

application of Protocol II would appear to be limited to situations at or near the level of a full-scale civil war; 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. Following on this, the report states that the result is one in which 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.

Commentary on customary international humanitarian law stresses that separate from treaty stipulations internal armed conflicts are still regulated by the rules of customary international law that have been established for decades. The report notes that the problem has not been to establish the applicability of customary law but rather to determine, both in general and as regards any specific case, what is prohibited by the “principles of humanity and the dictates of the public conscience”.

The report states that the rulings by the criminal tribunals for the former Yugoslavia and Rwanda may assist in the development of greater detail regarding rules that apply in internal conflicts which form part of customary law. Reference is also made to the fact that the International Criminal Court, once operative, is also likely to result in relevant developments.

On the question of potential advantages and disadvantages to a statement of fundamental standards of humanity, the report notes that apart from legal considerations a key issue is what impact such a statement will or may have on actually reducing or preventing abuses. The report cautions against viewing such a statement as an end in itself. In response to the question “What are the fundamental standards of humanity?” the report does not attempt to establish a conclusive and authoritative list but rather highlights a number of points including, *inter alia*, that standards would need to: at a minimum, deal with such abuses as deprivation of the right to life, torture and ill treatment, freedom of movement, the rights of the child, human rights for women, arbitrary deprivation of liberty and due process, and protection of the civilian population; be stated in a way that was specific enough to be meaningful in actual situations, while at the same time be clear and understandable; build a common framework of protection, that is, find rules common to both branches of relevant law and consider a fusion of the rules established in human rights and humanitarian law.

In the concluding section, the report suggests that further study might focus on, *inter alia*:

- ♦ the international legal accountability of non-state armed groups for abuses and whether a statement of fundamental standards of humanity would be an appropriate means of holding these groups accountable;
- ♦ 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 whether this can be accomplished through a statement of fundamental standards of humanity; and
- ♦ developments related to 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 how these developments relate to the identification of fundamental standards of humanity.

The addendum to the Secretary-General's main analytical report (E/CN.4/1998/87/Add.1) summarizes the views of: Botswana, Canada, Colombia, Croatia, Cuba, Ecuador, Finland, Jordan, Norway, the Philippines, Switzerland, Turkey, the Food and Agriculture Organization and the UN High Commissioner for Refugees.

Resolution of the Commission on Human Rights

Under agenda item 15 the Commission adopted by consensus a resolution (1998/29) in which the Commission *inter alia*: expressed grave concern at the large number of situations in which internal violence causes extensive suffering, breaches the principles of humanity and undermines the protection of human rights; emphasized the need to identify and implement measures to prevent violations and abuses of human rights and fundamental freedoms, in particular the right to life and integrity of the individual; acknowledged the desirability of identifying fundamental standards of humanity applicable in all situations in a manner consistent with international law, including the UN Charter; recognized the importance of establishing appropriate national legislation in each country to deal with such situations in a manner consistent with rule of law; requested the Secretary-General, in coordination with the International Committee of the Red Cross, to continue to study and consult on the issues identified in the 1998 analytical study and to submit a report entitled “Fundamental standards of humanity” to the 1999 session of the Commission.

