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BACKGROUND PAPER

THE PITFALLS OF LAWLESSNESS: DISORDER, EMERGENCIES, AND CONFLICT

Dr. MOHAMMAD-MAHMOUD OULD MOHAMEDOU

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SUMMARY

This paper examines the issues of disorder, emergency, and conflict and their management in a rule of law-based framework, with illustration from the aftermath of the September 11, 2001 attacks on the United States and the war in Iraq.

Noting that the promotion of the rule of law by state institutions has decreased in recent years, the paper postulates that the manifestation of violence as a result of sociopolitical unrest and armed conflict, whether domestic or international, is an indicator of a defective functioning of institutions, and that the maintenance and strengthening of the rule of law at all times are key to an effective enjoyment of human rights and to the practice of democracy.

The paper notes that there exist a number of distinct corpora of rules in international and domestic law that are applicable to an orderly, efficient, and rights-respecting management of disorder. In particular, it calls for *a symbiotic application of international humanitarian law and international human rights law*. Whereas the latter is a general law which is implemented at all times, the former is a special branch of law that to be only enacted during conflicts. Yet, though clearly different, the two bodies overlap, particularly in times of emergency as both seek to protect human dignity and reduce human suffering. Clarifying the core connections and establishing an explicit recognition of the international human rights normative framework and humanitarian values to democracy is particularly called for in times of emergency.

The typical state response to internal disorder is to enforce stricter interpretations of security laws, assert the power of the state government, and enact emergency legislation meant to facilitate investigation and prevention of violent emergencies. In that respect, the paper places emphasis on the existence of legal limits to emergency powers noting the extent to which *derogation* is codified formally. Similarly, the paper argues that *legitimacy* of the power to compel is a fundamental component of the rule of law, particularly in situations where institutions are failing. The practical result, during emergencies, is that no room is provided (or no longer available) for the articulation of citizens' aspirations as no structural accountability derivative of democratic dynamics is present.

In times of crisis and social disorder, dangers to the effective enjoyment of rights can originate (i) in the context of the implementation of derogation to rights, (ii) in the process of the administration of justice, or (iii) in the course of the enforcement of security laws. Limiting the effect of emergency powers and delineating clearly permissible derogations, so that the state of emergency is regarded as a temporary situation and not a norm, is a central aspect of the regulation of societal disorder processes. During emergencies, particular attention should also be paid to the administration of justice, which can come to suffer from degraded or weakened institutions. The modus operandi is the perpetuation of effective and justiciable remedies under the umbrella of a constitution incorporating the principles of international human rights and freedoms.

An important constellation of threats to the rule of law during disorder situations is represented by the type of existing *security legislations* and the manner in which authorities go about implementing them. The core issue is the extent to which legitimate security concerns (underscored by a desire to protect the civilian population from violent acts, in particular terrorist activity) come to bend regulations and proper procedures to the extent that civil liberties are endangered.

The practice in the scholarship and policy of *pitting security and rights against each other* as opposing forces locked in a tug-of-war *is dangerous and counter-productive*. Severe responses to national crises caused by terrorism or threats of terrorism may, in effect, suspend and eventually obliterate the very same rights and freedoms of the democracy which the responses are designed to protect. One of the main concerns regarding the enactment and enforcement of security legislation is that it has the potential to discriminate against certain disadvantaged groups and restrict their access to justice.

In periods of emergency, compliance with legal obligations under the law can indeed make way for a disdain for 'legalisms,' which, it is argued, preclude efficient measures. With one cardinal issue on their minds — security — public actors start lacking the mental space to maintain or reestablish democracy and its institutional safeguards. Because of an extraordinary situation, reflection and debate become absent as other priorities are set.

The paper offers pointers for action in the areas of protection mechanisms, redress measures, and cross-constituency networks. An understanding of the rule of law that highlights the interconnectedness with human rights and democracy can lead to more adequate responses to the different facets of the problem of law erosion. In giving due attention to the critical vulnerability and stigmatization that often accompany conflict situations, multifaceted measures enable responses that accommodate the protection and promotion of rights in the pursuit of democracy — considering not merely resources but the full range of capabilities, choices, security, and the empowerment required for the enjoyment of fundamental civil, cultural, economic, political, and social rights.

Equally, as no one set of political authorities can, in all circumstances, command sufficient political and economic resources in the face of disorder situations to project authoritatively across all the main arenas of public policy, it emerges that the safeguard of the rule of law and the concomitant promotion of human rights ought not be weighed against competing concerns. Rather, they should proceed under an *integrated* vision where security, writ large, is a concern that can and should be considered legitimately as part of a strategy that abides by existing laws.

I. RELEVANCE OF THE LAW

1. Law is a central component of the functioning of human societies. When conflict arises, for political, historical, geostrategic, or cultural reasons, societies come to experience multiple schisms. Invariably, that preponderant role occupied by law comes to be eaten away at, often pushing concern for the *rule* of law to the periphery. In time, societal disorder, whether short or long-term, undermines the relationship between the principles of law, rights, and democracy, whose precepts — characterized by several forms of superimposition — run side by side.

2. The rights approach is distinct from ethical, moral, or religious perspectives because its values are articulated formally in terms of legal standards. The recognition by political authorities (domestic and international) of these norms is what makes them relevant. Law, in and of itself, is never complete nor all-encompassing. Neither, as a dynamic aspect of human experience, is it static. It is the combined construct and practice of law that make it stand as a platform for rights. Legal reasoning, interpretation, and argumentation are meant to allow for a systematic and systemic approach to the promotion and defense of rights. That approach leads, in turn, to the implementation of law, not merely its theory.

3. This dimension of the primacy of the law — its 'rule,' in effect — stands at the heart of the relationship between human rights and the legal framework. It implies that all actors must appreciate (and respect) the added value of the legal approach, namely the insurance of protection associated with a process, which, though it may be imperfect, inconvenient, and sometimes misguided, seeks to help regulate and advance a societal process.

4. To be certain too, law is but a means to an end. It can be counterproductive, unfair, and indeed inhuman (as in the case of law-sanctioned slavery of old). Moreover, definition of the law is an exclusionary process, and its implementation can be arbitrary. This cannot, however, mean that the relevance of the law or its imperfect-yet-necessary aspects are questioned. Any law, including the one organizing human rights, is the expression of a particular order, which in turn represents a power configuration. That order and that force are inseparable from their context. As such, they need constant examination, and a disconnect can develop between the values and interests protected by the law and the parties that are supposed to benefit from that system.

5. In extraordinary situations, law is an effective and predictable tool for a successful and standardized approach to transition. For law is not merely a set of rights, it is a way of thinking about the future of a people (peacebuilding towards statebuilding), and, in the absence of a viable state, the legal framework cannot function.

6. Human rights and humanitarian standards which apply in order and disorder situations are meant to represent a universal set of principles. Their precise reasoning, underpinning nuanced judgments, echoes an international consensus on values linked to a legal framework, the marginalization of which hollows out the respect for these values. We must, therefore, understand the undermining of the rule of law as a fundamental constraint to human rights enjoyment and to the provision of humanitarian disposition

regulating conflict. Clarifying the core connections and establishing an explicit recognition of the international human rights normative framework and humanitarian values to democracy is especially called for in times of emergency.

II. THE CURRENT CONTEXT

7. Such necessary understanding is, however, challenging in the conditions that currently obtain. In the post-Cold War international environment, rights issues had shifted to the foreground of international policy-making, acquiring a new, stronger resonance among governments and being communicated (by civil society and some governments alike) more efficiently to the public. A number of states felt compelled to adjust their domestic behavior to a clearly emerging international standard of orderly governance. In some cases, a 'shaming' strategy was needed to convince authoritarian and repressive governments to alter their behavior. In other situations, economic sanctions or the threat thereof were the determinant element for authorities to turn benevolent.

8. The post-September 11, 2001 era has represented a step back in the advancement of rights and in the promotion and implementation of the rule of law. Cultural polarization, inflammatory rhetoric, political bias, and, in many quarters, the collapse of trust and tolerance have combined to create a divisive international atmosphere. To wit, persistent international conflict between the United States and the transnational, non-state armed group, Al Qaeda, and the 2003-2005 war in Iraq — where one hundred thousand civilians are believed to have been killed[1] — have contributed significantly to the slowing down of progress that had been achieved during the previous decade.

9. Specifically, the 'war on terrorism' has generated grave concerns about documented or suspected violations in the fields of illegal arrests and secret detentions; rights of detainees (presumption of guilt, incommunicado detention, conditions of imprisonment, denial of access to legal representation, monitoring of inmate contacts with defense lawyers, use of 'secret' or classified evidence, resort to torture); trials of civilians by military commissions; discrimination, racism, and racial profiling; illegal extradition procedures; and denials of freedom of expression.[2]

10. Whereas, an international consensus was emerging over the past few years on the importance of endowing the different dimensions of rights with permanent protection and implementation safeguards — particularly in the context of the World Conferences in Vienna, Cairo, Copenhagen, Beijing, and Durban (on, respectively, human rights, population, social development, women, and racism) — the proliferation, during the first half of the 2000s, of exceptionalisms of all sorts and a newfound questioning of existing standards yielded a negative international climate for the sustenance of the rule of law.

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[1] Les Roberts, Riyadh Lafta, Richard Garfield, Jamal Khudhairi, and Gilbert Burnham, "Mortality Before and After the 2003 Invasion of Iraq: Cluster Sample Survey," and Richard Horton, "The War in Iraq: Civilian Casualties, Political Responsibilities," *The Lancet*, 364, 9446, November 6, 2004.

[2] See, for instance, David Cole, *Enemy Aliens — Double Standards and Constitutional Freedoms in the War on Terrorism*, New York: The Free Press, 2003; and David Rose, *Guantánamo — The War on Human Rights*, London: New Press, 2004.

11. Following the attacks of September 11, 2001, the United Nations Security Council took the lead in laying out the criteria for balancing rights, law, and security. On September 28, 2001, it adopted Resolution 1373, which is binding on all Member States. In clear terms, the Resolution outlined clear measures that states ought to take in order to combat terrorism, noting specifically that states should be guided in their actions by the principles of human rights contained in international law.

12. Yet, as underscored by the United Nations Secretary General in September 2004, "today the rule of law is at risk around the world. Again and again, we see fundamental laws shamelessly disregarded — those that ordain respect for innocent life, for civilians, for the vulnerable... [The] framework is riddled with gaps and weaknesses. Too often it is applied selectively, and enforced arbitrarily. It lacks the teeth that turn a body of laws into an effective legal system… It is by reintroducing the rule of law, and confidence in its impartial application, that we can hope to resuscitate societies shattered by conflict."[3]

13. Indeed, set standards have come under attack at a staccato pace even before being achieved fully. Similarly, multilateralism has been weakened, militarism and resort to force have risen, and public confidence in public institutions — the very mainstay of the rule of law — has waned.

14. Such developments bear a responsibility in democratic shortcomings insofar as the alteration of political objectives and their implementation has penetrated social dynamics and has uprooted democratic codification of civic orders.

15. Besides the importance of international procedures, the promotion of the rule of law by state institutions has also decreased domestically, and we have been witnessing the proliferation of countries in a gray zone, neither completely ignoring the rule of law, nor fully implementing it. As one observer remarked, "a number of countries are neither dictatorial nor clearly headed towards democracy. They have some attributes of democratic political life, including at least limited political space for opposition parties and independent civil society, as well as regular elections and democratic constitutions. Yet they suffer from serious democratic deficits, often including poor representation of citizens' interests, low levels of political participation beyond voting, frequent abuse of the law by government officials, elections of uncertain legitimacy, very low levels of public confidence in state institutions, and persistently poor institutional performance by the state."[4]

III. NATIONAL CRISES AND STATES OF EMERGENCY

16. Moving from the identification of the linkages between democracy and human rights to the consideration of the inextricable relationship between democracy, human rights, and the rule of law — and the operational implications of those relationships — distinction should be made, at the outset, between two types of vulnerability situations, namely those

[3] Kofi Annan, Address to the United Nations General Assembly, New York, September 21, 2004.
[4] Thomas Carothers, "The End of the Transition Paradigm," *The Journal of Democracy*, 13, 1, 2002, pp. 9-10.

where the institutions of government are no longer able to function meaningfully (e.g., 'collapsed' or 'failed' states) and those cases where the state apparatus is functioning but where the conduct of political and judicial affairs — as a reaction to a new or developing situation — is endangering the rule of law. While discussion tends to focus on the former, we have seen in recent years, increasingly, the importance of considering properly the implications of the latter configuration.

17. In that respect, conflict can be caused by several key variables, notably, insecurity, inequality, private incentives, and perceptions.[5] Therefore, delineation of the nature of disorder is key to identifying available remedies. In most cases, disorder is a temporary effect of civil strife, not a chronic condition requiring sustained intervention. However, breakdown of law and order can also occur in the context or aftermath of a military conflict leading to the potential unraveling of the state fabric.

Internal disorder and vulnerabilities

18. The typical state response to internal disorder is to enforce stricter interpretations of security laws, assert the power of the government, and enact emergency legislation meant to facilitate investigation and prevention of violent emergencies. Often, the first (repressive) reaction to crises and states of emergency is to make all possible efforts to improve security by 'tightening up' the law and increasing the power of governmental institutions, regardless of the potential costs to rights and freedoms.

19. In that context, over the past four years, a number of international standards have come under attack. In particular, the relevance to the management of conflict of key dispositions of human rights and international humanitarian law has been questioned in a number of quarters. Such erosion has stemmed primarily from the combination of novel, hybrid situations — which have tested the boundaries of previously agreed upon mechanisms — and an increasing reliance on ad hoc unilateral approaches to conflict. If admittedly, international law does not have a readymade answer to any and all situations, it does constitute an invaluable and inescapable tool that can and should be used to address current and upcoming challenges.

20. When disorder occurs as result of civil disorder, uprisings, or prolonged periods of major criminality, the primacy of law (including its consistency with international standards) and the practice of democracy can become casualties of a process whereby rights-protecting mechanisms no longer function or do so only partially. Significant erosions of the rule of law constitute an assault on human rights and can in effect nullify the democratic functioning of a society.

21. As it is referred to here, democracy is understood as a sociopolitical and economic situation where the state is responsive to its citizens, hierarchy is broken down, separation of powers and citizens' participation in the political process are institutionalized, and

[5] See Anne-Marie Gardner, "Diagnosing Conflict: What Do We Know?," in Fen Osler Hampson and David M. Malone, eds., *From Reaction to Conflict Prevention — Opportunities for the UN System*, Boulder, Colorado: Lynne Rienner Publishers, 2002, pp. 15-40.

where (human) rights are guaranteed through the establishment of institutions in which separation of powers prevails.

22. Erosions may take the form of significant restrictions to access to rights. Other aspects concern the necessary protective tools of governance, namely the maintenance of national consensus, threat diffusion, and legitimacy renewal. Too often paired dichotomously, society and state are, in effect, two independent spheres which meet more formally than organically. In this respect, efforts entertained by institutions to establish, sustain, or revitalize domestic consensus towards reconstruction and democracy must rest fundamentally on a sense of justice and legitimacy.

23. To be certain, justice is a complex concept which has yet to achieve full purchase in human rights and with regard to the institutional protection of the rule of law. Whereas justice is often the most immediate request of individuals or communities suffering violations of their rights, it is not always completely grasped by a purely legal approach to protection. This is one clear limit of the law.[6] Much like discrimination, justice's elusive nature often escapes such regulations. This is the case particularly in time of conflict, when the basic safeguards are lifted or have evaporated.

24. Yet even in democracies, where less and less of daily life is immune from the activities and decisions of government bureaucracies, a tense political and security environment cannot justify encroachments on liberties. In all situations, domination can only be tolerated, at least prima facie, if it is deemed to be legitimate. In this sense, and using Weberian parlance, domination is to be understood as "the probability that certain specific commands (or all commands) will be obeyed by a given group of persons;...Domination ('authority') in this sense may be based on the most diverse modes of compliance: all the way from simple habituation to the most purely rational calculation of advantages...hence every genuine form of domination implies a minimum of voluntary compliance, that is, an interest (based on ulterior motives or genuine acceptance) in obedience."[7]

25. Questions of legitimacy can also occur when there is a crisis of change, doing so because all or some groups come to lack access to the political system and because the status of institutions is endangered (or perceived as such).[8] The practical result, during emergencies, is that no room is provided (or no longer available) for the articulation of citizens' aspirations as no structural accountability derivative of democratic dynamics is present. Such state of affairs is, then, conducive to an explicit legitimation crisis. Note that such crisis need not always be clearly manifested; it could exist without full explicitness.

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[6] See Julian Rivers, "The Interpretation and Invalidity of Unjust Laws," in David Dyzenhaus, ed., *Recrafting the Rule of Law — The Limits of Legal Order,* Evanston, Illinois: Northwestern University Press, 1999, pp. 40-65.

[7] Max Weber, *Economy and Society*, Berkeley, California: University of California Press, 1978 (1914), p. 212.

[8] For a discussion of legitimation crises, see Edward W. Lehman, *The Viable Polity,* Temple University Press, 1992. Lehman argues that the political viability of a governing state is to be assessed against three interdependent dimensions: (i) the state's capacity to effectively pursue its goals, (ii) the polity's ability to elicit efficiently popular participation, and (iii) the possible legitimacy of the prevailing political rules and procedures.

26. Accordingly, it is appropriate in discussing the legitimacy of state institutions vis-à-vis their society to retain a perspective which recognizes that legitimacy is inherently multi-dimensional in character. One such approach was formulated by David Beetham who argued that power can be said to be legitimate to the extent that: (i) it conforms to established rules; (ii) the rules can be justified by reference to beliefs shared by both dominant and subordinate; and (iii) there is evidence of consent by the subordinate to the particular power relation (see table 1).[9] Although Beetham posited that for power to be fully legitimate all three conditions are required, I will argue that, in practice, the first and second dimensions are key to maintaining or restoring the rule of law in disorder situations, where expectations are that the institutions will continue to provide for order and a reasonable redress of grievances.

Table 1 – The Three Dimensions of Legitimacy

CRITERIA FOR LEGITIMACY	FORM OF NON-LEGITIMATE POWER
Conformity to rules (legal validity)	*Illegitimacy (breach of rules)*
Justifiability of rules in terms of shared beliefs	*Legitimacy deficit (discrepancy between rules and supporting beliefs, absence of shared beliefs)*
Legitimation through expressed consent	*Delegitimation (withdrawal of consent)*

27. There is another sense in which legitimacy plays out in relation to the maintenance of order, and it is the case of legitimate internal rebellion. Here,

> what may justify rebellion is the forfeiture of the established state's authority locally rather than globally, namely in respect of that part of its population whose human rights it is violating. For suppose the state is repressing a national or other minority in its territory. Then it seems natural to say that it forfeits authority over them specifically, since the fact that it does not treat them like other citizens as benefiting from the protection of the law releases them from the normal obligations they have to it. *The state retains its authority over those who enjoy jurisdictional governance, and loses it over those who do not.*[10] (Emphasis added.)

Conflict and international humanitarian law

28. An instance in which the rule of law is affected by conflict is war, during which deprivations of liberty occur. The main threat to the rule of law, here, are violations, which can be deliberate or interpretative, and committed as an individual violation of state policies or a state violation of international standards.

[9] David Beetham, *The Legitimation of Power*, Atlantic Highlands, New Jersey: Humanities Press International, 1991, pp. 15-16.
[10] Paul Gilbert, *New Terror, New Wars*, Edinburgh: Edinburgh University Press, 2003, p. 112.

29. In February 2002, the United States' President, George W. Bush, determined that Al Qaeda prisoners were not prisoners of war and that, consequently, the Third Geneva Convention would not be applied to them (the rationale was that Al Qaeda is not a state and therefore not party to the convention). Similarly, the United States government determined that Taliban fighters in Afghanistan were not to be regarded as prisoners of war because they did not distinguish themselves from the civilian population. (According to the Third Geneva Convention, prisoner-of-war status disputes are to be arbitrated by a competent tribunal.)

30. In contradistinction, the United States did not deny officially the applicability of the Geneva Conventions to the war in Iraq. However, the stretching of the concept of "military necessity" (as stipulated by the Third Geneva Convention) in that conflict has allowed for a departure from established legal practice and, in some instances, lawbreaking. As we have seen with the situation in the Abu Ghraib prison, an ambiguous stance towards the law is an open door to violations.

31. Generally, disruption of order during armed conflict, whether international or non-international, requires the protection of civilians (all those not taking part in hostilities, i.e., being *hors de combat*). In both international and non-international armed conflict, civilians are protected from indiscriminate attacks, acts or threats of violence to spread terror, starvation, reprisals, inhuman treatment, deportation, and abuse during detention procedures. This obligation falls primary on the state that is exerting power over the protected population (the 'jurisdictional governance' test noted above).

32. There are two sets of international humanitarian law rules that are applicable to persons deprived of their liberty in a conflict, such as the one in Iraq. On the one hand, occupying powers are entitled to hold prisoners of war whose treatment is regulated by the Third Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949. On the other hand, the occupying powers are entitled — under specific conditions — to detain and intern certain protected persons, whose treatment is regulated by the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949.

33. The Third Geneva Convention provides a legal regime to protect members of the armed forces of a party to an international armed conflict who have fallen in the power of the enemy. The Convention defines a particular legal status for these individuals (prisoners of war) with rights and privileges accorded to them and obligations on the detaining authorities in terms of internment, treatment, and repatriation. The purpose of this protection is to ensure the safety and dignity of captured combatants while under the control of the enemy and for the duration of the hostilities.

34. Generally, members of the armed forces of a party to an international armed conflict are combatants and any combatant captured by the adverse party is a prisoner of war (Article 4 of the Third Geneva Convention). In addition to members of the armed forces, Article 4 extends the status of prisoner of war to: (i) resistance movements in occupied territories, provided that they are organized into a military structure, wear a fixed distinctive sign recognizable at a distance, carry arms openly, and conduct their operations in accordance with the laws and customs of war; (ii) individuals accompanying

the armed forces without actually being members thereof, such as the civilian crew of a military aircraft, war correspondents, supply contractors or suppliers for the welfare of the armed forces; and (iii) persons belonging, or having belonged, to the armed forces of the occupied country, if the occupying power deems it necessary by reason of such allegiance to intern them.

35. In addition to the international humanitarian rules regulating the status of prisoners of war, there are a number of obligations on the part of the coalition forces as occupying powers regarding the treatment of protected persons in their custody. The Fourth Geneva Convention is applicable, generally, to situations of international armed conflict and to situations of partial or total occupation of the territory of a High Contracting Party, even if said occupation meets with no armed resistance (Article 2). In occupied territories, the Fourth Convention applies to all persons who are not of the nationality of the occupying state, including the nationals of neutral states.

36. In the case of Iraq, the Coalition Provisional Authority handed sovereignty to an Iraqi Interim Government on June 28, 2004. The modalities of that handover were set forth in Security Council Resolution 1546 of June 8, 2004, and in an exchange of letters between the US Secretary of State and the Prime Minister of the Interim Government of Iraq and the President of the Security Council annexed to said resolution. With the dissolution of the Coalition Provisional Authority, the Security Council authorized the presence of a multinational force under unified command in Iraq, with the authority "to take all necessary measures to contribute to the maintenance of security and stability in Iraq in accordance with the letters annexed to the resolution."

37. As it were, the handover of sovereignty to the Iraqi interim government raised the question of the continuing applicability of international humanitarian law to persons deprived of their liberty in Iraq. As reported by Amnesty International, the United States had announced that it "inten[ded] to continue to hold, without charge, between 4,000 and 5,000 detainees."[11] It is to be noted that Security Council Resolution 1546, as well as the exchange of letter, did not contain specific provisions regarding the status of detainees that were in the custody of the coalition forces at the time of handover of sovereignty on June 28. The letter by former Secretary Powell merely states that after the handover of sovereignty the multinational forces may conduct activities necessary to counter ongoing security threats including "internment where this is necessary for imperative reasons of security."

38. In the final analysis, the question of which regime of protection is applicable on persons deprived of their liberty before the handover of sovereignty can only be answered in light of the larger question of whether the occupation of the coalition forces has ended effectively. An end of occupation signals the end of international armed conflict. Article 133 of the Third Geneva Convention provides that "internment shall cease as soon as possible after the close of hostilities." However, Article 119 of the same Convention provides that prisoners of war may still be detained after the cessation of hostilities if there are criminal charges pending against them, until the conclusion of criminal proceedings.

[11] Amnesty International, *Iraq: Human Rights Protection and Promotion Vital in the Transitional Period,* June 2004, p. 1.

39. The International Committee of the Red Cross has taken the position that with the handover of sovereignty, the situation in Iraq is "no longer that of an international armed conflict between the US-led coalition and the state of Iraq and covered by the Geneva Conventions of 1949. The current hostilities in Iraq between armed fighters, on one hand, opposing the multinational force and the newly-established authorities, on the other, amount to a non-international armed conflict. This means that all parties including the multinational force are bound by Article 3 common to the four Geneva Conventions, and by customary rules applicable to non-international armed conflicts."[12]

40. This means, on the one hand, that the Geneva Conventions shall remain applicable to persons deprived of their liberty before June 28, 2004, and who remained in the custody of the Coalition forces until their final release and repatriation. Persons who were handed over to the Iraqi authorities and who are detained in connection with the ongoing hostilities will be protected by Article 3 common to the four Geneva Conventions.

41. As evidenced even by the complex Iraqi case, there is no fundamental gap in the law when it comes to the regulation of warfare, the provision of order, and international humanitarian law. Indeed, the state or occupying power is responsible for taking all measures in its power to maintain or restore public order and safety. Beyond the obligation to ensure sufficient supplies in terms of food, water, and medical supplies, the administration of justice is to be attended to in relation to three key aspects: (i) local laws remain in force and local courts stay competent (Article 66 of the Fourth Geneva Convention); (ii) civilians may only be detained in view of a trial or for imperative security reasons, which must be determined individually, allowing for a right of appeal (Articles 78-135 of the Fourth Geneva Convention); and (iii) if civilians commit hostile acts, they may be punished but do not lose their civilian status. In no case may a civilian be deported outside the territory (Article 49 of the Fourth Geneva Convention).

42. Note that, though the obligations to provide for the needs of the population are imposed on the state, should the population become supplied inadequately, the state is required to accept relief operations (which cannot, in any event be regarded as alleviating the state's responsibility). In that respect, a key lesson learned from peace operations worldwide is that the most important objective in the initial phase of the post-conflict or stabilization period is to (re)establish the rule of law.

43. One example of building the rule of law in post-conflict situations can be drawn from Afghanistan where the need to develop a strong judiciary was identified and a Judicial Commission as well as a Human Rights Commission established to provide for the foundations of the rule of law. The collapse of the Afghan legal system, in the wake of twenty years of conflict, had hampered access to justice because of the lack of trained lawyers, poor infrastructure, and no complete record of the country's laws. For years, there had been few protections of the rights of individuals to a fair trial. Additionally, abuses were widespread and military commanders enjoyed great latitude.[13]

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[12] ICRC, *Iraq Post-28 June 2004: Protecting Persons Deprived Of Freedom Remains A Priority,* August 5, 2004.

[13] See International Crisis Group, Afghanistan: Judicial Reform and Transitional Justice, available at www.icg.org//library/documents/report_archive/A400879_28012003.pdf

III. THREATS TO RIGHTS AND FREEDOMS

44. Besides the relatively self-contained case of international humanitarian law regulating warfare, as a *lex specialis*, there are aspects of human rights analysis that are germane to the enjoyment of rights and the practice of democracy which must be reflected in any measurement methods of the rule of law. Here, too, we must differentiate between two levels of threats to the rule of law. Those generic measures which apply to all and, in their very nature, may, wittingly or unwittingly, be conducive to undermining liberties, and those regulations which target or end up targeting specific groups (on ethnic, religious, cultural, or gender grounds). Similarly, it is key to distinguish between those threats that fall under abuse of powers (conduct unbecoming, malpractice), and those manifestations of power that in their application during a state of emergency undermine the rule of law.

45. Generally, there should be *availability* and *accessibility* of rights (as well, indeed, as their affordability and quality). Additionally, the protection against threats to rights and freedoms calls for the respect of the five core human rights values, namely (i) inclusion (acknowledgement of dignity and demonstration of respect), (ii) no discrimination (fair and equal treatment of individuals), (iii) accountability (authorities are answerable for their actions), (iv) transparency (processes and information are readily visible and available), and (v) participation (in decisions and processes that affect one's affairs).

46. In times of crisis and social disorder, dangers to the effective enjoyment of rights can originate in the context of the implementation of derogation of rights, in the process of the administration of justice, or in the course of the enforcement of security laws.

Derogation of rights

47. The question of derogation is central to the maintenance of law and protection during situations of internal disorder. Its dispositions and regulation are covered under both international humanitarian law and international human rights law.

48. Under international humanitarian law, there are no derogations from the obligations of the individual agents of the state in applying the laws of war during conduct of hostilities and respecting the cardinal principles of distinction between combatants and non-combatants and proportionality of the use of force.

49. Under international human rights law, derogations exist in situations of public emergency. However, essential human rights are non-derogable. Article 4 of the International Covenant on Civil and Political Rights (ICCPR) specifies the conditions under which derogations to certain rights (freedom of the press, right to assembly, freedom of movement) can take place, namely that (i) the measures be limited to the extent required by the exigencies of the situation (in particular, there should be a declaration of emergency and a public notification thereof), (ii) the measures must not involve discrimination, (iii) there are elements of international law that are non-derogable (prohibition against taking hostages, abductions or unacknowledged, 'ghost' detention), and (iv) the state must always comply with the obligation to provide effective remedies for violation of non-derogable rights.

50. Article 4 (2) indicates that no derogation can be made to the right to life, due process, freedom of thought, conscience and religion, the prohibition of torture and slavery, improper imprisonment, as well as retroactivity of the law.

51. Additionally, the Siracusa Principles — adopted at a high-level international conference on the limitation and derogation provisions of the ICCPR, held in Italy in 1984, and subsequently presented to the Commission on Human Rights — note that derogations to human rights: (i) must be provided by law (not drafted arbitrarily or imposed unreasonably); (ii) are subject to qualified limitation (notably, they ought not to impair the democratic functioning of society); (iii) should be strictly necessary for public order (the original French "*ordre public*" meaning which is not confined solely to a security subtext but conveys a larger sense of proper functioning of institutions and citizens' affairs); (iv) should concern national security (i.e., the nation's very existence and territorial integrity, not merely isolated threats to law and order); and (v) must pursue a legitimate objective and be proportionate to that aim.

52. In July 2001, the Human Rights Committee adopted General Comment 29, which clarified further the application of ICCPR Article 4. It is to be noted, too, that international law is not the only source of protection for fundamental rights and freedoms; constitutional governments have their own sets of non-derogable rights. Yet the relationship between those rights and the necessity of emergency powers in the face of crisis is often unclear.

53. Since the attacks of September 11, 2001, there has been much discussion of potential threats to rights and freedoms and a fair administration of justice posed by the management of major national crises and states of emergency, both in the United States, where the attacks occurred, and around the world. To be sure, the United States has a long history of "episodes of resurgent government control and historical moments of the threat of restriction on the exercise of…basic freedoms of speech and assembly."[14] For example, during the Civil War, the United States Congress approved of the detention of thousands of civilians by the Union army. For the most part, these extreme measures in the face of national crises were regarded later as severe infringements to rights and freedoms. In the case of the detention of civilians during the Civil War, the US Supreme Court stepped in eventually to assert that a denial of basic rights and freedoms, even in a state of emergency, is not acceptable noting that the Constitution is

> a law for rulers and people, equally *in war and in peace*, and covers with the shield of its protection all classes of men, at all times, and *under all circumstances*. No doctrine, involving more pernicious consequences, was ever invested by the wit of man than that any of its provisions can be suspended during any of the great *exigencies* of government.[15] (Emphasis added.)

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[14] Mark Sidel, *More Secure Less Free? — Antiterrorism Policy and Civil Liberties after September 11*, Ann Arbor, Michigan: University of Michigan Press, 2004, p. 4. For an informative discussion of the history of security legislation in the United States, see David Cole, "Let's Fight Terrorism, Not the Constitution," in Amitai Etzioni and Jason H. Marsh, eds., *Rights vs. Public Safety After 9/11*, New York: Rowman and Littlefield Publishers, Inc., 2003, pp. 36-38.

[15] *Ex Parte Milligan*, 71 U.S. 2, 120-21 (1866).

54. The security legislation enacted after September 2001 is merely an instance of a pattern of reactions on the part of a governmental authority in response to a national emergency that poses a potential threat to the rights and freedoms of the population. In this case, the first major law enacted in response to the September 11 attacks was the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (PATRIOT). Post-Patriot Act measures have included the Computer Assisted Passenger Prescreening System (CAPPS), the Terrorism Information and Prevention System (TIPS), Highway Watch, Airport Watch, Eagle Eyes, and a thwarted Patriot Act II. The Patriot Act's dispositions reach into many different sectors, and critics have expressed concern that the law violates some of the most basic principles of human rights. One expert outlines three "principle flaws" in the Act: (i) it imposes guilt by association on immigrants; (ii) it authorizes executive detention on mere suspicion that an immigrant has engaged in a violent crime or provided humanitarian aid to a proscribed organization; and (iii) it resurrects ideological exclusion, denying admission to aliens.[16]

55. In addition to the issue of legal guarantees and the protection of non-derogable rights in the face of national crises and emergency security legislation, it is important to examine the broader question of the role of legislation as a weapon against violent threats and whether legislation is, in fact, an effective means of handling such situations.

Administration of justice

56. Limiting the effect of emergency powers and delineating permissible derogations, so that the state of emergency is regarded as a temporary situation and not a norm, is but one aspect of the regulation of societal disorder processes. In times of emergency, particular attention should also be paid to the administration of justice, which can come to suffer from degraded or weakened institutions. The modus operandi is the perpetuation of effective and justiciable remedies under the umbrella of a constitution incorporating the principles of international human rights and freedoms.

57. The requirements of justice follow two key principles, namely *independence* and *impartiality*, which are often the object of attacks in times of disorder when the denial of justice can proliferate. These two bedrocks underscore the larger, democratic principle of equality before the law. Indeed, proper functioning of the courts is a measure of democracy — since the constitutional will of the people is vested therein — and a component of the rule of law, insofar as courts are attributes of state institutions.

58. The cardinal constitutional guarantees (independent judiciary, public proceedings, trial by jury, due process, habeas corpus, and appeal to higher courts), separation of powers, and the possibility to monitor and document publicly the process are the cornerstone of that aspect. The administration of justice represents, as it is, a particular constellation of societal vulnerability in time of disorder as the respect for procedure can be swayed by

[16] Cole, "Let's Fight Terrorism, Not the Constitution," p. 36.

improper derogations, as seen above. Confusion as to what authority obtains can also result from the general weakening of institutions.

59. The rules governing a proper administration of justice are laid out notably in the Universal Declaration of Human Rights (Articles 10 and 11), the International Covenant on Civil and Political Rights (Articles 2, 14, and 26), the International Convention on All Forms of Racial Discrimination (Article 5), the Convention of the Rights of the Child (article 37), as well as the Basic Principles on the Independence of the Judiciary adopted by the United Nations General Assembly in 1985, the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors, the latter two adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990.

60. In practice, the credibility of judicial proceedings spells a legitimate and competent initiation of investigation; transparent, non-discriminatory prosecutorial procedures; and interference-free judicial guarantees of remedy and redress. Less tangible, but equally consequential aspects of the administration of justice in times of crisis require maintaining at all times access to the justice sector (as well as ensuring the provision of adequate resources for that sector), an aspect that often implies taking into account the vulnerability of particular groups. Finally, in another instance of the mutually-reinforcing nature of international humanitarian law and international human rights law, accountability of the military during social disorder situations is key.

61. The practice in the scholarship and policy of pitting security and rights against each other as opposing forces locked in a tug-of-war is dangerous and counter-productive. Counter-terrorism measures, for instance, often carry potential risks for the democratic systems that initiate them. The most obvious problem is that severe responses to national crises caused by terrorism or threats of terrorism may, in effect, suspend and eventually obliterate the very same rights and freedoms of the democracy which the responses are designed to protect.

62. The post-September 11 era has, in that respect, witnessed a proliferation of instances in which all measures for a proper administration of justice were not respected fully. In a number of countries, the monitoring of client-attorney communications, the introduction of secret procedures,[17] the relaxed scrutiny with the provision of evidence, and the multiplication of pre-trial detention as anticipatory sentences without evidence of wrongdoings have characterized security and counter-terrorism measures.

63. In the aftermath of the March 11, 2004 attacks in Madrid, Spanish authorities have, for instance, often imposed secrecy, or *secreto de sumario*, on investigations and judicial proceedings related to counter-terrorist activity. Under *secreto de sumario*, defense attorneys do not have access to critical information regarding the charges against their clients or the evidence against them. This restricted access may be kept in place until the investigative phase of the legal process is almost concluded.[18]

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[17] See Tim Golden, "After Terror, a Secret Rewriting of Military Law," *The New York Times*, two-part article, October 24-25, 2004, respectively pp. 1 and 12-13, and pp. 1 and 8-9.

[18] Human Rights Watch, *Setting an Example? Counter-Terrorism Measures in Spain*, January 2005.

64. One of the main concerns regarding the enactment and enforcement of security legislation is that it has the potential to discriminate against certain disadvantaged groups and restrict their access to justice. Specifically, since the attacks of September 11, 2001, many governments have adopted counter-terrorism policies that subject certain categories of individuals — primarily those who are of Arab lineage and/or Muslim confession — to special immigration rules. Those targeted include migrants, temporary visitors, asylum seekers and refugees.[19] The post-September 11 policies targeting these groups resulted in the detention of thousands of individuals without disclosure of their names or locations. Those in detention have faced real and practical obstacles to justice. They have had limited access to telephones, little or no advice on how to contact the appropriate legal services, and restrictions on lawyers themselves trying to gain access to clients or prospective clients.[20]

Enactment of security legislation

65. An important constellation of threats to the rule of law during disorder situations is, therefore, represented by the type of existing security legislations and the manner in which authorities go about implementing them. This issue has gained particular urgency in the past four years. In several parts of the world a form of neo-authoritarianism — whereby the state uses attributes of order to relegitimate its hold on its society — has emerged. In many ways, the 1990s retreat of the state begat a subsequent regeneration of the state with the latter's in-built tendency to expand manifesting itself in the guise of necessary security measures.

66. The core issue is the extent to which legitimate security concerns (underscored by a desire to protect the civilian population from violent acts, in particular terrorist activity) come to bend regulations and proper procedures to such a degree that civil liberties are endangered. A case in point is the situation in the United States following the September 11, 2001 attacks on targets in New York and Washington. In the aftermath of those operations, President George W. Bush declared, on November 13, 2001, an "extraordinary emergency" in the United States and issued a Military Order on the Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism.[21] The Order established that military commissions should try foreign nationals who were members of Al Qaida and foreign nationals who committed acts of international terrorism. The basis for jurisdiction by the military commissions is the American president's own determination of whether an individual is subject to the military order. The commissions can establish any penalty provided under applicable law, including life imprisonment or death. (On February 1, 2005, a US federal court requested the government to allow prisoners at Guantanamo Bay to be allowed to contest their detention in courts, ruling that special military reviews are illegal.)

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[19] Human Rights Watch, Submission to the Committee on the Elimination of Racial Discrimination (CERD) regarding the Rights of Non-Citizens, February 13, 2004; Nina Bernstein and Marc Santora, "Asylum Seekers Treated Poorly, U.S. Panel Says," *The New York Times*, February 8, 2005, pp. 1 and 27.

[20] Lawyers Committee for Human Rights, 2002, p. 19.

[21] Available at www.whitehouse.gov/news/releases/2001/11/20011113-27.html.

67. Subsequently, hundreds of male individuals of Arab descent and/or Muslim religion — including dozens that were either US citizens, permanent residents, or had entered the country legally — were detained by the Department of Justice and the Federal Bureau of Investigation as part of the criminal investigation associated with the New York and Washington attacks. In a large number of cases, reasonable suspicion of guilt translated into trespassing on constitutionally- and internationally-protected rights. A number of reports have documented methods of physical and psychological coercion used to gain confessions and extract information, particularly during the initial capture and interrogation of detainees suspected of security offences or deemed to have an intelligence value.[22]

68. Similarly, in the United States, in the post-September 11 era, the danger of legal improvisation was best embodied in the debate on the use of torture.[23] Beginning in the fall of 2001, that discussion featured a number of prominent national commentators putting forth the idea that, under special circumstances, torture — a basic violation of international human rights law — could be administered publicly, under presidential authority. The rationale is that, though regrettable, 'torture works', and if a non-lethal dose of it (such as "water-boarding", i.e., the practice of strapping a prisoner down and placing him under water until he felt he would drown, hooding, intimidation by dogs, threats of rape, extended urine-sittings, sleep and dietary deprivation) can be used to save lives, it is a calculus worth making.

69. This line of thinking is dangerous in two respects. First, rationalization of the use of prohibited measures opens the door to further rationalization of coercive methods, including on the part of one's enemy. Terrorism, which lacks an internationally agreed upon legal definition, would be particularly exposed to political and contextual arguments. Second, invoking such arguments as the "American" and "un-American" nature of a particular method to test its acceptability — resorting, hence, to subjective moral values and nationalistic determinants that have no grounding in international legal standards — ends up undermining the very universal dimension of obligations that endows them with full legitimacy, in essence introducing a cultural component to the respect or violation of rights. In the final analysis, any attempt to legitimize torture even in the rarest of cases risks the slippery slope towards normalizing it.[24]

70. In periods of emergency, compliance with legal obligations under the law can make way for an unspoken yet palpable disdain for 'legalisms,' which, it is argued, 'get in the way' of

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[22] See, inter alia, Lawyers Committee for Human Rights, *A Year of Loss — Reexamining Civil Liberties Since September 11*, 2002; Human Rights Watch, *Presumption of Guilt: Human Rights Abuses of Post-September 11 Detainees*, 2002; William Schulz, *Tainted Legacy — 9-11 and the Ruin of Human Rights*, New York: Thunder's Mouth, 2003.

[23] See, for instance, Steve Chapman, "Should We Use Torture to Stop Terrorism?," *The Chicago Tribune*, November 1, 2001; Jim Rutenberg, "Torture Seeps into Discussion by News Media", *The New York Times*, November 5, 2001, p. C1; "Time to Think about Torture as U.S. Option", *Newsweek*, November 5, 2001; Alan M. Dershowitz, "Is There a Torturous Road to Justice", *The Los Angeles Times*, November 8, 2001; Bruce Hoffman, "Should We Torture? — A Nasty Business", *The Atlantic Monthly* 289, 1, January 2002, pp. 49-52; Dana Priest and Barton Gellman, "US Decries Abuse But Defends Interrogations," *The Washington Post*, December 26, 2002, p. A1; and Raymond Bonner, Don Van Natta Jr., and Amy Waldman, "Questioning Terror Suspects in a Dark and Surreal World," *The New York Times*, March 9, 2003, pp. 1 and 14.

[24] Robert D. Kaplan, "Hard Questions," *The New York Times Book Review*, January 23, 2005, p. 11.

efficient measures. With one cardinal issue on their minds — security — public actors start lacking the mental space to maintain or reestablish democracy and its institutional safeguards. Because of an extraordinary situation, reflection and debate become absent as other priorities are set. One ought, hence, to stress the disruptive effect that this developmental history has on the sociopolitical process as a whole for, in time, radical security measures come to be rationalized and indeed supported enthusiastically by segments of civil society.[25] Hence, questioning of legitimate order becomes tied to notions of security performance rather than nomothetic issues.

71. Undermining the rule of law by taking exception to its dispositions is, however, shortsighted and self-destructive. In conflict areas, the message sent to belligerents and populations alike is that the law can be bent. For violence-prone non-state actors, such as transnational armed groups, this can spell an invitation to have even less consideration for the rule of law. Designing laws for specific situations, invoking the national character of particular parties, while dismissing existing impartial international and domestic laws that just as well apply, is akin to lawlessness. Simply put, a distorted regimen is useless and violations beget violations.

72. If surely a process of adaptation of international law is increasingly called for, such process goes hand in hand with that body of law's reaffirmation.[26] Commitment and adherence to law is not optional nor is it dependent on one's (humane) practice; it is a requirement. In practice, this means acceptance of the fact that disorder can be remedied efficiently within the existing contours and corpus of law.

V. REMEDIAL STRATEGIES

73. An understanding of the rule of law that highlights the interconnectedness with human rights and democracy can lead to more adequate responses to the different facets of the problem of law erosion. In giving due attention to the critical vulnerability and stigmatization that often accompany conflict situations, multifaceted measures enable responses that accommodate the protection and promotion of rights in the pursuit of democracy — considering not merely resources but the full range of capabilities, choices, security and the empowerment required for the enjoyment of fundamental civil, cultural, economic, political, and social rights.

74. Efficient and legitimate responses to threats to the rule of law in times of disorder and emergency call for a complementary and mutually reinforcing set of measures that are implemented with the twofold requirement of *obligation of means* (protection of rights) and *obligation of results* (respect for procedures) as cardinal principles of concerted action — i.e., authorities must manifest their best efforts and achieve certain results.

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[25] Michelle Malkin and John Derbyshire, for instance, argue in favor of racial profiling. See, respectively, *In Defense of Internment — The Case for Racial Profiling in World War II and the War on Terror*, Washington, DC: Regnery Publishing, 2004; and "A (Potentially) Useful Tool," in Etzioni and Marsh, *Rights Vs. Public Safety*, pp. 57-60.

[26] See the work conducted on this question by the International Humanitarian Law Research Initiative (www.ihlresearch.org), a research, policy, and information project dedicated to the reaffirmation and development of international humanitarian law.

75. That obligation rests first and foremost with the state, which by virtue of its sovereign jurisdiction, must see to it that the rule of law is protected under any circumstances. Too, the state has the basic duty to enforce a minimum level of human rights, and to provide the conditions for a fair competition between alternative political programs and the societal project that they entail. A rationale embracing long-standing patterns and path-dependent indigenous democratic traditions ought to be incorporated in such a scheme.[27] Undoubtedly, there will be political differences, plurality of discourses, and bold opposition from parties of all ilks (government and civil society), but the precept of a procedural institution with a shared decision-making is in essence to facilitate citizen participation in public policy.

76. In many cases, however, the state retreats because it can no longer manage across the board. Often, it reacts merely by increasing quantitatively its interaction with society, engaging in multifaceted tasks and surveillance of the social realm. As no one set of political authorities can, in all circumstances, command sufficient political and economic resources, in the face of malicious acts,[28] to project policy authoritatively across all the main arenas of public policy, it emerges that the safeguard of the rule of law and the concomitant promotion of human rights ought not be weighed against competing concerns. Rather, they should proceed under an integrated vision where security, in particular, is a concern that can and should be considered legitimately as part of a strategy that abides by existing laws.

77. In that respect, we can identify operational benchmarks for action in the following three key areas for the facilitation of return to peace and normalcy:

- *Providing for the proper functioning of protection mechanisms*
  - obligation on the state to binding commitments and compliance
  - public awareness of the mandate and jurisdiction of the different organs
  - establishing, protecting, and communicating publicly the independence of legal institutions
  - ensuring the effective functioning of competent and independent oversight/monitoring systems

[27] On this issue, see Beatrice Pouligny, "UN Peace Operations, INGOs, NGOs, and Promoting the Rule of Law: Exploring the Intersection of International and Local Norms in Different Postwar Contexts," *Journal of Human Rights*, 2, 3, September 2003, pp. 359-377.

[28] These are defined as acts resulting in death or disability, which are caused by war, invasion, acts of foreign enemies, hostilities, civil war, revolution, rebellion, insurrection, usurped military power, riots, civil commotion, sabotage, explosion of war weapons, and terrorist actions.

- *Addressing gaps in redress measures*

  - ensuring that human rights and humanitarian norms are dully considered, and seen as offering a permanent comprehensive regime of protection

  - addressing the perception that rights come at the expense of security — a false dichotomy and a dangerous trade-off

  - building regulatory capacity of the military (expertise and processes)

- *Working with cross-constituency networks*

  - developing multifaceted yet integrated approaches to security management and crisis diffusion

  - husbanding the resources made available by the different local political and security actors (judiciary, parliament, law-enforcement, national human rights commissions, and civil society)

  - ensuring that the media play a responsible, informative, non-inflammatory role in times of emergency[29]

78. To be sure, an intertwined set of protection measures constitutes an asset. Here, the interplay between international humanitarian law and international human rights law also gives the principles an operational force. Their temporal combination (peacetime and war) allows for a permanent regime of protection. When such regime comes under attack, there is then the possibility to resort to its different components to maintain the rule of law. Indeed, international humanitarian law applies precisely where (some) exceptions can be made to international human rights law.

79. In the final analysis, peace and prosperity cannot be achieved in times of crises without partnerships involving governments, international organizations, and civil society using the full corpus of applicable law. That rights and law have edged their way to the center of international politics is above all a function of the development of a strong sense of accountability — as well as a desire to avoid the irruption of system-shaking crises — which underlies these concerns.

[29] See, as well, the recommendations on objectivity, credibility, diversity, contextualization, and terminology in Mohammad-Mahmoud Ould Mohamedou, "The Media in Democracies: Role, Responsibilities, and Human Rights Issues," Seminar on the Interdependence between Democracy and Human Rights, Office of the High Commissioner for Human Rights, Geneva, November 25-26, 2002.