

Draft Model Declaration on Internal Strife

by Theodor Meron*

Introduction

The tragedy of internal strife affects a large and growing number of countries throughout the world. The situations in many of these countries have been studied by UN bodies, governmental agencies and non-governmental organizations and, of course, by the International Committee of the Red Cross. On the basis of their reports, it would be possible to describe the symptoms of internal strife specific to these particular countries. However, this paper focuses on the general features characteristic of internal strife, without reference to particular countries, since accounts of the situation in any specific country inevitably prompt debate over conflicting factual allegations. Such debate would deflect us from our tasks of developing and understanding of the nature of internal strife and suggesting the necessary remedies.

Internal strife frequently presents an aggregate of violent acts and human rights abuses which are interrelated rather than isolated phenomena. Despite the salutary efforts of the International Committee of the Red Cross, the United Nations, and such non-governmental organizations as Americas Watch and Amnesty International to humanize the behaviour of the principal actors in situations of internal

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strife, gross abuses of human dignity continue unabated. A systemic relationship often exists between various types of abuses, so that a given practice will create an environment in which other abuses are almost certain to occur. This paper focuses on the most serious and the most frequent of these abuses.

In preparing this paper, I have drawn heavily on my published writings¹ on the tragic and increasingly frequent situations of internal strife and on the working paper presented, on my own responsibility, to the International Committee of the Red Cross (ICRC) in April 1984. In these writings I attempted to demonstrate the need to draft a declaration containing an irreducible and non-derogable core of human and humanitarian norms that must be applied in situations of internal strife and violence. Such normative progress in establishing such norms should be accompanied by efforts to strengthen the implementation of existing provisions guaranteeing human and humanitarian rights. I explained both the conceptual context and the practical urgency of such an initiative. Focusing on the problems of applicability and the effective reach of the relevant humanitarian and human rights instruments, I tried to explain that humanitarian law instruments are not applicable in cases of internal strife which fall below the thresholds of applicability of Article 3 common to the four Geneva Conventions of 12 August 1949 for the Protection of Victims of War and of Article 1 of the Protocol II Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts. I found that human rights instruments are either inapplicable, because the States concerned have chosen not to become parties to them, or ineffective because of the frequency of the *de facto* and *de jure* derogations from the normally applicable rights. This ineffectiveness is heightened by the grave inadequacy of non-derogable rights relevant to situations of violent internal strife. The combined effect of derogations from human rights instruments, the inadequacy of the non-derogable human rights provisions, and of the inapplicability of humanitarian law result in a denial of elementary protections to persons caught up in internal strife.

The present paper comprises two sections. The first enumerates the abuses not effectively dealt with in existing norms and comments on

¹ Theodor Meron, "On the Inadequate Reach of Humanitarian and Human Rights Law and the Need for a New Instrument", 77 *American Journal of International Law (AJIL)* 589 (1983); Meron, "Towards a Humanitarian Declaration on Internal Strife", 78 *AJIL* 859 (1984); T. Meron, *Human Rights in Internal Strife: Their International Protection* (Hersch Lauterpacht Memorial Lectures, Cambridge, Grotius Publications 1987).

the deficiency of existing protections. The second consists of the annotated text of a draft Model Declaration on Internal Strife, showing the antecedents and sources from which the provisions of the Declaration were drawn. The provisions of the draft Declaration are primarily based on existing human rights and humanitarian instruments.

I. Abuses not effectively addressed by existing norms

SUMMARY AND ARBITRARY EXECUTIONS, CAPITAL PUNISHMENT, AND MURDER

Protecting the right to life from arbitrary deprivation is the first and most important of the non-derogable rights enumerated in Article 4(2) of the International Covenant on Civil and Political Rights (Political Covenant). However, because it is possible to derogate from the critically important due process provisions in Article 14 of the Political Covenant and because the protection of the right to life under Article 6 is not absolute, there is considerable danger that some States will argue that in times of emergency, death sentences may be imposed following summary procedures, provided that the more limited guarantees stated in Article 6 itself are observed. Despite the salutary efforts made by Wako ² in his reports to the UN Commission on Human Rights and by the Human Rights Committee created under Article 28 of the Political Covenant (through its General Comments) to establish that the procedural safeguards of Article 14 are non-derogable for cases where the death penalty may be imposed, even during a public emergency, Wako's reports and other reliable information document frequent arbitrary and summary executions in situations of internal strife.

Provisions strengthening the protection of the right to life are urgently needed. A major goal should be the "freezing" or suspension of executions. It should be provided that the death penalty should not be carried out during internal strife, or at least (as provided in Article 75 of the Fourth Geneva Convention), until a stated period of time has elapsed following the entering of the final judgment.

² Discussed in T. Meron, *Human Rights in Internal Strife*, *supra* note 1, pp. 61 (note 88), 64-67.

TORTURE OR CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Although the non-derogable norm prohibiting torture or cruel, inhuman or degrading treatment or punishment is stated in all the principal human rights and humanitarian instruments, this prohibition is frequently violated in situations of internal strife. In such situations, committing torture is made much easier by the suspension, *de jure* or *de facto*, of judicial guarantees, by large-scale detention of persons, particularly detention incommunicado, and by preventing access to counsel and to families, *etc.* Prolonged detention and detention incommunicado maximize the risk of ill-treatment and torture, as basic procedural rights and avenues of redress are denied the detainees. Due to this situation, it is therefore necessary to emphasize that the imperative prohibition of torture or cruel, inhuman or degrading treatment or punishment continues to be applicable in conditions of internal strife.

TAKING OF HOSTAGES

Hostage-taking is a frequent occurrence in situations of internal strife. This abuse, which often leads to the deprivation of the right to life, constitutes cruel, inhuman or degrading treatment, and comprises wrongful deprivation of the liberty of the person. Hostage-taking is prohibited by humanitarian law instruments and by customary law, but is not explicitly addressed in human rights instruments. The Declaration should, therefore, include the prohibition of hostage-taking.

CAUSING THE DISAPPEARANCE OF INDIVIDUALS

Often a euphemism for murder, causing the disappearance of individuals is particularly common in situations of internal strife. Although various rights enshrined in international human rights treaties, including some which are non-derogable, are violated through “disappearances,”³ an explicit prohibition of “disappearances” has not yet appeared in any human rights treaty.

³ Among the rights implicated are the right to life; the prohibition of torture or other cruel, inhuman or degrading treatment or punishment; the right to liberty and security of the person; the right not to be subjected to arbitrary arrest and detention; the right to due process of law; the right of persons deprived of their liberty to be treated with humanity; the right to recognition everywhere as a person before the law and the rights of the family, motherhood and childhood.

The draft of the new *Restatement of the Foreign Relations Law of the United States*⁴ correctly lists causing the “disappearance” of individuals as a violation of customary international law. Considering that the prohibition of disappearances has been accepted into the corpus of customary international law and that disappearances occur with great frequency in many countries, especially in situations of internal strife, the Declaration should incorporate this concept and include the prohibition of disappearances or at least state that the authorities have a duty to acknowledge all detentions and to notify the families of the detainees without delay.

TERRORIZING THE CIVILIAN POPULATION

In internal strife situations, acts or threats of violence whose purpose or effect is to spread terror among the population are very common. This abusive practice must be addressed in the Declaration.

EXCESSIVE USE OF FORCE

Abusive and excessive force is frequently used against civilians and innocent bystanders in situations of internal strife, for example, to suppress demonstrations, enforce curfews or to intimidate the population.

The problem is exacerbated by the absence in human rights instruments of provisions to humanize violent conflict situations, such as requiring “proportionality” between a legitimate objective and the amount of force used to achieve the objective. Such provisions are contained in international humanitarian law instruments governing international armed conflicts. But only few provisions concerning permissible use of force can be found in international humanitarian instruments governing internal armed conflicts. While it is possible to maintain that certain general principles of customary law should govern the use of force even in internal conflicts and internal strife, efforts to humanize the authorities’ behaviour by invoking general principles of customary law have not proven to be effective in the past.

⁴ Restatement of the Foreign Relations Law of the United States (Revised) §702 (Tent. Draft No. 6, Vol. I, 1985).

Of course, regulation of the use of force in internal strife is different from that in war. While in war killing is allowed in principle, in internal strife, use of force is permissible only in connection with law-enforcement and weapons may be used only as an extreme police measure. The Declaration should therefore attempt to curtail the use of force, incorporating the principle of proportionality between the objective to be attained and the amount of force used. The use of materials calculated to cause unnecessary or indiscriminate suffering should not be allowed. The Declaration should at least reflect the concept that the use of firearms constitutes an extreme measure which is simply not permitted in certain egregious cases, for example against peaceful demonstrators or children.

DEPORTATIONS, FORCED MOVEMENT OF POPULATION

Deportations and forced movements of the population which cause great suffering and often lead to the loss of life are common in situations of internal strife. Articles 12-13 of the Political Covenant concerning the liberty of movement and the expulsion of aliens are derogable and subject to limitation clauses. These articles do not explicitly deal with the phenomenon of mass expulsions, but the major regional human rights instruments do expressly prohibit mass expulsions of aliens. Although the General Comments of the Human Rights Committee on Article 13 are beneficial in fighting deportation abuses, it is important that the Declaration should deal with such acts specifically for situations of internal strife and base its provisions on the model of the provisions contained in humanitarian law instruments.

ABSENCE OR ABUSE OF JUDICIAL SAFEGUARDS; GUARANTEES OF DUE PROCESS AND HUMANE TREATMENT FOR PERSONS DETAINED OR PROSECUTED FOR REASONS RELATING TO THE INTERNAL STRIFE

Experience indicates that widespread abuse of judicial and humane treatment guarantees is common in situations of internal strife. The important guarantees of due process and of the humane treatment for detainees and internees are mostly derogable in human rights instruments, e.g., Articles 9, 10 and 14 of the Political Covenant. The

substance of these guarantees is also to be found in humanitarian instruments which are non-derogable. It is from these instruments that judicial and humane treatment guarantees should be “borrowed”.

Providing due process guarantees presents a strategic question. The Geneva Conventions and the Protocols contain detailed and explicit provisions on due process, while a different approach is followed in common Article 3. This provision contains only the requirement that regularly constituted courts afford “all the judicial guarantees which are recognized as indispensable by civilized peoples.” Which approach is better for a declaration on internal strife? Since States are sensitive to due process issues, a modest approach may be preferable. A modest treatment might be based on enumerating certain essential elements of due process, such as the right to counsel (as provided by Article 72 of the Fourth Geneva Convention, Article 105 of the Third Geneva Convention, and in provisions concerning prosecutions for grave breaches, for example Article 129 of the Third Geneva Convention) or at least requiring the extension of “all necessary rights and means of defence” (Article 75(4)(a) of Protocol I, Article 6(2)(a) of Protocol II) and such elementary safeguards as the right to appeal, the prohibition of retroactive penal measures, the presumption of innocence, and the right to be judged by an independent tribunal.

MASSIVE AND PROLONGED ADMINISTRATIVE DETENTIONS WITHOUT JUDICIAL REVIEW

Among the phenomena endemic to internal strife, massive and prolonged administrative detention merits special consideration because of its frequency and the scarcity of non-derogable provisions guaranteeing judicial review in the Political Covenant.

A provision dealing with massive and prolonged detentions (often ostensibly for preventive purposes) would, therefore, be of great importance. Such a provision should contain minimum standards of treatment, the right to correspond with families and the right to family visits. A particularly difficult question concerns the extent to which the Declaration should address the reasons for preventive detention. Minimally, ordering the preventive detention of an individual should be subject to at least some due process guarantees such as the right to appeal.⁵

⁵ See Art. 78 of the Fourth Geneva Convention.

COLLECTIVE PUNISHMENTS

The prohibition of collective punishments is stated explicitly in humanitarian law instruments, but only implicitly in human rights conventions, such as the Political Covenant. Because of the relevance of this prohibition to situations of internal strife, it merits inclusion in the Declaration.

PROTECTION OF CHILDREN

In situations of internal strife, children are often mobilized and forced to participate in acts of violence. A prohibition against mobilizing children or otherwise forcing them to participate in violent activities should be included in the Declaration.⁶

PROTECTION OF MEDICAL PERSONNEL; PROTECTION AND CARE OF THE SICK AND WOUNDED; ACTIVITIES OF HUMANITARIAN BODIES AND RELIEF

In internal strife situations, medical personnel acting in accordance with the principles of medical ethics are often punished for treating guerrillas and dissidents. The Political Covenant does not provide these individuals with explicit protection, nor does the Covenant cover the protection and care of the sick and wounded or the activities of humanitarian bodies and humanitarian relief. The Declaration should contain provisions dealing with these matters.

II. Draft model Declaration on internal strife

The General Assembly,

Recalling the reaffirmation by the Charter of the United Nations of faith in the dignity and worth of the human person,

Considering that situations of internal strife have been on the increase and have caused great suffering to millions of victims,

⁶ See Art. 77(2)-(3) of Protocol I; Art. 4(3) of Protocol II.

Noting that experience has demonstrated a need for further specificity and a more effective implementation of human rights and humanitarian principles in order to provide a more adequate protection to victims of internal strife,

Declaring that in cases not covered by the law in force, the human person remains under the protection and authority of the principles of humanity and the dictates of public conscience,⁷

Now, therefore,

Proclaims this Declaration on Internal Strife.⁸

Article 1

Material scope of application

1. This Declaration shall apply in all cases of internal strife, as defined in paragraph 2 of this Article.
2. Internal strife shall comprise all situations involving substantial and protracted acts of violence.⁹

Article 2

Personal scope of application

This Declaration shall be respected by, and applied to, all persons present in the State in which internal strife is taking place without any adverse discrimination.¹⁰

⁷ This is a short statement of the Martens clause, adapted from the last preambular paragraph of Protocol II.

⁸ This language is inspired by the language of parallel provisions of the Universal Declaration of Human Rights.

⁹ This language is based on the Draft Declaration of the Fundamental Rights of the Individual in Time of Internal Disturbances or Public Emergency, which was presented in 1971 by the ICRC to the Conference of Government Experts on Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts.

¹⁰ This provision reflects the prohibition of discrimination, which is central to the UN Charter, humanitarian instruments and human rights instruments. The language borrows, *mutatis mutandis*, from Article 75(1) of Protocol I and Article 2(1) of Protocol II. It aims at the observance of the rights and duties stated in the Declaration by all persons in the State where the internal strife is taking place, irrespective of the side to which they may belong.

Article 3

Humane treatment ¹¹

1. 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. Without prejudice to the generality of the foregoing and of the fundamental guarantees stated in Articles 7-10, the following acts against persons referred to in paragraph 1 are and shall remain prohibited:

- (a) violence to the life, health and physical or mental well-being of persons, in particular murder, as well as cruel, inhuman or degrading treatment or punishment such as torture or mutilation and other outrages upon personal dignity;¹²
- (b) collective punishments against persons and their property;¹³
- (c) taking of hostages;¹⁴
- (d) acts of terrorism;
- (e) causing or acquiescing in the disappearance of individuals, including their abduction or unacknowledged detention;¹⁵
- (f) pillage;
- (g) threats to commit any of the foregoing acts.

In a low-intensity conflict, the traditional distinctions between combatants and civilians, participants and innocent bystanders, persons affected or not affected by the situation of internal strife, *etc.*, may not always be meaningful. Moreover, such distinctions may be abused so as to circumvent the objectives of the Declaration. As a matter of general policy, the Declaration should therefore be made applicable to the entire population. However, certain protections (*e.g.*, derogable due process guarantees) may have to be limited to particular categories of beneficiaries such as persons prosecuted for offences related to the internal strife, because States may be reluctant to go further. *See infra* Articles. 9-10.

¹¹ This Article reflects essential protections of humane treatment stated in Article 4 of Protocol II. These protections also echo certain provisions of common Article 3 and of the Fourth Geneva Convention.

¹² This provision draws on Article 4(2)(a) and (e) of Protocol II.

¹³ This provision follows paragraph 6 of the 1971 ICRC Draft Declaration, *supra* note 9.

¹⁴ This provision follows paragraph 6 of the 1971 ICRC Draft Declaration, *supra* note 9.

¹⁵ The reference to the prohibition of causing disappearances combines the language of the Draft Restatement of the Foreign Relations Law of the United States (*supra* note 4) with that of Resolution 1984/13 adopted by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities.

Article 4

Use of force by law enforcement officials¹⁶

Law enforcement officials, such as military and paramilitary personnel, including persons or groups who are in fact acting on behalf of a State or are in fact exercising elements of governmental authority, may use force only when strictly required for the performance of their duty and then only in the minimum degree.¹⁷ The use of force which is disproportionate to the legitimate objective to be achieved is prohibited.¹⁸ Weapons or other material calculated to cause unnecessary or indiscriminate suffering shall not be employed.¹⁹ Their use against children, peaceful demonstrators and other defenseless persons shall be prohibited.²⁰

Article 5

Acts or threats of violence

Acts or threats of violence the primary purpose or effect of which is to spread terror among the population are prohibited.²¹

¹⁶ This provision reflects several important principles: prohibition of the use of force unless such use is strictly required; proportionality between the objective to be attained and the degree of force used; the concept that use of firearms constitutes an extreme measure and that their use is not to be allowed in certain egregious circumstances.

This Article does not address the use of force by elements of the opposition (situations of internal strife are governed by national law, subject to any international obligations of the State concerned. National laws do not authorize use of force by elements of the opposition), a subject which is covered by other Articles of the Declaration, such as Articles 3 and 5.

¹⁷ The first sentence of this draft Article originates in Article 3 of the Code of Conduct for Law Enforcement Officials, adopted by the UN General Assembly on 17 December 1979 in Resolution 34/169, combined with the language of Article 8 of the International Law Commission's Draft Articles on State Responsibility (part one). 2 Y. B. Int'l L. Comm'n 73 (Pt. 2, 1976).

¹⁸ The second sentence is borrowed, with modifications, from the Commentary on Article 3 of the Code of Conduct for Law Enforcement Officials, *supra* note 17.

¹⁹ This sentence builds on the language of Article 23(e) of The Hague Regulations Annexed to Hague Convention No. IV Concerning Laws and Customs of War on Land, which reflects a principle of customary law.

²⁰ This sentence is inspired, in its reference to children, by paragraph (c) of the Commentary to Article 3 of the Code of Conduct for Law Enforcement Officials, *supra* note 17.

²¹ Although the prohibitions stated in this draft Article overlap, to a certain extent, other provisions of the draft Declaration, events in various parts of the world, such as

Article 6

Prohibition of forced movement of the population ²²

1. The displacement of the population shall not be ordered for reasons related to the internal strife unless the safety of the population involved 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 thus displaced shall be transferred back to their homes as soon as the conditions which made their displacement imperative have ceased.

2. Civilians shall not be compelled to leave their own territory for reasons connected with the internal strife.

Article 7

Right to life

1. In addition to the guarantees of the inherent right to life, stated in Article 6 of the International Covenant on Civil and Political Rights, the following provisions shall be respected as a minimum.²³

the activity of so-called "death squads", acts and threats of violence against indigenous or political groups, make this draft Article necessary. The draft borrows from Article 13(2) of Protocol II and employs the "purpose or effect" language of Article 1(1) of the International Convention on the Elimination of All Forms of Racial Discrimination.

²² Recent experience shows the necessity of including in the Declaration the prohibition of deportations and massive displacement of the population. This vital principle is well-established in humanitarian law, but rather less in the human rights instruments. The formulation of the above provision is therefore based on language to be found in humanitarian instruments. The provision employs the language of Article 17 of Protocol II, with certain changes, and adapts it to the circumstances of internal strife. It is thus provided that not only the conditions under which the civilians are received must correspond to certain standards, but that such standards should apply also to the conditions prevailing during the transfer of the civilians. The last sentence of paragraph 1 is based, with some changes, on the last sentence of the second paragraph of Article 49 of the Fourth Geneva Convention.

²³ This paragraph emphasizes that the protections stated in paragraphs 2-3 are additional to those stated in Article 6 of the Political Covenant, which are declaratory of *jus cogens* norms and must, of course, always be observed.

2. Sentence of death shall not be carried out on mothers of young children.²⁴

3. 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, or of an order denying pardon or reprieve.²⁵

Article 8

Rights of the child

Every child has the right to the measures of protection required by his condition as a minor and shall be provided with the care and aid he requires.²⁶ Persons who have not yet attained the age of fifteen years shall not be recruited in armed forces or groups or allowed to take part in acts of violence.²⁷

Article 9

Persons deprived of their liberty ²⁸

1. In addition to the provisions of Article 3, persons deprived of their liberty for reasons related to the internal strife:

- (a) shall be treated humanely, provided with adequate food and drinking water, decent accommodation and clothing, and be afforded safeguards as regards health and hygiene and protection against the rigours of climate and the dangers of the internal strife;
- (b) shall be allowed to practice their religion and, if requested, to receive spiritual assistance from persons, such as chaplains, performing religious functions;

²⁴ This paragraph is based on Article 6(4) of Protocol II (*see also* Art. 76(3) of Protocol I). This is a vital addition to the protections stated in Article 6 of the Political Covenant given the fact that the execution of a mother shortly after she gives birth endangers the life of the infant and its mental and physical well-being.

²⁵ This provision is based on Article 75 of the Fourth Geneva Convention and Article 101 of the Third Geneva Convention.

²⁶ The first part of the first sentence is based on the non-derogable Article 19 of the American Convention on Human Rights, with the deletion of the last words of that Article. The second part is based on the first part of Article 4(3) of Protocol II.

²⁷ This sentence is based on Article 4(3)(c) of Protocol II, *mutatis mutandis*.

²⁸ This draft Article is based on Article 5 of Protocol II, with a number of changes.

- (c) shall be allowed to send and receive letters and cards, the number of which may be reasonably ²⁹ limited by the competent authority if it deems necessary;
 - (d) shall not have their physical or mental health and integrity endangered by any unjustified act or omission.
2. If it is decided to release persons deprived of their liberty, necessary measures to ensure their safety shall be taken by the releasing authority.

Article 10

Penal prosecutions ³⁰

1. The rights stated in paragraphs 2-3 shall be respected as a minimum in the prosecution and punishment of criminal offenses related to the internal strife.

2. No sentence shall be passed and no penalty shall be executed on a person found guilty of an offense 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 offense alleged against him, shall provide for a trial without undue delay, and shall afford the accused before and during his trial all necessary rights and means of defense;
- (b) no one shall be convicted of an offense except on the basis of individual penal responsibility;
- (c) anyone charged with an offense is presumed innocent until proved guilty according to law;
- (d) anyone charged with an offense shall have the right to be tried in his presence;
- (e) no one shall be compelled to testify against himself or to confess guilt;

²⁹ The word "reasonably" has been added to the language of Article 5(2)(c) of Protocol II to limit the discretion of the detaining authorities.

³⁰ This draft Article is based on Article 6 of Protocol II, with changes. It applies only to persons prosecuted and punished for offences related to internal strife.

- (f) no one shall be liable to be tried or punished again for an offense for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of the State in which an internal strife is taking place;³¹
- (g) no one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offense was committed. If, subsequent to the commission of the offense, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby. Nothing in this paragraph shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.³²

3. The competent authority shall endeavour to grant the broadest possible amnesty to persons who have participated in the internal strife, or those deprived of their liberty for reasons related to the internal strife.

Article 11

Administrative detentions ³³

If the authorities consider it necessary for imperative reasons of security to subject any person to assigned residence or to internment, such decisions shall be subject to a regular procedure, which shall include the right of appeal and to a periodical review.

³¹ This paragraph is based on Article 14(7) of the Political Covenant, which is derogable. *See also* Article 75(4)(h) of Protocol I.

³² Paragraph 2(g) repeats the language of the non-derogable Article 15 of the Political Covenant, while consolidating its two paragraphs into one and introducing the resultant modifications.

³³ This provision is inspired by Articles 42-43 of the Fourth Geneva Convention, to which the right of appeal has been added.

Article 12

Protection and care ³⁴

In every circumstance, the wounded and sick, whether or not they have taken part in internal strife, 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

Search ³⁵

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, and to decently dispose of them.

Article 14

Protection of medical and religious personnel ³⁶

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 mission. 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.³⁷

³⁴ Although the Declaration assumes a conflict of low-intensity violence, provisions on the care of wounded and sick may nevertheless be needed and have, therefore, been incorporated in the draft Declaration. The above provision adapts to the situation of internal strife Article 7 of Protocol II or the similar Article 10 of Protocol I with a number of modifications.

³⁵ This provision reflects Article 8 of Protocol II, with a number of changes.

³⁶ This provision tracks Article 9 of Protocol II.

³⁷ This sentence is based on Article 16(1) of Protocol I.

2. In the performance of their duties, medical personnel may not be required to give priority to any person except on medical grounds.

Article 15

Activities of humanitarian bodies ³⁸

The authorities of the State in which internal strife is taking place (hereinafter referred to as the “authorities”) should grant to humanitarian organizations all facilities within their power so as to enable them to carry out their humanitarian activities for the protection of and assistance to the victims of the internal strife.

Article 16

Legal status of authorities and persons ³⁹

The application of this Declaration shall not affect the legal status of any authorities, groups, or persons involved in the situation of internal strife.

Article 17

Prohibition of derogations ⁴⁰

No derogation from the provisions of this Declaration may be made on any ground whatsoever, including public emergency, which threatens the life of the nation, nor may there be any suspension from the judicial guarantees essential for the protection of the rights stated in this Declaration.

³⁸ This provision is based on Article 81(1) of Protocol I, with a number of changes designed to adapt them to a situation of internal strife.

³⁹ Such a provision is necessary to encourage governments to respect the Declaration without fear that its application might amount to recognition of, or grant of political status to, dissidents, or opposition groups. The provision is based on the final paragraph of Article 3 common to the four Geneva Conventions and on Article 4 of Protocol I. The reference to “authorities and persons” is substituted for the “parties to the conflict” to reflect the different scope of applicability of the present Declaration, namely a situation of internal strife, rather than armed conflict between contesting parties. Unlike Article 4 of Protocol I, the draft Article mentions only the Declaration, rather than other humanitarian instruments or any special agreements.

⁴⁰ The first part of the draft provision on derogations is based on Article 4(2) of the Political Covenant, to which the words “on any ground whatsoever...” have been added.

Article 18

Saving provisions

1. Nothing in the present Declaration shall be interpreted as impairing the provisions of the Geneva Conventions of 12 August 1949 for the protection of war victims and the Additional Protocols of 8 June 1977 and of any international human rights instrument.⁴¹

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 Declaration does not recognize such rights or that it recognizes them to a lesser extent.⁴²

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The addition is based, with modifications, on the language of Principle 6 of Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment, which was adopted by the UN General Assembly on December 18, 1982 by Resolution 37/194, and on Article 4(1) of the Political Covenant. The second sentence is based on the final words of Article 27(2) of the American Convention on Human Rights. The addition of the second sentence is intended to eliminate the weakness in the Political Covenant which allows derogation from some due process rights essential for the safeguarding of non-derogable rights.

⁴¹ Paragraph 1 is based, *mutatis mutandis*, on the language of Article 46 of the Political Covenant (Art. 24 of the Economic Covenant).

⁴² This paragraph is based, with modification, on Article 5(2) of the Political Covenant and the Covenant on Economic, Social and Cultural Rights, to which the reference to the principles of humanity has been added because of its special relevance. The word "treaties" replaces the word "conventions", to avoid ambiguity and clearly cover both the Geneva Conventions and the 1977 Protocols.