

- ♦ What are the advantages to identifying fundamental standards of humanity and are there significant disadvantages? For example, in the case of disadvantages, would a statement of such standards undermine existing ones?
- ♦ What are the “fundamental standards of humanity”?
- ♦ What would be the nature of a statement of fundamental standards of humanity?
- ♦ Assuming the desirability of identifying and setting out fundamental standards of humanity, by which means should this be done?

With regard to supposed gaps in international human rights law the report notes that there is an impressive body of such law which establishes that human rights are “inalienable” and individuals are “born free and equal in dignity and rights”. The argument about the inadequacies of human rights law essentially rests 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.

On the issue of derogation, the report notes a number of rights from which states may derogate in times of public emergency, including the rights related to freedom of movement, equality, protection of minorities, fair trial, freedom of expression and protection from arbitrary detention or imprisonment. With that in mind, the report states that 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.

Following on this, a number of points are made, including that: rights which are subject to derogation are not automatically subject to outright suspension at the state’s discretion; there are concrete limits on a state’s use of derogation clauses; derogations must not be inconsistent with a state’s other obligations under international law; some human rights treaties contain no derogation clauses, and many states that have ratified the International Covenant on Civil and Political Rights, in which derogation is set out, are also parties to these treaties; and, only the most serious internal situations justify invoking the derogation clauses, viz. the mere existence of violence inside a country does not *ipso facto* justify derogation. The report concludes by stating that these constraints on the application of derogation clauses appear to provide a solid basis in international law for ensuring these clauses are not abused. The report further states that, on its own, the derogation argument does not provide a clear justification for developing fundamental standards of humanity. The report then notes 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.

On the issue of non-state armed groups and human rights law the report acknowledges that: armed groups are often responsible for the most grave human rights abuses; and these groups are not, strictly speaking, legally bound to respect the provisions of international human rights treaties. The report also acknowledges that the supervisory mechanisms established by these treaties are not empowered to monitor or take action on reports on the activities of armed groups. Reference is then made to the fact that armed groups are bound by international humanitarian law in situations where such law applies but that in situations where it does not apply the international legal accountability of such groups for human rights abuses is unclear although subject to penalty under domestic criminal law.

The report states 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, especially in countries where the government has lost the ability to apprehend and punish those who commit such acts. The report cautions, however, that very serious consequences could follow from a rushed effort to address such acts through the vehicle of existing international human rights law, not least because it might serve to legitimize actions taken against members of such groups in a manner that violates human rights. It is affirmed that 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 UN. The report states that the challenge is to sustain that achievement and at the same time ensure that the conception of human rights remains relevant to the world and actual events.

The report reviews provisions in common article 3 to the Geneva Conventions and notes that it sets out in clear 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”. Bearing in mind that common article 3 is now considered to be part of customary international law, two of its shortcomings are noted: (a) it provides only a minimum of protection by, for example, remaining silent on issues relating to freedom of movement, not explicitly prohibiting rape, and not explicitly addressing matters related to the methods and means of warfare; and (b) it does not define “armed conflicts not of an international character”, thereby leaving room for governments to contest its applicability to situations of internal violence inside their countries.

The report recalls that efforts to address these shortcomings are reflected in Protocol II (the Protection of Victims of Non-International Armed Conflicts). The Protocol expands the protection offered by common article 3 but the protections it offers only apply in internal conflicts that meet a certain threshold of intensity and nature. The Protocol omits such situations of disturbances and tensions as riots, isolated and sporadic acts of violence and other acts of a similar nature. The report then states: the