal violence, and the extent to which, if at all, armed groups can be held accountable under international human rights law. It is further argued that some human rights guarantees lack the specificity required to be applied effectively in situations where fighting is taking place.
3. As regards international humanitarian law, the main issue concerns the difficulties in determining in which situations the rules regulating non-international armed conflicts become operable, and the fact that some situations of internal violence fall outside of existing treaty law. In addition, there is the question of the adequacy of the existing rules even in cases where the situation meets the thresholds set out in international humanitarian law. Further, there is also the need to identify customary rules of international humanitarian law.

What would be the advantages of identifying "fundamental standards of humanity", and are there significant disadvantages?

1. Obviously, if there are significant problems regarding the scope of existing standards, then in principle finding a means to extend their scope is desirable. But, the question must involve an assessment of how, in concrete terms, a more precise statement about norms of conduct would contribute to alleviating the plight of those affected by such situations.
2. Regarding the possible disadvantages, the key question is the relationship of a statement of fundamental standards of humanity to existing international law. Would such a statement undermine or in any way detract from existing standards? [...]

What would be the nature of a statement of fundamental standards of humanity?

1. Finally, assuming the desirability of identifying and setting out fundamental standards of humanity, the question arises of the means by which this should be done.

V. INTERNATIONAL HUMAN RIGHTS LAW AND SITUATIONS OF INTERNAL VIOLENCE

1. There exists an impressive body of international law concerning the protection of human rights and fundamental freedoms. Since the advent of the United Nations, covenants, conventions and declarations, as well as resolutions adopted by competent United Nations organs, have elaborated in considerable detail the scope of human rights protection. While further standard-setting in the field of human rights protection continues, and will remain necessary to keep pace with a changing world, the breadth of the existing regulation is impressive.

2. Complementing the Universal Declaration of Human Rights, there are the two International Covenants, adopted in 1966, on Civil and Political Rights and on Economic, Social and Cultural Rights, the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and the Convention on the Rights of the Child (1989). In addition, there are the Convention and Protocol relating to the Status of Refugees (1951 and 1967 respectively), the many conventions with human rights provisions adopted under the auspices of the International Labour Organization and several non-treaty declarations and other resolutions adopted by the General Assembly. Among the latter are the Declaration on the Right to Development (1986), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (1989) and the Declaration on the Protection of All Persons from Enforced Disappearance (1992). These are just some of the many human rights standards developed by the United Nations and do not include any of the standards adopted at a regional level.
3. Given the scope of existing standards, the argument that there is a gap in the protection provided by international human rights law needs to be carefully examined. After all, the main human rights instruments (the Universal Declaration of Human Rights and the two International Covenants) taken together guarantee protection, at least in a general form, for the most important human rights and fundamental freedoms. This includes those rights of most immediate relevance to individuals in situations of internal violence. The two International Covenants have been ratified by a solid majority of Member States, and there is no doubt that some of their provisions have become norms of customary international law binding on all States. It is widely accepted that the Universal Declaration of Human Rights, though it is not a treaty per se, creates obligations on all States Members of the United Nations. Most importantly, as the Universal Declaration states, human rights are “inalienable”, individuals are “born free and equal in dignity and rights” – it follows that we possess these rights regardless of whether the countries we live in are at war or at peace.
4. However, the argument about the inadequacies of human rights law is more complex. It rests essentially on three points: the possibility of derogation, the position of non-State armed groups vis-à-vis human rights obligations, and the lack of specificity of existing standards.

A. Derogation

1. Some human rights treaties allow States, in exceptional circumstances, to take measures derogating from their obligations with regard to certain human rights commitments they have undertaken. It is widely understood that a situation of internal violence *might* be of such an exceptional nature as to justify derogation. The International Covenant on Civil and Political Rights (ICCPR) provides, in article 4 (1), that

“In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve

discrimination solely on the ground of race, colour, sex, language, religion or social origin."

1. A similar provision can be found in two regional human rights treaties, the American Convention on Human Rights (article 27) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (article 15).
2. However, article 4 (2) of the ICCPR provides that States may not derogate from their obligations regarding several of the rights protected in the Covenant, including the right to life, the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, the right not to be held in slavery or servitude, the right not to be imprisoned for failure to perform a contractual obligation, the right not to be subject to retroactive penal measures, the right to recognition as a person before the law, and the right to freedom of thought, conscience and religion. Similar so-called non-derogable rights can be found in the two regional conventions mentioned above.
3. Significantly, among others, rights related to freedom of movement, equality, protection of minorities, fair trial, freedom of expression and protection from arbitrary detention or imprisonment are rights subject to derogation under these treaties. This means that, if a situation of internal violence justifies invoking the derogation clauses, there is the possibility that States may legitimately restrict the exercise of such rights.
4. On the other hand, the possibility that a situation of fighting inside a country might allow for the legitimate restriction of certain rights does not necessarily support the conclusion that there is a gap in the protection offered by international law. First, it must be emphasized that rights which are subject to derogation are not automatically thereby subject to outright suspension at the State's discretion. Article 4 of the ICCPR includes a number of qualifications which place concrete limits on a State's use of the derogation clauses. These include the requirements that no measures taken involve discrimination solely on the ground of race, colour, sex, language, religion or social origin; and that each of the specific measures taken to restrict particular rights are only "to the extent strictly required by the exigencies of the situation". The latter stipulation is particularly important as it requires that the restriction must be proportional. A state of emergency might justify some restrictions on freedom of assembly and movement (for example, a nighttime curfew), but not necessarily any restriction. Restrictions which are sweeping or general in nature will be inherently suspect. There are other requirements, such as the temporary nature of derogation, and its basis in law, which also limit a State's discretion.
5. Second, derogations must not be inconsistent with a State's other obligations under international law. Some human rights treaties, including the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Elimination of All Forms of Discrimination against Women contain no derogation clauses, and many States that have ratified the ICCPR are also parties to these treaties.
6. Third, only the most serious internal situations justify invoking the derogation clauses. The mere existence of violence inside a country does not ipso facto justify derogation. The phrase "threatens the life of the nation" in article 4 clearly envisages a truly exceptional situation.
7. Taken together, these constraints on the application of derogation clauses appear to provide a solid basis in international law for ensuring these clauses are not abused. In this regard it is interesting to note the conclusions of expert meetings which have developed in some detail guidelines for applying derogation clauses in such a manner as to ensure the greatest possible protection for human rights

consistent with a State's legitimate need to respond to an exceptional situation. The use of such guidelines, firmly based in the treaty law, seems a promising means of overcoming some of the problems posed by derogation clauses in situations of internal violence.

8. In sum, it is not clear that the derogation argument provides, on its own, a clear justification for developing fundamental standards of humanity. That is, even though there is no doubt that states of emergency do create serious problems for the protection of human rights, it is not clear that such problems arise primarily from the possibility for States to derogate from certain human rights obligations. It would seem that further analysis would be needed to identify the extent to which the human rights abuses which are most prevalent in situations of internal violence can be attributed to the proper and faithful application of derogation clauses set out in international treaties.

B. Non-State armed groups and human rights law

1. A second problem concerning the adequacy of human rights law arises in regard to the activities of non-State actors. It is clear that measures taken by actors other than States can have a negative impact on the enjoyment of human rights and fundamental freedoms. In particular, armed groups, operating at different levels of sophistication and organization, are often responsible for the most grave human rights abuses. Yet these groups are not, strictly speaking, legally bound to respect the provisions of international human rights treaties which are instruments adopted by States and can only be formally acceded to or ratified by States. The supervisory mechanisms established by these treaties are not empowered to monitor or take action on reports on the activities of armed groups.
2. In situations where international humanitarian law applies (discussed below), armed groups are bound by its provisions. However, in situations where that law does not apply the *international legal* accountability of such groups for human rights abuses is unclear (although clearly such acts should be penalized under domestic criminal law). There are different schools of opinion regarding the proper standard of accountability. Some Governments argue that armed groups can commit human rights violations, and should be held accountable under international human rights law. Other Governments maintain that, while the abuses of armed groups are deserving of condemnation, they are not properly speaking human rights violations since the legal obligation which is violated is one that is only binding on Governments. This divergence of views is found also among scholars and commentators.
3. The modern concept of human rights is grounded in an understanding that these rights are held by individuals vis-à-vis the State and create legal obligations on the State of both a negative and positive nature to ensure the full enjoyment of those rights. Human rights protection developed as a means of checking the exercise of State power, and, particularly with regard to economic, social and cultural rights, also as legitimate demands for State intervention to ensure rights were respected (for example, as regards the right to education or the right to health). Later, with the recognition of the right to development, obligations for implementation were placed on States acting alone and in cooperation with each other.
4. And yet, this conception of human rights (while dominant, and rightly so given the scale of violations of human rights by Governments) has never provided a fully adequate description of the scope of international human rights concern. The Universal Declaration of Human Rights, as well as the two International Covenants, in their preamble paragraphs recognize duties on individuals to promote respect for human rights. The two Covenants include this statement in their preambles:

"*Realizing* that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant"

Such references clearly indicate the responsibility of individuals to promote human rights, although it is not clear whether that includes legal obligations regarding human rights violations. Early efforts to abolish the slave trade, though not explicitly framed in the language of human rights, were directed at suppressing the practice of slavery in all its forms including when the enslavement of others was carried out by non-State actors. The very first United Nations-sponsored human rights treaty, the Convention on the Prevention and Punishment of the Crime of Genocide, clearly applied to "constitutionally responsible rulers, public officials or *private individuals*" (emphasis added). More recently, resolutions adopted on "Human rights and terrorism" in the Sub-Commission and Commission on Human Rights have expressed concern about the "gross violations of human rights perpetrated by terrorist groups".

1. Also relevant is the fact that certain acts committed by individuals can attract international criminal responsibility regardless of whether the individual acts on behalf of a State or not. These include acts which violate human rights law. The crime of genocide, noted above, is an example, but it is just one of several crimes against humanity which can be committed by non-State agents. [...] The discussion on the establishment of an International Criminal Court, due to be finalized at a diplomatic conference of plenipotentiaries in Rome in July 1998, includes the issue of identifying those crimes, including crimes against humanity and war crimes, which will be with in the competence of the court. The results of the diplomatic conference will therefore be of particular interest and relevance to this question of determining the accountability of members of armed groups for violations of human rights law.
2. Clearly, given the divergent views on this issue, and its complexity, further study is needed. It seems beyond doubt that when an armed group kills civilians, arbitrarily expels people from their homes, or otherwise engages in acts of terror or indiscriminate violence, it raises an issue of potential international concern. This will be especially true in countries where the Government has lost the ability to apprehend and punish those who commit such acts. But very serious consequences could follow from a rushed effort to address such acts through the vehicle of existing international human rights law, not least that it might serve to legitimize actions taken against members of such groups in a manner that violates human rights. The development of international human rights law as a means of holding Governments accountable to a common standard has been one of the major achievements of the United Nations. The challenge is to sustain that achievement and at the same time ensure that our conception of human rights remains relevant to the world around us. [...]

C. Lack of specificity of existing human rights rules

1. A third possible problem with the application of existing human rights standards to situations of internal violence concerns the lack of specificity of some of the most relevant rights and protections. One of the great advantages of international humanitarian law is that its provisions speak in a direct and detailed manner to the abuses associated with conflict, offering potential victims relatively clear guidance regarding their rights in specific circumstances. Just as importantly, the duties and responsibilities of

armed forces are also spelt out in some detail. In contrast, many human rights guarantees which are of critical importance in situations of internal violence are stated in rather general terms. [...]

[...]

VI. INTERNATIONAL HUMANITARIAN LAW AND SITUATIONS OF INTERNAL VIOLENCE

1. International humanitarian law covers a wide range of international treaties and agreements, some dating back over a hundred years. The most important instruments are the Four Geneva Conventions for the protection of victims of war of 1949, and their two Additional Protocols. [...]
2. As indicated above, the argument concerning the problems of applying international humanitarian law to situations of internal violence rests essentially on two points: first, that there are difficulties in determining in which circumstances the treaty rules regulating internal conflicts become operable, and second, that even when these rules do apply they only provide a minimum of protection. In addition, neither argument can be properly examined without also considering the scope of customary law.
3. Before examining these issues, however, one important caveat should be made. Whatever problems there might be with the scope of the existing rules, it is always important to ask ourselves whether the continuing abuses result from legal ambiguities or rather reflect other realities. That is, it would be unwise and unhelpful to focus too heavily on examining the inadequacies of the existing law if that leads to the assumption that addressing these inadequacies will in itself be sufficient. The following discussion should be read with this in mind, and it is a point returned to in the concluding paragraphs of this report.

A. Scope of application of international humanitarian law to situations of internal violence and conflict

1. When the 1949 Geneva Conventions were drafted and adopted, it was possible to spell out in considerable detail rules regarding the care of the wounded, sick and shipwrecked, the treatment of prisoners of war, and even the protection of civilians in occupied territories. But these detailed rules were only applicable in wars between States. As regards “non-international armed conflicts”, only one article could be agreed. [...]
2. The importance of common article 3 should not be underestimated. It sets out in straightforward terms a number of important protections that all parties to a conflict must respect, and applies to any armed conflict “not of an international character”. It is now considered to be part of customary international law. However, common article 3 has two shortcomings. First, it provides only a minimum of protection; for example, it is silent on issues relating to freedom of movement, does not explicitly prohibit rape, and does not explicitly address matters relating to the methods and means of warfare. Second, while common article 3 does not define “armed conflicts not of an international character”, in practice this wording has left room for Governments to contest its applicability to situations of internal violence inside their countries.
3. However, efforts to improve upon the shortcomings of common article 3 have met with only limited success. The most significant of these efforts grew out of a resolution adopted at the International Conference on Human Rights, held in Tehran in 1968. Resolution XXIII specifically requested the General Assembly to invite the Secretary-General to study, *inter alia*:

“The need for additional humanitarian international conventions or for possible revision of existing

Conventions to ensure the better protection of civilians, prisoners and combatants in *all* armed conflicts ...". (emphasis added)

This request was based on the consideration that the 1949 Geneva Conventions were "not sufficiently broad in scope to cover all armed conflicts". The studies subsequently prepared by the Secretary-General, in close consultation with the ICRC, recommended that, among other things, efforts be undertaken to considerably expand the scope of protection in internal armed conflicts. [...]

1. Protocol II sets out numerous important guarantees for the protection of those affected by non-international armed conflicts. It expands the protection offered by common article 3 to include prohibitions on collective punishments, violence to health and physical or mental well-being, acts of terrorism, rape, enforced prostitution and indecent assault, slavery and pillage. In addition, it includes provisions for the protection of children, for the protection and rights of those detained for reasons related to the conflict, and provides fair trial guarantees for those prosecuted for criminal offences related to the conflict. There are also articles dealing with the protection and care of the wounded, sick and shipwrecked and the protection of medical and religious personnel. Protocol II also prohibits attacks on the civilian population, the use of starvation as a method of war, and the arbitrary displacement of the civilian population.
2. The protections offered by Protocol II are a considerable improvement on common article 3. However, measured against the rules for inter-State wars, they are still quite basic. The most serious omissions concern the many specific protections for civilians against the effects of hostilities found in Protocol I. For example, Protocol I prohibits direct *and* indiscriminate attacks on civilians, including providing examples of specific types of prohibited indiscriminate attacks; it places fairly detailed obligations on armed forces regarding precautions to be taken to ensure the protection of the civilian population and civilian objects; and it establishes rules regarding non-defended localities and demilitarized zones. Protocol II provides only a few general rules on these matters.
3. However, the bigger difficulty with Protocol II is that the protections it offers only apply in internal conflicts meeting a certain threshold of intensity and nature. Under article 1 (1), the Protocol applies to armed conflicts:

"... which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol."

And article 1 (2) specifically excludes from the scope of the Protocol:

"... situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts."

1. This two-fold test would appear to limit the application of Protocol II to situations at or near the level of a full-scale civil war, and certainly few Governments are prepared to admit the application of the Protocol

to situations of lesser intensity. Since neither the Protocol nor any other agreement allows for an impartial outside body to decide on whether the criteria are met to apply the Protocol, it is largely left to the goodwill of the Government concerned. This goodwill is often lacking – admitting the application of the Protocol is seen as conferring international legitimacy on the opposition forces (even though such an interpretation is specifically ruled out by another provision of the Protocol), and/or an implicit admission on the Government's part of its lack of effective control in the country.

2. The result is that there are many situations of internal violence – including ones leading to thousands of deaths – where there are no clear treaty rules in place to regulate important aspects of the behaviour of the armed forces and armed groups involved. It is revealing to note that there are occasions where the Security Council has determined that an internal situation amounts to a threat to international peace and security (so as to initiate action under the Charter), but where it is unclear as to whether Protocol II would apply.
3. Clearly, from the point of view of the actual or potential victims, this is an unsatisfactory state of affairs. Civilians and civilian objects should be clearly protected against direct and indiscriminate attack in all circumstances. Weapons or methods of warfare the use of which is prohibited in international armed conflicts should also generally be prohibited in situations of internal violence and conflict. Likewise, obligations on armed forces to take precautions in attack so as to reduce the risk of civilian casualties, and detailed rules regarding facilitating and protecting the work of humanitarian agencies providing relief to the civilian population should apply regardless of the nature or scale of the conflict. It seems illogical, and indeed morally indefensible, to suggest that armed forces are free to engage in behaviour against citizens of their own country which would be outlawed were they involved in military operations abroad. Likewise, why should armed groups be held internationally accountable for arbitrarily expelling people from their homes, for example, only when the conflict they are engaged in meets the high threshold established in Protocol II? [...]
4. The key question [...] is whether it is feasible to further develop the rules regulating internal violence in such a way as to ensure protection to all who need it whenever they need it. Given past difficulties, it would seem unrealistic to assume that the problems can be overcome by redrafting or updating existing treaties. Moreover, in this regard it is important to point out the importance of customary rules of international humanitarian law rules separate from treaty law and which are of cardinal importance when it comes to overcoming the problems of applying international humanitarian law in situations of internal violence. As discussed in the next section, there are a number of developments regarding the identification of customary rules which could assist in identifying fundamental standards of humanity.

B. Customary international humanitarian law

1. The above analysis has been restricted to existing rules found in international treaties. It needs to be stressed that separate from treaty rules, internal armed conflicts are still regulated by the rules of customary international law. As far back as 1907, States have seen fit when drafting international agreements concerning the law of war to explicitly indicate that in situations not covered by treaty rules, both combatants and civilians:

"... 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 the public conscience."

This clause, known as the Martens clause, is found also in the Preamble to Protocol II:

"*Recalling* that, in cases not covered by the law in force, the human person remains under the protection of the principles of humanity and the dictates of the public conscience."

1. Like common article 3, the importance of the Martens clause should not be underestimated. It shows a concrete recognition and acceptance by States that rules of customary international law above and beyond existing treaty rules can apply to fighting inside countries. To date, the problem has been in determining, both in general and as regards any specific case, what is prohibited by the "principles of humanity and the dictates of the public conscience". Does this mean, for example, that weapons the use of which is prohibited in international conflicts cannot generally be used in internal conflicts? Does it mean that prohibitions on arbitrary displacement and on the use of starvation as a method of war apply at all times, and not just in internal conflicts meeting the high threshold of Protocol II? Or does it also mean that indiscriminate attacks are prohibited at all times and not just in international conflicts? [...]

VII. ADVANTAGES AND DISADVANTAGES OF IDENTIFYING FUNDAMENTAL STANDARDS OF HUMANITY

1. The question of weighing the desirability of a statement of fundamental standards of humanity turns on a full analysis of whether existing standards are sufficient. As set out above, there are some problems with the scope and application of existing law, but more analysis is needed to identify precisely where further elaboration and clarification are needed, and to see how developments elsewhere assist in that regard.
2. Separate from the legal point, however, a key issue is the more practical point as to the impact a statement of fundamental standards of humanity would have on actually reducing or preventing abuses. In other words, such a statement should not be viewed as an end in itself.
3. Insofar as there is confusion about the application of existing rules, a statement of fundamental standards of humanity would provide a useful reference for those advocating greater respect for human rights in situations of internal violence. This applies especially to those engaged in education and training programmes with members of armed forces. It is also likely that a statement of fundamental standards of humanity would be useful to the work of humanitarian workers involved in situations of internal violence.
4. As regards education or training programmes, the view has been expressed that a statement of fundamental standards of humanity would be an extremely useful document for explaining the basic principles of protecting human rights in situations of internal violence. The idea is that if this statement set out principles in a simple and straightforward manner, it would facilitate the process of making these principles known, rather than trying to explain all the complexities of existing law. This point might be of particular relevance as regards seeking to influence the behaviour of armed groups.
5. However, to ensure the rules are not only known but also respected is the key challenge. It seems likely that a statement of principles would depend on existing bodies for its implementation. [...]
6. The potential disadvantages of identifying fundamental standards of humanity centre on the fear that a statement of such standards might undermine existing international standards. This fear is based on a number of factors. In particular, because the original proposal involved identifying a set of minimum standards there was the possibility that, by implication, rights not included would be somehow

diminished. Also, there is always the risk that when any new text is agreed upon it might fall below or somehow undermine existing rules. On the other hand, it is possible to guard against such results or interpretations through including specific clauses in the new text, as has been done in numerous human rights instruments. Also, there are other examples where the development of codes of conduct or statements of principles have been agreed to which do not undermine, but rather support, treaty rules. If work does proceed on identifying fundamental standards of humanity, there will be a need to ensure it does not pose a risk to existing treaty law. [...]

VIII. WHAT ARE THE FUNDAMENTAL STANDARDS OF HUMANITY?

[...]

1. [...] [T]o recognize the complexity of the task is not to cast doubt on its usefulness. Certainly, developing a compilation of existing norms, whether treaty based or customary, that apply in situations of internal violence would be a worthwhile undertaking. It would be the best means of reaching definitive conclusions on the adequacy of the existing standards. But, as indicated by the discussion above, given relevant ongoing developments in both human rights law (as regards the elaboration of crimes against humanity) and international humanitarian law (as regards the identification of customary rules and the international criminalization of some acts), it would seem that coming up with a conclusive and authoritative list at the present time would be premature. Still, a number of points can be made.
2. First, it is clear that to effectively address human rights abuses in situations of internal violence, at a minimum standard dealing with the abuses set out in section II.B would need to be included, namely: deprivation of the right to life; torture and cruel, inhuman or degrading treatment; freedom of movement; the rights of the child; women's human rights; arbitrary deprivation of liberty and due process; and protection of the civilian population. Also, the standards would need to be stated in a way that was specific enough to be meaningful in actual situations, and yet at the same time be clear and understandable.
3. Second, the need to find rules *common* to both branches of relevant law points to one of the most interesting aspects of the whole problem – namely, the need, where appropriate, to consider a fusion of the rules. For too long, these two branches of law have operated in distinct spheres, even though both take as their starting point concern for human dignity. Of course, in some areas there are good reasons to maintain the distinctness – particularly as regards the rules regulating international armed conflicts, or internal armed conflicts of the nature of a civil war. But in situations of internal violence where there is considerable overlap and complementarity – this distinctness can be counter-productive. One must be careful not to muddle existing mandates, or to undermine existing rules, but within these constraints there is still considerable scope for building a common framework of protection.

IX. NATURE OF A STATEMENT OF FUNDAMENTAL STANDARDS OF HUMANITY

1. This report has left open the question of the form an eventual statement of fundamental standards of humanity might take. The Sub-Commission resolution in 1994 which forwarded the Turku/Åbo Declaration on Minimum Humanitarian Standards to the Commission on Human Rights recommended its "... further elaboration and eventual adoption". To date, the resolutions adopted by the Commission have only recognized "the desirability of identifying principles", without indicating in what manner such principles might be agreed upon and adopted.
2. Previous sets of principles and standards in the human rights field have normally been developed in

working groups established by the Commission on Human Rights, and then forwarded to the General Assembly for adoption through a General Assembly resolution. However, there might be other options for developing a statement of fundamental standards of humanity. Given the close relationship with issues of international humanitarian law and the ICRC's acknowledged expertise in this field, there is no doubt that the ICRC should be closely involved in any efforts to develop these standards. [...]

X. CONCLUSIONS AND SUGGESTIONS FOR FURTHER STUDY

1. The aim of this report has been to set out the various issues involved in the possible identification of fundamental standards of humanity. Where possible, tentative conclusions on certain points have been put forward; elsewhere, issues have been identified as deserving of further consultation and analysis.
2. Of necessity, an analysis of whether an elaboration of standards is required must consider the legal questions involved. To the non-lawyer this exercise might seem a bit abstract. In concluding, therefore, it is appropriate first to reiterate and emphasize the starting point for the discussion, namely the horrific impact on the lives of millions of individuals of the many situations of internal violence which continue to plague our world. Most of the country-specific resolutions adopted by the Commission on Human Rights concern countries in which there is some degree of internal violence, and such countries figure prominently also in the reports of the Commission's various thematic rapporteurs and working groups. There is clearly a close relationship between the existence of these conflicts and human rights abuse. It is therefore timely and appropriate to look again at the tools we have at hand to prevent these abuses.
3. One of these tools is international law, and as regards internal violence we have legal standards from both human rights and humanitarian law. The picture that emerges from this initial report is that there are some problems with both branches of law. The extent to which international human rights law creates obligations on non-State armed groups is unclear, and it can be argued that some of the most important rights – for example, the right to life as set out in international instruments lack the specificity to give them real impact in internal conflicts. On the other hand, international humanitarian law can be applied to non-State armed groups, and its rules are specific and detailed, but its application in many internal situations is hampered by troublesome threshold tests and the absence – in the treaty law – of some important protections.
4. Insofar as the development of fundamental standards of humanity can overcome these problems, it is an initiative that deserves serious attention and support. Clearly, however, the initiative needs to proceed with close attention to ongoing developments in both branches of law. Further study and activity might, among other issues, focus on the following:
    a. Examining the international legal accountability of non-State armed groups for abuses, including views as to whether a statement of fundamental standards of humanity would be an appropriate means of holding these groups accountable;
    b. Examining how relevant provisions of human rights law could be made more specific so as to ensure respect for them in situations of internal violence, and considering whether this could be accomplished through a statement of fundamental standards of humanity;
    c. Following closely developments regarding the identification of crimes against humanity and customary rules of international humanitarian law relevant to the protection of human dignity in situations of internal violence, and assessing how these developments relate to the identification of fundamental standards of humanity;
    d. Soliciting views from Governments and other relevant actors concerning the issues set out in this

report, and engaging in consultations for this purpose. [...]