THE INSECURITY OF HUMAN SECURITY

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"On résiste à l'invasion des armées; on ne résiste pas à l'invasion des idées." (Victor Hugo)[1]

ABSTRACT

Since the mid-1990s, a new concept has entered into international discourse: human security. The concept of Human security seeks to create a paradigm shift in conceptions of security. It aims to relocate the focus of protection from the state to individuals and to expand the scope of the conception of security from military security into broader areas, such as protection from hunger, natural disaster, poverty, and other threats not traditionally conceptualized in terms of security. Human security reflects the need for conceptual innovation in political, legal, national, and international discourse.

This article presents a conceptual analysis of human security. It clarifies the distinctions between national security and human security, and demonstrates how this term cuts across the familiar dichotomy between human rights and security by approaching subjects that were typically the concern of human rights discourse through a security prism. Human security thus requires revised thinking in both international and domestic law about, inter alia, the identification of threats to the security

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[1] VICTOR HUGO, HISTOIRE D'UN CRIME 489 (Abeille et Castor 2009) (1877) ("A man can resist an invasion of armies; he cannot resist invasion of ideas.").

of the individual and the relationship between a government and its citizens.

The article offers a critical study of the human security concept. The author argues that although human security is normatively appealing, it suffers from numerous analytical shortcomings. Therefore, instead of promoting new concepts, the author argues that it is more useful to concentrate on the familiar concept of rights. If the aspiration is to protect human security in the broad sense, the international community should focus its efforts on the protection, promotion and realization of civil and political rights, together with social, economic, and cultural rights, instead of the promotion of new concepts. Genuine protection of human dignity, life, health, standard of living and a suitable environment, etc., will provide humanity's true security.

INTRODUCTION

As of the middle of the 1990s, a new concept arose in international law discourse: *human security*. The concept emerged against the backdrop of the dangers and threats that human beings face in modern times, and, at its core, was the will to create a paradigmatic shift in the way that we think about security.[2] First, the concept human security aims to shift the focus of protection from the abstract entity of the state and its territory to the individual and the society in which she lives. Second, this concept aims to broaden the scope of the concept of *security* beyond its narrow interpretation of physical and military security to other areas, such as security from hunger, diseases, natural disasters, and other hardships. [3] Millions of people die from these afflictions every year, yet they do not fall within the traditional interpretation of security. In a world in which war, terrorism, and humanitarian and economic crises are common phenomena, the rise of the concept of human security aims to deliver a message of hope for improving the security of mankind in a wider sense.[4]

This article presents a conceptual analysis of the term human security. It also aims to offer a preliminary observation and critique that although the concept of human security aims to improve humanity's condition, it suffers from numerous disadvantages and it is doubtful whether it can substantially contribute to the universal discourse on human rights. Part I of the article reviews the concept of human security, why a shift in the security discourse was needed, and describes the relationship between national and human security. Part II reviews the history of the development of the concept in the international debate, its position in international law, and its nexus with the responsibility to protect (R2P) doctrine. Part III puts forward the general criticism against the concept of human security. Part IV focuses on the claim that the use of the concept of human security may not only be redundant, but may

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[2]   *See* Emma Rothschild, *What Is Security?*, DAEDALUS, Summer 1995, at 53, for a review of this shift in security discourse.

[3]   Monica den Boer & Jaap de Wilde, *Introduction* to THE VIABILITY OF HUMAN SECURITY 9, 10 (Monica den Boer & Jaap de Wilde eds., 2008); Mary Kaldor, Interview, *Putting People First: The Growing Influence of 'Human Security'*, YALE J. INT'L AFF., Spring – Summer 2010, at 17 [hereinafter *An Interview with Mary Kaldor*]; George A. MacLean, *Human Security and the Globalization of International Security*, WHITEHEAD J. DIPL. & INT'L REL., Winter/Spring 2006, at 89, 90.

[4]   Archbishop Desmond Tutu, *Foreword* to Human Security Report 2005 – War and Peace in the 21st Century III (2005).

well be more harmful than helpful to the protection and promotion of human rights. Part V provides a conclusion to the article. All in all, while the concept of human security is on the way of becoming increasingly relevant in international law and security literature,[5] this article seeks to take a critical or at least precautionary approach to this arising concept.

I.   THE DEVELOPMENT OF THE HUMAN SECURITY CONCEPT

A.   WHAT IS HUMAN SECURITY?

The word security comes from the Latin term *sine cura* – without worries, without fear. Security is thus a matter of feeling, of sense.[6] It is the sense of safety, of being protected.[7] It appears that the concept of human security is intellectually rooted in the modern theories of the Canadian psychologist William Blatz, according to whom, security is necessarily an inclusive and pervasive concept.[8] Thus, in the context of human security, the concept of security is broadened to include protection from various kinds of threats, such as economic, social, and natural threats. Security focuses on the person, placing the individual as the first referent of security.[9] By placing the individual at the center, the concept of human security was claimed to offer a systematic rational perspective; a complex one that is comprised of many variables, but which is detached of national realism or global neo-liberalism biases.[10]

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[5]   For bibliographical references, see Stéphane de la Peschadière, *La Sécurité Humaine: Etat de l'Art et Repères Bibliographiques*, 1 HUM. SECURITY J. 79 (2006).

[6]   Mary D. Salter Ainsworth, *Security and Attachment*, *in* THE SECURE CHILD: TIMELESS LESSONS IN PARENTING AND CHILDHOOD EDUCATION 43, 46 (Richard Volpe ed., 2010).

[7]   See Ronen Eidelman, *Personal Security*, in 3 MAFTE'AKH – LEXICAL REV. POL. THOUGHT 105 (2011) [Hebrew], for an interesting note on sensing personal security (contra to human security).

[8]   Blatz used the term independent security early as 1966 in his research on the ways in which human beings develop a sense of security during their lives. *See* WILLIAM E. BLATZ, HUMAN SECURITY 63 (1966). *See also* JENNIFER BROWER & PETER CHALK, THE GLOBAL THREAT OF NEW AND REEMERGING INFECTIOUS DISEASES: RECONCILING U.S. NATIONAL SECURITY AND PUBLIC HEALTH POLICY 4 (2003). It was argued that the philosophical roots of human security are in 18th century Enlightenment Liberalism. *See* P. H. Liotta & Taylor Owen, *Why Human Security?*, WHITEHEAD J. DIPL. & INT'L REL., Winter/Spring 2006, at 37, 40–41.

[9]   Edward Newman, *Human Security and Constructivism*, 2 INT'L STUD. PERSP. 239 (2001). *See also An Interview with Mary Kaldor*, *supra* note 3.

[10]   Jorge Nef, *Human Security, Mutual Vulnerability, and Sustainable Development: A Critical View*, WHITEHEAD J. DIPL. & INT'L REL., Winter/Spring 2006, at 55, 57. See CAROLINE THOMAS, GLOBAL GOVERNANCE, DEVELOPMENT AND HUMAN SECURITY: THE CHALLENGE OF POVERTY AND INEQUALITY (2000), for a criticism on new-liberal policy as exacerbating the absence of human security.

In this article, I therefore refer to human security to invoke a novel concept that focuses on the security of people rather than the security of a territorial state, and has at its core the survival, everyday life, and dignity of the human being.[11] Caroline Thomas argued that human security is achieved when basic material needs are supplied and when human dignity, including real participation in the community, is fulfilled.[12] Others advocate a wider interpretation, according to which anything that can improve the quality of man's life – economic growth, improved access to resources, social and political empowerment, and so on – all form part of human security.[13] What is clear is that the debate regarding human security is an attempt to conceptually merge development issues with humanitarian and security issues.[14] It is therefore possible to draw parallels between the approach to human security and that of Amartya Sen, according to whom the welfare of human beings is not merely a by-product of development, but rather a means for development and its purpose.[15] According to Sen, development is a process of expanding liberties and economic, social, and political freedoms mutually which influence one another. Human liberties, democracy, and basic political and social rights are the purpose of development and the basic means for its achievement.[16]

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[11]   *See* Amartya Sen, Why Human Security?, Presentation at the International Symposium on Human Security 1 (July 28, 2000) (transcript available at http://sicurezzaambientale.gruppi.ilcannocchiale.it/mediamanager/sys. group/447/filemanager/Sen2000.pdf).

[12]   Caroline Thomas, *Introduction* to GLOBALIZATION, HUMAN SECURITY, AND THE AFRICAN EXPERIENCE 1, 3 (Caroline Thomas & Peter Wilkin eds., 1999). Thomas' book, IN SEARCH OF SECURITY: THE THIRD WORLD IN INTERNATIONAL RELATIONS (1987), was highly influential in broadening the traditional militant security approaches which focused on states to areas such as poverty and focus on people, especially in developing nations, rather than states.

[13]   Ramesh Thakur, *From National to Human Security*, *in* ASIA-PACIFIC SECURITY: THE ECONOMICS-POLITICS NEXUS 52, 53–54 (Stuart Harris & Andrew Mack eds., 1997).

[14]   On the relationship between development and human security, see, e.g., Jan Gruiters, *Human Security and Development: An Ambivalent Relationship*, 19 SECURITY & HUM. RTS. 54 (2008); James Busumtwi-Sam, *Development and Human Security – Whose Security, and From What?*, 57 INT'L J. 253 (2001-2002); Keith Griffin, *Global Prospects for Development and Human Security*, 16 CAN. J. DEV. STUD. 359 (1995). On the right to development in international law, see THE RIGHT TO DEVELOPMENT IN INTERNATIONAL LAW (Subrata Roy Chowdhury et al. eds., 1992).

[15]   *See generally* Amartya Sen, Development as Freedom 282–98 (1999).

[16]   *Id.*

B. THE RELATIONSHIP BETWEEN HUMAN SECURITY AND NATIONAL SECURITY

An interdependent nexus exists between human, national, and international securities. Human security must be the basis for national security, and national security – with human security as its base – must be the basis for international security.[17] National and international securities cannot be achieved without giving due respect to human security by respecting basic human rights and freedoms. In the modern world, there are many circumstances in which oppression leads to mass violations of human rights, conflicts, poverty and immigration. Numerous societies are deeply divided due to conflicts since democracy, the rule of law, and rights protection are largely illusionary there.[18]

Notwithstanding this nexus, human security and national security are not identical. Numerous major distinctions exist between the two: First, national security is a narrower concept than human security. The former focuses on physical security from violent threats, whereas the latter focuses on physical security, but also on concerns over food, poverty, health, political or social rights, the environment, trade, and many other topics.[19]

Second, national security acts "top-down" as it focuses primarily on the welfare of the nation state and only secondly on the individual.[20] Human security, in contrast, acts "bottom-up." It begins its focus with human beings, as individuals and as groups. It conceives the people themselves, those who are affected by insecurity, as the paramount source for understanding what the best security needs are.[21]

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[17]   *See* Bertrand Ramcharan, *Human Rights and Human Security*, Disarmament F., Jan. 2004, at 39, 40 (referring to Barry Buzan, People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era (2d ed. 1991)).

[18]   *See* BUZAN, *supra* note 17.

[19]   *See, e.g.*, Mahbub ul Haq, *New Imperatives of Human Security*, *in* PEOPLE: FROM IMPOVERISHMENT TO EMPOWERMENT 370, 370–79 (Üner Kirdar & Leonard Silk eds., 1995); Michael Andregg, Human Security: Why Not Cooperate on Our Common Goal?, Opening Comments for an ISA Roundtable (Mar. 18, 2004) (transcript available at http://www.allacademic.com/meta/p_mla_apa_research_citation/0/7/2/2/4/pages72243 /p72243-1.php).

[20]   *See* U.S. Comm'n on Nat'l Sec./21st Century, Road Map for National Security: Imperative for Change 48 (2001).

[21]   See STUDY GRP. ON EUR.'S SEC. CAPABILITIES, A HUMAN SECURITY DOCTRINE FOR EUROPE (2004), for this approach. See Monica den Boer & Jaap de Wilde, *Top-Down and Bottom-Up Approaches to Human Security*, *in* THE VIABILITY OF HUMAN SECURITY, *supra* note 3, at 9, for different approaches to human security.

Third, national security tends to focus on the security of a single state. Contrary to national security, human security does not observe states at a micro level, but at a macro level; it acts from a global perspective. Therefore, whereas national security focuses on state-actors, human security focuses on non‑state actors. Human security discourse emphasizes the important role of the international community, NGOs, and supra‑national organizations.[22]

Fourth, the implementation of national security goals is more practical while human security is more idealistic. Fear and "worst case scenarios" motivate national security while human security is motivated by love and a utopian view of what the world can be.[23]

Finally, national security is short‑sighted. It handles threats that follow different political or security events while human security looks for long‑term solutions. It seeks to cope with the long‑term consequences of conflicts through investment in reconstruction and restoration in order to ensure that past conflicts will not lead to future violence. Also, human security does not react to security threats, but aims to address their roots. The idea is to invest in preventive efforts in order to reduce, and hopefully negate, the need for intervention. Human security thus acts according to the motto "prevention is better than cure."[24]

In light of these distinctions, it is clear that human security is not supposed to replace national security. The state continues – and will continue – to be the cornerstone of the international legal order, *inter alia*, since many threats are still included within the traditional conceptual framework of interstate conflicts.[25] Moreover, the United Nations (UN) collective security mechanism is limited in its ability to act in light of the Security Council's structural difficulties, mainly, the veto right given to the permanent member states.[26] In the absence of a well‑

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[22]   Harley Feldbaum, *Global Health and Security*, *in* GLOBAL CHANGE AND HEALTH 146, 148–49 (Kelley Lee & Jeff Collin eds., 2005); ul Haq, *supra* note 19; Andregg, *supra* note 19.

[23]   Andregg, *supra* note 19.

[24]   Leen Boer & Ad Koekkoek, *Development and Human Security*, 15 THIRD WORLD Q. 519, 520 (1994).

[25]   So, for instance, it was argued that territorial sovereignty and human security are compatible since human security is best secured in a sovereign state under the rule of law while basic rights and freedoms are fully respected. *See* Hans Corell, Under-Sec'y-Gen. for Legal Affairs, Legal Counsel of the United Nations, From Territorial Sovereignty to Human Security, Address at the Canadian Council of International Law 1999 Annual Conference (Oct. 29, 1999) (transcript available at http://www.un.org/law/counsel/ottawa.htm).

[26]   *See, e.g.*, Yoram Dinstein, War, Aggression and Self-Defence 292–93 (5th ed. 2011); Christine Gray, International Law and the Use of Force 255 (3d ed. 2008); Julius Stone, *Force and the Charter in the Seventies*, 2 Syracuse J. Int'l L. & Com. 1, 4–5 (1974).

functioning mechanism of collective security, and since the existing mechanism cannot always provide states due protection, states themselves often invoke the right to use force in self-defense, a right that is acknowledged in Article 51 of the UN Charter.[27]

Yet, human security is meant to complement the idea of national security and to better define its purpose, which is to protect human beings and not the abstract entity of the state. Since states represent means rather than aims, it is illogical to place the security of states at the center of security thinking. States are methods for security. The state, according to Ken Booth's analogy, is like a house and a house requires maintenance.[28] Nonetheless, it is inconsistent to spend excessive sums of money to protect the house from flooding, mold, and burglary if these costs are at the expense of the quality of life of those that reside in the house. Surely, there is a connection between the security of the state and the security and quality of life of its people, but is there any doubt, Booth asks, which security is more important?[29] Thus, again, contrary to the protection provided by the state against external threats, the concept of human security looks inside, within the state, and seeks to provide care for an environment that offers security and welfare to the population.[30]That is the ultimate goal of security.

This paradigm shift is not merely a theoretical change, but one that bears practical implications, at the very least with regard to the resources distribution. Already in 1967, Bruce Birchard argued that we ought to convert our enormous resources devoted to, what he terms "military illusions of national security," to institutions and platforms which can provide "real human security." [31] According to Birchard, "[s]truggles to meet human needs, establish sexual, racial and social justice, empower the oppressed, oppose unfair taxes, create democratic economic structures and develop alternative institutions all contribute to

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[27]   U.N. Charter art. 51. See, e.g., Yaniv Roznai, Let the Caroline Sink! Assessing the Legality of a Possible Israeli Attack on Iranian Nuclear Facilities and Why the Traditional Self-Defense Formula Is Incompatible with the Nuclear Age, CAL. INT'L L.J., Spring 2010, at 18; Yaniv Roznai, "Cracking the Nuc" in the Legal Field: An Israeli Attack on Iran's Nuclear Facilities from an International Law Perspective, 6 SHAAREI MISHPAT L. REV. 221 (2013) [Hebrew].

[28]   Ken Booth, *Security and Emancipation* 17 REV. INT'L STUD. 313, 320 (1991).

[29]   *Id.*

[30]   Gerd Oberleitner, *Human Security and Human Rights*, 8 ETC – HUM. RTS. & DEMOCRACY, OCCASIONAL PAPER SERIES 10 (2002).

[31]   Bruce Birchard, Human Security or National Defense: The Question of Conversion, 4 J. SOC. & SOC. WELFARE 543 (1976-1977).

human security. . . ."[32] Therefore, alongside the approach that promotes human security, there is the option of revising our mode of thinking regarding the relationship between the resources invested in state security contra to those that are vested in protecting people's human security.[33]

C. WHY WAS A CONCEPTUAL CHANGE REQUIRED?

Traditionally, security threats were derived from sources that were external to the state. Security issues were thus analyzed in the context of national or state security, i.e. the security of the state, and protecting its borders, citizens, and institutions from external attacks. State sovereignty and its territorial borders were considered inviolable – almost sacred – so that external intervention or interference with the state's internal affairs was strictly forbidden. In order to defend itself, the state established security and military systems.[34]

Nowadays, except for a minority of incidents of state aggression or threats on other states' sovereignty or territorial integrity, many citizens are victims of internal violence that takes place within the borders of the state,[35] and which results from historical opposition or enmity between different ethnic, religious, and social groups.[36] Studies

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[32] *Id.* at 565.

[33] Oberleitner, *supra* note 30, at 11; Sadako Ogata & Johan Cels, *Human Security – Protecting and Empowering the People*, 9 GLOBAL GOVERNANCE 273, 275 (2003).

[34] *See, e.g.*, Abdelhamid El Ouali, *Territorial Integrity: Rethinking the Territorial Sovereign Right of the Existence of the States*, 11 GEOPOLITICS 630, 637 (2006) ("[B]y recognising the exclusive jurisdiction of states—as well as the right to self-defence as we will see later on—international law has, in fact, recognised nothing other than the states' right to preserve their existence. It does so through the general concept of sovereignty, which simultaneously covers the internal and external spheres…The principle of sovereignty is inherent then to the concept of the state. Its main function is to protect the right of existence of the state and then to ensure that the principle of territorial integrity is respected by other states."). *See generally* Thomas J. Biersteker, *State, Sovereignty and Territory*, *in* HANDBOOK OF INTERNATIONAL RELATIONS 157 (Walter Carlsnaes et al. eds., 2002).

[35] *See, e.g.*, NON-INTERNATIONAL ARMED CONFLICT IN THE TWENTY-FIRST CENTURY (Kenneth Watkin & Andrew J. Norris eds., 2012); SANDESH SIVAKUMARAN, THE LAW OF NON-INTERNATIONAL ARMED CONFLICT (2012); Monika Hlavkova, *Reconstructing the Civilian/Combatant Divide: A Fresh Look at Targeting in Non-International Armed Conflict*, J. CONFLICT & SECURITY L., http://jcsl.oxfordjournals.org/content/early/2013/06/12/jcsl.krt013.extract (last visited Apr. 13, 2014).

[36] Robert I. Rotberg, *Failed States, Collapsed States, Weak States: Causes and Indicators*, *in* STATE FAILURE AND STATE WEAKNESS IN A TIME OF TERROR 1, 5 (Robert I. Rotberg ed., 2003) ("The civil wars that characterize failed states usually stem from or have roots in ethnic, religious, linguistic, or other intercommunal enmity."). I stated elsewhere that "[t]he ways in

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show that 70% of the armed conflicts that have taken place since 1945 have been internal rather than external. [37]According to one study, between the years 1816 and 1997, seventy-nine interstate armed conflicts took place, fifty-nine of which occurred during the twentieth century. In contrast, during that same period of 180 years, 214 civil wars took place, 143 of which were during the twentieth century.[38] From 1950 to 1990, the number of armed conflicts that can be described as political-ethnic doubled.[39]

In many cases, the role of the state as its citizens' protector has been inefficient – if not contradictory – since the state takes an active part in many internal conflicts.[40] In the last 100 years, more people have been killed by their own governments than by foreign governments.[41] Internal rather than external conflicts are also the main reason for refugees fleeing from the danger of war.[42] Therefore, protecting civilians from foreign attacks may well be a necessary condition for people's security, but it is not a sufficient one.[43] Moreover, victims of such conflicts are mainly ordinary civilians – women, men, and children.[44] The

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which deeply divided societies respond to different challenges carry colossal practical implications, including the possibility of alienation, discrimination, civil war, and even genocide." Yaniv Roznai, *Rights in Divided Societies*, 2013 PUB. L. 909, 910 (2013) (reviewing RIGHTS IN DIVIDED SOCIETIES (Colin Harvey & Alex Schwartz eds., 2012)).

[37]   K. J. Holsti, *War, Peace, and the State of the State*, 16 INT'L. POL. SCI. REV. 319, 322–23 (1995). *See also* Nils Petter Gleditsch et al., *Armed Conflict 1946-2001: A New Dataset*, 39 J. PEACE RES. 615, 616 (2002).

[38]   Meredith Reid Sarkees et al., Inter-State, Intra-State, and Extra-State Wars: A Comprehensive Look at Their Distribution over Time, 1816-1997, 47 INT'L STUD. Q. 49, 60–61 (2003).

[39]   Ted Robert Gurr, *Peoples Against States: Ethnopolitical Conflict and the Changing World System: 1994 Presidential Address*, 38 INT'L STUD. Q. 347, 350 (1994). *See also* ORNA BEN-NAFTALI & YUVAL SHANY, INTERNATIONAL LAW BETWEEN WAR AND PEACE 226–39 (2006) [Hebrew] who state that once the balance of powers that characterized the Cold War was lost, and due to de-colonization and globalization, most of the armed conflicts that have taken place in recent years have not derived from traditional international conflicts between states.

[40]   See William Abresch, A Human Rights Law of Internal Armed Conflict: The European Court of Human Rights in Chechnya, 16 EUR. J. INT'L L. 741, 743 (2005); Lloyd Axworthy, Human Security and Global Governance: Putting People First, 7 GLOBAL GOVERNANCE 19 (2001).

[41]   *See, e.g.*, Rudolph J. Rummel, Death by Government (1996); Rudolph J. Rummel, Statistics of Democide: Genocide and Mass Murder Since 1900 (1998).

[42]   Walter Kälin, *Flight in Times of War*, 83 INT'L REV. RED CROSS 629 (2001).

[43]   *See What is Human Security?*, *in* HUMAN SECURITY REPORT 2005 – WAR AND PEACE IN THE 21ST CENTURY, *supra* note 4, at VIII.

[44]   *See, e.g.*, Geraldine Van Bueren, *The International Legal Protection of Children in Armed Conflicts*, 43 INT'L. & COMP. L.Q. 809, 810 (1994) ("Out of the 20 million killed in the 150 armed conflicts between 1945 and 1982, the majority of deaths were women and children. In the past ten years alone internal armed conflicts have led to 1.5 million child deaths, 4 million children disabled as a result of war wounds and 5 million children living in refugee camps to escape conflicts.").

shift from traditional frontline fighting between armies to home-front fighting within populated areas and between non-state actors, together with the use of modern and deadly weaponry systems, have altogether caused a substantial increase in the number of civilians being killed in armed conflicts.[45] In World War I, civilians comprised about 15% of the total killed; this number increased to 65% in World War II and over 84% in modern armed conflicts.[46]

The issue is more than just military threats. Today, poverty, hunger and diseases, are a real danger to hundreds of millions of the world's population.[47]   For instance, in 2005 it was estimated that approximately forty million people lived with HIV or AIDS worldwide; a real threat to human security.[48] Broad in its application, human security does not only focus on armed conflicts and applies (to a certain degree) in both poor and prosperous states.[49]

Unless the primary purpose of the state is to provide people's security, then its relevance is questionable, as are other claims that focus on state's security.[50] That is particularly true when the state is conceived (from a human security perspective) as part of the problem rather than part of the solution.[51] In the same vein, it is argued that the fact that there are states that cannot provide security for their citizens, but manage to secure their own survival points to the moral bankruptcy of national

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[45]   *See, e.g.*, World Bank, Breaking the Conflict Trap: Civil War and Development Policy 17 (2003).

[46]   *See* Amnon Rubinstein & Yaniv Roznai, *Human Shields in Modern Armed Conflicts: The Need for a Proportionate Proportionality*, 22 STAN. L. &. POL'Y REV. 93, 94 n.1 (2011) (citing EDMUND CAIRNS, A SAFER FUTURE: REDUCING THE HUMAN COST OF WAR 17 (1997)).

[47]   The numbers that Thomas Pogge cites are astonishing: 830 million people suffer from malnutrition, 1,100 million lack access to safe water, and 1,600 million lack access to electricity. Forty percent of the world's population live in severe poverty conditions. One-third of all the death incidence is a consequence of reasons related to poverty. *See* THOMAS POGGE, WORLD POVERTY AND HUMAN RIGHTS: COSMOPOLITAN RESPONSIBILITIES AND REFORMS 2 (2d ed. 2008). See FOOD AID AND HUMAN SECURITY (Edward Clay & Olav Stokke eds., 2000), for further debate on food aid and human security.

[48]   Stefan Elbe, *HIV/AIDS: A Human Security Challenge for the 21st Century*, WHITEHEAD J. DIPL. & INT'L REL., Winter/Spring 2006, at 101, 104.

[49]   Josefa S. Edralin, *Total Human Security Awareness*, REGIONAL DEV. DIALOGUE, Autumn 2003, at 1, 4 (2003); David Kilgour, *The UN and the Challenge of Human Security*, DAVID KILGOUR, http://www.david-kilgour.com/secstate/mcmun.htm (last visited Apr. 13, 2014).

[50]   Pauline Kerr, *Human Security*, *in* CONTEMPORARY SECURITY STUDIES 91, 105 (Alan Collins ed., 2007).

[51]   Nicholas Thomas & William T. Tow, *The Utility of Human Security: Sovereignty and Humanitarian Intervention*, 33 SECURITY DIALOGUE 177, 178–79 (2002).

security.[52]   Consequently, the human security concept attaches utter importance to the role of the international and regional communities and non-state actors. When states are unwilling to or incapable of taking responsibility for protecting their civilians, arguably other actors – such as other states, supra-national, and international organizations – bear the responsibility (at least a moral one) to act.[53] This correlation between the internal (the state) and the external (such as international or supra-national organizations) forms one of the main characteristics of the concept of human security.[54]

D.   WHY NOW? HUMAN SECURITY, THE COLD WAR, AND GLOBALIZATION

The development of the concept of human security did not occur *ex-nihilo*; it was influenced by historical, social, and political events – most importantly, the termination of the cold war and globalization.[55] Generally, the end of the Cold War exhausted the bipolar thinking that had characterized security discourse.[56] States, which had been overly preoccupied with the rivalry between the two superpowers – the United States and the–former Soviet Union and with fear of a nuclear war, found themselves "available" to cope with other threats.[57] An interstate war on a major scale was no longer the main concern of the international community; rather, internal conflicts and the number of civilian casualties that accompanied these conflicts became a main source of unease.[58] With the end of the Cold War, the feeling became that the states

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[52]   William Bain, The Tyranny of Benevolence: National Security, Human Security, and the Practice of Statecraft 15 GLOBAL SOC'Y 277, 281 (2001).

[53]   MacLean, *supra* note 3; Shahrbanou Tadjbakhsh, *Human Security: Concepts and Implications with an Application to Post-Intervention Challenges in Afghanistan*, LES ETUDES DU CERI, Sept. 2005, at 1, 10.

[54]   *See An Interview with Mary Kaldor*, *supra* note 3, at 18.

[55]   Barbara von Tigerstrom, Human Security and International Law – Prospects and Problems 18–21 (2007).

[56]   *See generally* Richard Ned Lebow, *The Long Peace, the End of the Cold War, and the Failure of Realism*, 48 INT'L ORG. 249 (1994); William C. Wohlforth, *Realism and the End of the Cold War*, INT'L SECURITY, Winter 1994/95, at 91; Michael J. Hogan, *Introduction* to THE END OF THE COLD WAR: ITS MEANING AND IMPLICATIONS 1, 2 (Michael J. Hogan ed., 1992).

[57]   *See generally* Barry Buzan, *Rethinking Security After the Cold War*, 32 COOPERATION & CONFLICT: NORDIC J. INT'L STUD. 5 (1997).

[58]   *See supra* Part I.C.

themselves were safer, but the civilians were more vulnerable.[59] A new way of thinking about security was needed.

The development of the concept of human security is especially related to globalization.[60] Globalization is a contradictory phenomenon. On the one hand, globalization leads to the spread of democratic values, maintaining a global civil society, the promotion of global constitutionalism, and to economic growth, all which improved the quality of life in many places.[61] Also, globalization contributed to creating wealth, work opportunities, and better lives for many people as well as a wider global protection of human rights.[62] Therefore, globalization can be considered as a positive development for the protection and improvement of human security.

On the other hand, globalization also has a negative influence on many delicate social spheres: the exceptional increase in technological information and the promotion of transportation, communication, and financial transfers, have all accelerated the movement of people, including "bad people."[63] The distinction between a safe and welcome movement of people and a dangerous, criminal, or illegal movement became unclear.[64] With its great advantages, globalization also offered further challenges and complications to protecting the state or its citizens by assisting the internationalization of religion and ethnic groups, disregard for the environment, the spread of epidemics, international crime,[65] and human trafficking.[66] Also, a relatively "new" kind of threat

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[59] VON TIGERSTROM, *supra* note 55, at 18.

[60] *See generally* PETER JOHN STOETT, HUMAN AND GLOBAL SECURITY 97–118 (1999); MacLean, *supra* note 3, at 93–95; GLOBALIZATION, DEVELOPMENT AND HUMAN SECURITY (Anthony McGrew & Nana K. Poku eds., 2007); MARY KALDOR, HUMAN SECURITY: REFLECTIONS ON GLOBALIZATION AND INTERVENTION (2007); PAUL BATTERSBY & JOSEPH M. SIRACUSA, GLOBALIZATION AND HUMAN SECURITY (2009).

[61] JAN-ERIK LANE, GLOBALIZATION AND POLITICS: PROMISES AND DANGERS 14 (2006).

[62] *See* SUSAN MARKS & ANDREW CLAPHAM, INTERNATIONAL HUMAN RIGHTS LEXICON 185–95 (2005), on globalization and human rights. *See also* Rhoda E. Howard-Hassmann, Can Globalization Promote Human Rights? (2010).

[63] Sadako Ogata, Former United Nations High Comm'r for Refugees, State Security – Human Security, UNU Public Lectures, Fridtjof Nansen Memorial Lecture 2001, at 9–10 (Dec. 12, 2001).

[64] See MIGRATION, GLOBALISATION AND HUMAN SECURITY (David T. Graham & Nana K. Poku eds., 2000), for migration patterns in the globalization era within the context of human security.

[65] *See* Nicholas C. Burbules & Carlos Alberto Torres, *Globalization and Education: An Introduction*, *in* GLOBALIZATION AND EDUCATION 20 (Nicholas C. Burbules & Carlos Alberto Torres eds., 2000); MOSES N. KIGGUNDU, MANAGING GLOBALIZATION IN DEVELOPING COUNTRIES AND TRANSITION ECONOMIES: BUILDING CAPACITIES FOR A CHANGING WORLD 14–16 (2002).

appeared: international terrorism – a devastating threat, as the horrible terror attack that took place on September 11, 2001 has proven. If that was not enough, the reaction to international terrorism – following the September 11 attacks – has even intensified the sense of insecurity.[67] All of the aforementioned are "the dark side of globalization."[68]

Human security must therefore be of a global concern and responsibility as well.[69] "Globalization," Lloyd Axworthy remarks, "has made individual human suffering an irrevocable universal concern."[70] Against the backdrop of these issues, a new approach of security has emerged: *human security*.

II. HUMAN SECURITY AND INTERNATIONAL LAW

A. THE DEVELOPMENT OF THE CONCEPT OF HUMAN SECURITY IN INTERNATIONAL DISCOURSE

As noted above, with the end of the Cold War and the dissolution of the bipolar thinking that had characterized the security paradigm and international relations at the time, there was the need for a new way of thinking about security, particularly in the global era. A change in security discourse had already begun in the early 1980s, for instance, with the 1982 report of The Independent Commission on Disarmament and Security Issues, entitled "Common Security."[71] This report called to revise traditional geo‑political security thinking with a novel doctrine, according to which: states will seek to prevent conflict

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[66]   *See* Mohamed Y. Mattar, Human Security or State Security? The Overriding Threat in Trafficking in Persons, 1 INTERCULTURAL HUM. RTS. L. REV. 249 (2006).

[67]   Jude McCulloch, 'Counter-terrorism', Human Security and Globalisation – From Welfare to Warfare State? 14 CURRENT ISSUES CRIM. JUST. 283 (2003).

[68]   Rob McRae, *Human Security in a Globalized World*, *in* HUMAN SECURITY AND THE NEW DIPLOMACY: PROTECTING PEOPLE, PROMOTING PEACE 14 (Rob McRae & Don Hubert eds., 2001). On globalization and security, Italian philosopher Giorgio Agamben writes: "In the new situation created by the end of the classical form of war between sovereign states it becomes clear that security finds its end in globalisation: it implies the idea of a new planetary order which is in truth the worst of all disorders." Giorgio Agamben, *On Security and Terror*, *in* CREATING INSECURITY: ART AND CULTURE IN THE AGE OF SECURITY 23–24 (Wolfgang Sützl & Geoff Cox eds., 2009).

[69]   Oscar Arias, Economics and Disarmament After the Cold War – Human Security: Our Common Responsibility, 19 DISARMAMENT: PERIODIC REV. BY UN 7 (1996).

[70]   Axworthy, *supra* note 40, at 20.

[71]   *See generally* The Indep. Comm'n on Disarmament & Sec. Issues, Common Security: A Blueprint for Survival (1982).

not by force, but through cooperation; the UN would play a major role; and security would be assessed in economic, social, and political, as well as physical, terms.[72]

The concept of human security was awarded a wider conceptual framework within the UN Agenda for Peace of 1992, which sought to emphasize conflict prevention and peace building.[73] The military-strategic term of security made room for a wider concept, which includes care for developmental concerns. Hence, peace-keeping tasks received civilian character – as opposed to solely military character– and included humanitarian aid provided by police forces trained in the promotion of the human rights.[74] Development-related actors and approaches became more relevant both in the analysis of the causes of conflicts and in providing possible solutions through peace building efforts.[75]

The term human security appeared in the "Human Development Report 1993" on human security,[76] but the concept is mainly associated with the "Human Development Report 1994" on human security.[77] The purpose of the concept was to bridge "freedom from want" and "freedom from fear" – freedoms that rest at the base of the UN – with a "people-centered" approach.[78] Freedom from fear refers to the freedom not to be subjected to violence while freedom from want refers, generally, to the freedom not to be subjected to poverty.[79]

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[72] *See* Johan Galtung, The Palme Commission Report on Disarmament and Security, 14 BULL. PEACE PROPOSALS 147 (1983); Anders Ferm, Comment on Johan Galtung's Critique of the Palme Commission's Report, 14 BULL. PEACE PROPOSALS 153 (1983). *See generally* Geoffrey Wiseman, The Palme Commission: New Thinking About Security, in INTERNATIONAL COMMISSIONS AND THE POWER OF IDEAS 46 (Ramesh Thakur et al. eds., 2005).

[73] U.N. Secretary-General, An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping: Rep. of the Secretary-General, U.N. Doc. A/47/277-S/24111 (June 17, 1992).

[74] Yuji Uesugi, The Nexus Between UN Peacekeeping and Human Security: Reviewing the Functions of UN Peacekeeping from a Perspective of Human Security, in CONFLICT AND HUMAN SECURITY: A SEARCH FOR NEW APPROACHES OF PEACE-BUILDING 96 (Hideaki Shinoda & How-Won Jeong eds., IPSHU Research Report Series No.19, 2004).

[75] *See* Georg Frerks, *Human Security as a Discourse and Counter-discourse*, 19 SECURITY & HUM. RTS. 8, 9 (2008).

[76] United Nations Dev. Programme, Human Development Report 1993, at 2 (1993).

[77] United Nations Dev. Programme, Human Development Report 1994 (1994).

[78] *See* Oscar Arias Sánchez, The Legacy of Human Development: A Tribute to Mahbub ul Haq, 1 J. HUM. DEV. 9, 9–16 (2000). On the development of the concept, see Gerd Oberleitner, Porcupines in Love: The Intricate Convergence of Human Rights and Human Security, 6 EUR. HUM. RTS. L. REV. 588, 589–93 (2005); Charles-Philippe David & Jean-François Rioux, Le Concept de Sécurité Humaine, in LA SECURITE HUMAINE (Jean-François Rioux ed., 2001).

[79] See, e.g., GEORGE KENT, FREEDOM FROM WANT: THE HUMAN RIGHT TO ADEQUATE FOOD (2005), on freedom from want. Freedom from want and freedom from fear appeared in Franklin D. Roosevelt's famous address "The Four Freedoms," along with the freedom of speech and

According to the "Human Development Report 1994," the idea of human security, albeit simple, may cause a social revolution in the twenty‑first century. [80]The report identified a number of basic features of human security. First, it is a universal concern which relates to people all around the world, in both poor and wealthy states. Second, it is easier to ensure human security and handle its threats through ex-*ante* prevention than through *ex-post facto* intervention. Third, human security regards the human being at its center and engages with issues as to how people live and survive in society. Finally, human security is comprised of economic, health, nutrition, environmental, personal, social, and political security.[81] Indeed, since its publication, the report has had a significant influence on international politics and institutions.

In 1995, the Commission on Global Governance published the report "Our Global Neighborhood," in which the commission called on the international community to shift the way that it thought about security from military security to protecting the environment and the welfare of its citizens. The report emphasized that states themselves might pose more of a threat to the physical security and welfare of their citizens than external forces. Therefore, the report stressed the need to focus on the security of individuals rather than on national security alone. [82]

The Canadian government was one of the leaders of promoting this approach to human security and adopted the "Human Development Report 1994" as part of its foreign policy.[83] Japan is also heavily

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belief. *See* Franklin D. Roosevelt, The Four Freedoms, Address to the United States Congress (Jan. 6, 1941).

[80]   *See also* Adam Ashforth, Human Security and Spiritual Insecurity: Why the Fear of Evil Forces Needs to Be Taken Seriously, 11 GEO. J. INT'L AFF. 99 (2010).

[81]   UNITED NATIONS DEV. PROGRAMME, *supra* note 77.

[82]   Comm'n on Global Governance, Our Global Neighborhood, ch. 3 (1995).

[83]   For elaboration of human security as part of Canada's foreign policy, see MacLean, *supra* note 3, at 95–98; Lloyd Axworthy, *Canada and Human Security: The Need for Leadership*, 52 INT'L J. 183 (1997); Xavier Furtado, *Human Security and Asia's Financial Crisis – A Critique of Canadian Policy*, 55 INT'L J. 355 (2000); Cranford Pratt, *Competing Rationales for Canadian Development Assistance: Reducing Global Poverty, Enhancing Canadian Prosperity and Security, or Advancing Global Human Security?*, 54 INT'L J. 306 (1999); Elizabeth Riddell-Dixon, *Canada's Human Security Agenda – Walking the Talk?*, 60 INT'L J. 1067 (2005); David B. Dewitt, *National Defence vs. Foreign Affairs: Culture Clash in Canada's International Security Policy?*, 59 INT'L J. 579 (2004); Vincent J. Curtis, *Human Security and the Canadian Armed Forces*, 60 INT'L J. 273 (2004-2005); David Bosold & Wilfried von Bredow, *Human Security: A Radical or Rhetorical Shift in Canada's Foreign Policy?*, 61 INT'L J. 829 (2006); Francis J. Furtado, *Human Security: Did it live? Has it died? Does it Matter?*, 63 INT'L J. 405 (2008); Paul Heinbecker, *Human Security: The Hard Edge*, CAN. MIL. J., Spring 2000, at 11;

involved in promoting human security and supports a great number of initiatives for achieving this aim.[84] Yet, Japan and Canada conceive the concept of human security differently.[85] The Canadian approach focuses on freedom from fear. It emphasizes armed conflicts and humanitarian concerns. Human security, according to the Canadian approach, is a condition or a situation characterized by freedom from threats to human rights, physical security, and life.[86] In contrast, the Japanese approach focuses on freedom from want. It emphasizes the importance of development concerns and human dignity.[87]

The next international institutional development regarding human security took place in 1998, when Canada and Norway led the establishment of the Human Security Network,[88] which now includes thirteen states that have united in order to promote human security universally.[89] In 2000, 180 states endorsed the goal of the millennium declaration to fulfill freedom from want and freedom from fear to all, epitomizing the shift in the security discourse.[90] Consequently, in 2001, the Commission on Human Security was established under the initiation of the Japanese government.[91] The commission included twelve leading

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Paul Heinbecker, *Human Security*, CAN. FOREIGN POL'Y, Fall 1999, at 19; Heather Owens & Barbara Arneil, *The Human Security Paradigm Shift: A New Lens on Canadian Foreign Policy? Report of the University of British Columbia Symposium on Human Security*, CAN. FOREIGN POL'Y, Fall 1999, at 1.

[84] *See* Sabina Alkire, *A Conceptual Framework for Human Security* 13–23 (Ctr. for Research on Inequality, Human Sec. & Ethnicity, CRISE, Working Paper 2, 2003). On human security as part of Japan's foreign policy, see Akiko Fukushima, *Human Security and Japanese Foreign Policy*, *in* International Conference on Human Security in East Asia 121 (2004); Bert Edström, *Japan's Foreign Policy and Human Security*, 15 Japan F. 209 (2003).

[85] Amitav Acharya, *Human Security - East Versus West*, 56 INT'L J. 442 (2001). For a summary of the literature regarding wide and narrow interpretations of human security, see Taylor Owen, *Human Security - Conflict, Critique and Consensus: Colloquium Remarks and a Proposal for a Threshold-Based Definition*, 35 SECURITY DIALOGUE 373, 375–76 (2004).

[86] *Human Security: Safety for People in a Changing World*, CTR. FOR PEACE & DEV. STUD., http://www.cpdsindia.org/peopleinachangingworld.htm (last visited Apr. 13, 2014).

[87] Global Issues Cooperation Div., Ministry of Foreign Affairs of Japan, The Trust Fund for Human Security: For the "Human-Centered" 21st Century 3 (2009).

[88] *See* Michael Small, *The Human Security Network*, *in* HUMAN SECURITY AND THE NEW DIPLOMACY: PROTECTING PEOPLE, PROMOTING PEACE, *supra* note 68, at 231.

[89] Member states include: Austria, Canada, Chile, Costa-Rica, Greece, Ireland, Jordan, Mali, The Netherlands, Norway, Switzerland, Slovenia, and Thailand, and South-Africa as an observer. *See* VON TIGERSTROM, *supra* note 55, at 21.

[90] *See* KOFI A. ANNAN, WE THE PEOPLES – THE ROLE OF THE UNITED NATIONS IN THE 21ST CENTURY (2000); Ogata & Cels, *supra* note 33.

[91] *About the Commission*, COMM'N ON HUM. SEC., http://www.unocha.org/humansecurity/chs/ (last visited Apr. 13, 2014).

international figures such as Sadako Ogata and Amartya Sen.[92] In a report drafted in 2003, the Commission on Human Security declared that the international community urgently needs a paradigmatic shift in its understanding of the conception of security:

> [T]he security debate has changed dramatically since the inception of state security advocated in the 17th century. According to that traditional idea, the state would monopolize the rights and means to protect its citizens. . . . But in the 21st century, both the challenges to security and its protectors have become more complex. The state remains the fundamental purveyor of security. Yet it often fails to fulfill its security obligations—and at times has even become a source of threat to its own people. That is why attention must now shift from the security of the state to the security of the people—to human security.[93]

The purpose of human security, according to the commission, is:

> [T]o protect the vital core of all human lives in ways that enhance human freedoms and human fulfillment. Human security means protecting fundamental freedoms. . . . It means protecting people from critical (severe) and pervasive (widespread) threats and situations. It means using processes that build on people's strengths and aspirations. It means creating political, social, environmental, economic, military and cultural systems that together give people the building blocks of survival, livelihood and dignity.94

The International Commission on Intervention and State Sovereignty emphasized the concept of human security in its 2001 report regarding the R2P doctrine. According to the report, "[t]he concept of human security – including concern for human rights, but broader than that in its scope – has also become an increasingly important element in international law and international relations, increasingly providing a conceptual framework for international action."[95] The concept of human security was also mentioned several times in the UN report "A More Secure World" of 2004,[96] and in the report of the Secretary General of the UN "In Larger Freedom" of 2005,[97] to point to its growing

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[92]   *Commissioners*, COMM'N ON HUM. SEC., http://ochaonline.un.org/humansecurity/CHS/about
       /profile/index .html (last visited Apr. 13, 2014) (describing the commissioners).

[93]   Comm'n on Hum. Sec., Human Security Now 2 (2003).

[94]   *Id.* at 4.

[95]   Int'l Comm'n on Intervention & State Sovereignty, The Responsibility to Protect 6, 15 (2001).

[96]   U.N. Sec'y-Gen.'s High-level Panel on Threats, Challenges and Change, A More Secure World:
       Our Shared Responsibility (2004).

[97]   U.N. Secretary-General, In Larger Freedom: Towards Development, Security and Human
       Rights for All, U.N. Doc. A/59/2005 (Mar. 21, 2005) [hereinafter In Larger Freedom].

importance as an instrument for analyzing and shaping policies within the international realm.[98]

With its increased importance within international discourse, the concept of human security found itself on a collision track with more traditional concepts such as human rights and national security; not necessarily because it is incompatible with them, but because, in certain contexts, it poses an alternative to them. Human security replaces the "morality of states" with "morality of individuals."[99] It regards the state itself as one of human security's potential enemies; a kind of a threat in itself. This threat may only be dealt with by the international or supranational community, for instance, through international laws that act separately and autonomously from the states. Therefore, human security, whether within the Japanese approach or the Canadian approach, manages to go above and beyond the state.[100]

B.   The Relationship between Human Security and International Law

The concept of human security is mainly utilized today for defining states' foreign policies. As such, the human security paradigm has enormous – nonetheless often neglected – importance for international law. To one degree or another, international norms and institutions treat almost all of the issues addressed by human security. The UN Charter's purpose and the Universal Declaration on Human Rights (UDHR) present an international system for protecting human security.[101] Actually, if international human rights law, international criminal law, and international humanitarian law are taken together, the outcome is a concern for human security in the wider sense.

In fact, the idea of human security is a leitmotif in each branch of international law, and especially in the laws of the use of force, human rights law, humanitarian law, refugee law, and international criminal law. In the laws of war, the regulation of *jus ad bellum* – such as the prohibition on the use of force and regulating the response to threats on

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[98]   Richard Jolly & Deepayan Basu Ray, The Human Security Framework and National Human Development Reports: A Review of Experiences and Current Debates 1 (United Nations Dev. Programme, NHDR Occasional Paper 5, 2006).

[99]   John Erik Fossum, Gidsland *and Human Security – Cosmopolitan Vehicles?*, 61 Int'l J. 813, 820 (2006).

[100]   *See* Alkire, *supra* note 84. *See also* Thomas & Tow, *supra* note 51.

[101]   Larry May, Global Justice and Due Process 14 (2011).

international peace and security – protect human security. This is also the case for *jus post bellum*, as illustrated by operating peace force tasks.[102] Similarly, human security, as a concept that focuses on safeguarding people's security and safety, also has a direct link to *jus in bello* and humanitarian law. The concern for human security, even if not described explicitly in these terms, goes back to the nineteenth century and the Geneva Conventions signed after the Second World War, which sought to ensure humane treatment to civilians during hostilities.[103] The principal foundation of humanitarian law is the protection of civilians and the prevention of unnecessary suffering during hostilities and is based on ideas of caring and compassion for humanity.[104]

Just as human security seeks to shift the focus of security from the state to the people, so too has international law. Traditionally, international law regulated the relationship between states. This approach has been modified so that the focal point is now the individual.[105] However, existing international law still grants legal superiority to the status and protection of the state, even a state that infringes on its own citizens' security.[106] This superiority is precisely the concept that human security seeks to undermine.

The focus on "humanity"[107] received, of late, an elaborated treatment within the international law scholarship. Larry May, for

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[102] *See* John Linarelli, *Peace-Building*, 24 DENV. J. INT'L L. & POL'Y 253, 253–83 (1996); Priyankar Upadhyaya, *Human Security, Humanitarian Intervention, and Third World Concerns*, 33 DENV. J. INT'L L. & POL'Y 71, 78 (2004); Oliver P. Richmond, *Human Security and the Liberal Peace: Tensions and Contradictions*, WHITEHEAD J. DIPL. & INT'L REL., Winter/Spring 2006, at 75.

[103] Robin Coupland, *Humanity: What Is It and How Does It Influence International Law?*, 83 INT'L REV. RED CROSS 969, 972–73 (2001); McRae, *supra* note 68, at 14, 15–16.

[104] *See* René Provost, International Human Rights and Humanitarian Law 5 (2002).

[105] Claudio Grossman & Daniel D. Bradlow, Are We Being Propelled towards a People-Centered Transnational Legal Order?, 9 AM. U. J. INT'L L. & POL'Y 1 (1993). See also Andrew Clapham, The Role of the Individual in International Law, 21 EUR. J. INT'L. L. 25 (2010).

[106] Bain, *supra* note 52, at 279–80.

[107] David Luban explains that, "'Humanity' means both the quality of being human—humanness— and the aggregation of all human beings—humankind. Taken in the former sense, 'crimes against humanity' suggests that the defining feature of these offenses is the *value* they injure, namely humanness." David Luban, *A Theory of Crimes Against Humanity*, 29 YALE J. INT'L L. 85, 86– 87 (2004). Interestingly, Massimo Renzo states that there are two ways to define crimes against humanity: as "'crime against humankind', i.e. crimes that harm not only their direct victims, and possibly the political community, but *all* human beings" or as crimes which violate the core humanity that all humans share. Massimo Renzo, *Crimes Against Humanity and the Limits of International Criminal Law*, 31 L. & PHIL. 443, 449, 451 (2012). For more on the idea of humanity in international legal thought, see Matthew Zagor, *Elementary Considerations of*

example, claimed that it is the humanness principle which forms the basis of humanitarian law.[108] In a similar vein, Ruti Teitel argued, that in the post-cold war era the international legal order has been through a deep normative transformation from prioritizing national security to prioritizing human security. According to Teitel, a merger of human rights law, the laws of war, and international criminal law is taking place within a wider framework of "humanity law," in which humanity forms the basis or source for principles and normative concerns in the global system.[109]

Therefore, the concept of human security can have an influence on strengthening international criminal law and the laws that govern the conduct of hostilities.[110] Intervention in post-conflict regions, [111]the war on terror,[112] prohibitions on targeting civilians, and on certain use of weapons[113] – such as landmines[114] and nuclear disarmament[115] – are just some of the areas in which international law can assist in creating a framework that promotes human security.

Therefore, there is an ambivalent relationship between international law and human security. On the one hand, international law may be an obstructing or restricting factor for those actions that may be necessary for securing human security, such the principle of non-

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Humanity, *in* THE ICJ AND THE EVOLUTION OF INTERNATIONAL LAW: THE ENDURING IMPACT OF THE CORFU CHANNEL CASE 264 (Karine Bannelier et al. eds., 2012).

[108] *See generally* Larry May, War Crimes and Just War (2007).

[109] RUTI G. TEITEL, HUMANITY'S LAW 192 (2011). Gerd Hankel remarks that to support the idea of the emergence of "humanity law" as advocated by Teitel, it is enough to mention the indignation that arose following the refusal of China and Russia in the Security Council to act in any meaningful manner to protect the Syrian people facing the governmental violence perpetrated against them. *See* Gerd Hankel, *Humanity's Law* 23 Eur. J. Int'l L. 583 (2012) (reviewing RUTI G. TEITEL, HUMANITY'S LAW (2011)).

[110] *See* Mary Kaldor, *From Just War to Just Peace*, *in* THE VIABILITY OF HUMAN SECURITY, *supra* note 3, at 21; Willy Bruggeman, *Failing Global Justice and Human Security*, *in* THE VIABILITY OF HUMAN SECURITY, *supra* note 3, at 47.

[111] Yuka Hasegawa, Is a Human Security Approach Possible? Compatibility Between the Strategies of Protection and Empowerment, 20 J. REFUGEE STUD. 1 (2007).

[112] *See, e.g.*, Wayne Nelles, Education, Human Security, and the Terrorism Problematique: Reflections on UNESCO, ISESCO, and Iran, WHITEHEAD J. DIPL. & INT'L REL., Winter/Spring 2006, at 115.

[113] Fen Osler Hampson, *Human Security*, *in* SECURITY STUDIES: AN INTRODUCTION 229, 230 (Paul D. Williams ed., 2008).

[114] *See* Mark Gwozdecky & Jill Sinclair, *Landmines and Human Security*, *in* HUMAN SECURITY AND THE NEW DIPLOMACY: PROTECTING PEOPLE, PROMOTING PEACE, *supra* note 68, at 28. *See also* Fen Osler Hampson & Holly Reid, *Coalition Diversity and Normative Legitimacy in Human Security Negotiations*, 8 INT'L NEGOTIATION 7 (2003).

[115] *See* Ved P. Nanda, *Nuclear Weapons, Human Security, and International Law*, 37 DENV. J. INT'L L. & POL'Y 331 (2009).

intervention in the internal affairs of a sovereign state.[116] On the other hand, international law can be a useful tool for promoting human security and vice versa. Human security can assist in promoting international law. It can assist in better conceptualizing "security," "state's sovereignty," or in elucidating the proper roles of non-states actors and UN Security bodies with regard to human security.[117]

Human security can also assist in creating or developing new international norms. For instance, one may regard the adoption of the Rome Statute of the International Criminal Court (the treaty that established the International Criminal Court) or the Optional Protocol to the Convention on the Rights of the Child, which addresses the involvement of children in armed conflict, as legal developments influenced and promoted by the notion of human security.[118] Another example is the R2P doctrine which is the subject of the next section.

C. HUMAN SECURITY AND THE RESPONSIBILITY TO PROTECT

The concept of human security implies that states bear the duty to protect the welfare of the people and to prioritize this cause over considerations of national secaaurity or state sovereignty. This is closely connected to the R2P doctrine.[119] To clarify, the R2P approach is not identical to human security; rather, it complements and re-enforces it. The two concepts form a nexus. The R2P doctrine is a means to protect

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[116] On human security and international law, see generally Alioune Sall, *La Sécurité Humaine dans le Droit International*, *in* LUTTE CONTRE LA PROLIFERATION DES ARMES LEGERES EN AFRIQUE DE L'OUEST: MANUEL DE FORMATION DES FORCES ARMEES ET DE SECURITE 19 (2003); Gerd Oberleitner, *Human Security: A Challenge to International Law?*, 11 GLOBAL GOVERNANCE 185, 192–93 (2005).

[117] For example, it was argued that UN institutions that deal with security, and especially the UN Security Council, ought to suit themselves to handle threats on human security. *See* Dwight Newman, *A Human Security Council? Applying a "Human Security" Agenda to Security Council Reform*, 31 OTTAWA L. REV. 213 (1999-2000). *See also* Oberleitner, *supra* note 116, at 192–93. For an argument that the UN is the proper institution for a universal cooperation and management of human security concerns, see Ramesh Thakur, *The UN and Human Security*, CAN. FOREIGN POL'Y, Fall 1999, at 51, 57–59.

[118] *See, e.g.*, McRae, *supra* note 68, at 25.

[119] *See* Okolo Ben Simon, *Human Security and the Responsibility to Protect Approach – A Solution to Civilian Insecurity in Darfur*, 7 HUM. SECURITY J. 46 (2008); Rhéa Nadine Wilson, *Securing the Human: A Critique of Human Security and The Responsibility to Protect* (2006) (unpublished Master of Arts thesis, University of Victoria) (on file with the University of Victoria); VON TIGERSTROM, *supra* note 55, at 91–112.

human security in its narrow sense whereas human security forms the conceptual base for the R2P doctrine.[120]

As discussed below, the R2P doctrine acknowledges that the prime responsibility for protecting the people rests upon the sovereign state. However, when a state is unable or unwilling to protect its own people, or when the state itself poses a threat to its people, then the R2P rests upon the international community.[121] The main importance of the R2P doctrine is that it expresses the need to consider the faith of human beings within foreign policy and security policy, including the consideration of the use of force.[122]

Indeed, one of the manifestations of the R2P doctrine is the idea of humanitarian intervention. Generally, humanitarian intervention refers to the use of force by a state against another state in order to prevent or reduce the suffering of that state's citizens.[123] The North Atlantic Treaty Organization bombing in Kosovo[124] and in Libya[125] may be regarded as humanitarian interventions. Humanitarian intervention, in which the care for the individual's safety defeats the state's sovereignty, is an example of human security in action.[126]

The idea of humanitarian intervention, as an exception to the prohibition on the use of force, is a controversial one in international law.[127] Traditionally, the principles of non-intervention and state sovereignty were supreme in the international security paradigm.

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[120] Marlene Gottwald, *Humanizing Security? The EU's Responsibility to Protect in the Libyan Crisis* 11 (FIIA Working Paper 75, Apr. 2012).

[121] GARETH EVANS, THE RESPONSIBILITY TO PROTECT: ENDING MASS ATROCITY CRIMES ONCE AND FOR ALL 46 (2008); ALEX J. BELLAMY, RESPONSIBILITY TO PROTECT 2–3 (2009).

[122] S. Neil Macfarlane et al., *The responsibility to Protect: Is Anyone Interested in Humanitarian Intervention?*, 25 THIRD WORLD Q. 977, 990 (2004); Fen Osler Hampson & Dean F. Oliver, Pulpit Diplomacy: A Critical Assesment of the Axworthy Doctrine, 53 INT'L J. 379, 404 (1997).

[123] *See generally* THOMAS G. WEISS, HUMANITARIAN INTERVENTION (2d ed. 2012). For criticism of humanitarian intervention, see the controversial article by Edward N. Luttwak, *Give War a Chance*, FOREIGN AFF., July/Aug. 1999, at 36, who claims that often humanitarian intervention only prolongs and intensifies armed conflicts and that the parties to the conflict should be given an opportunity to reach a military solution.

[124] *See, e.g.*, Adam Roberts, *NATO's 'Humanitarian War' over Kosovo*, SURVIVAL, Autumn 1999, at 102; Louis Henkin, *Kosovo and the Law of "Humanitarian Intervention",* 93 AM. J. INT'L. L. 824 (1999).

[125] *See, e.g.*, James Pattison, *The Ethics of Humanitarian Intervention in Libya*, 25 ETHICS & INT'L AFF. 271 (2011); Jon Western & Joshua S. Goldstein, *Humanitarian Intervention Comes of Age – Lessons from Somalia to Libya*, FOREIGN AFF., Nov./Dec. 2011, at 48.

[126] *See, e.g.*, Lloyd Axworthy, *NATO's New Security Vocation*, NATO REV., Winter 1999, at 8.

[127] On the prohibition on the use of force, see UN Charter art. 2, para. 4. On a humanitarian exception to that general prohibition, see DINSTEIN, *supra* note 26, at 70–73; GRAY, *supra* note 26, at 33–55.

Moreover, at the world summit in 2005, the states of the world confirmed that the UN Charter's provisions regarding the use of force and its exceptions (the right of self‑defense and the collective security mechanism) were sufficient to address the wide variety of threats to peace and international security.[128] Any forcible intervention without UN Security Council authorization and which is not covered by the conditions for the right of self‑defense – even one which is driven by moral and humanitarian considerations – is a violation of state sovereignty and *prima facie* of the prohibition on the use of force.[129] Yet, with the development of principles based upon the concept of human security, the international community continues to generate clear rules regarding when a humanitarian intervention may take place and states' duty to intervene, even in a state's internal conflicts.

In an address given in 1999, Kofi Annan, the then UN Secretary General, posed a challenge to the member states of the UN to develop a model of humanitarian intervention in order to protect civilians from atrocities such as crimes against humanity and genocide. Annan advanced the idea of two conceptions of sovereignty – "state sovereignty" and "individual sovereignty." In case of a conflict between state and individual sovereignties, the international community must decide how far it will go in order to protect individual sovereignty. Should the world, Annan asked, stand aside while gross and systematic violations of human rights are taking place?[130] In response, in 2001, the International Commission on Intervention and State Sovereignty published "The Responsibility to Protect",[131] which concerned the duty of humanitarian intervention.

The report examines when, if ever, it is proper for states to take military action against another state(s) in order to protect that state's

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[128]   2005 World Summit Outcome, ¶ 79, G.A. Res. 60/1, U.N. Doc. A/RES/60/1 (Sept. 16, 2005).

[129]   There is a difference between legality and legitimacy; the two are not similar. *See generally* Anthea Roberts, Legality Versus Legitimacy: Can Uses of Force Be Illegal but Justified?, *in* HUMAN RIGHTS, INTERVENTION, AND THE USE OF FORCE 179, 206–08 (Philip Alston & Euan MacDonald eds., 2008). Legitimacy of a forcible intervention is comprised of various factors wider than the question of the intervention's legality as they involve questions of morality and politics. *See* Jane Stromseth et al., *Interventions and International Law: Legality and Legitimacy*, *in* CAN MIGHT MAKE RIGHTS? BUILDING THE RULE OF LAW AFTER MILITARY INTERVENTIONS 18 (Jane Stromseth et al. eds., 2006).

[130]   Kofi Annan, *Two Concepts of Sovereignty*, ECONOMIST, Sept. 18, 1999, at 1; Kofi Annan, Balance State Sovereignty with Individual Sovereignty, Speech Before the U.N. General Assembly (Sept. 20, 1999).

[131]   *See* INT'L COMM'N ON INTERVENTION & STATE SOVEREIGNTY, *supra* note 95.

citizens who are at risk.[132] According to the report, the responsibility to protect its citizens rests on each state. If a state is unable or unwilling to do so, the international responsibility to protect replaces the principle of non-intervention.[133]Therefore,   the   legal   basis   for   humanitarian intervention is shifting from the right of states to intervene to the duties inherent in the concept of sovereignty and the responsibility of states to protect the lives of innocents.[134]

"The Responsibility to Protect" report is directly linked to the concept of human security and even mentions that one of the advantages of a discourse of responsibility to protect is its focus on the protection of human security; the security of the people and not the state.[135] Human security, the report states, provides a conceptual framework for international actions.[136] The report adopts a human security approach according to which the protection of the welfare of the individual is more important than the protection of the welfare of the state and that prevention is the ultimate solution to threats on human security. In other words, understanding and addressing the roots of humanitarian crises (such as economic, political, or social instability) and collectively acting with reference to them is more effective in solving problems and protecting human security in the long term.[137]Yet, according to the report, when regional or international security mechanisms – such as the UN Security Council – refrain from action, military intervention to protect lives that are in danger may only take place as a last resort after all other peaceful means have been exhausted and failed.[138]

Following this report, the UN Secretary General established the High Level Panel on Threats, Challenges and Change, which in 2004 published the report "A More Secure World." This report proposed to adopt five criteria for determining when a humanitarian intervention is

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[132] *Id.* at VII. The term "responsibility to protect" was preferred over the term "humanitarian intervention" since it puts more emphasis on international solidary, whereas the latter raises fears regarding domination based upon hierarchy of international powers. *See* Ramesh Thakur, *Outlook: Intervention, Sovereignty and the Responsibility to Protect: Experiences from ICISS*, 33 SECURITY DIALOGUE 323, 328 (2002).

[133] INT'L COMM'N ON INTERVENTION & STATE SOVEREIGNTY, *supra* note 95, at XI.

[134] Paul R. Williams & Meghan E. Stewart, Humanitarian Intervention: The New Missing Link in the Fight to Prevent Crimes Against Humanity and Genocide?, 40 CASE W. RES. J. INT'L L. 97, 105 (2007-2008).

[135] INT'L COMM'N ON INTERVENTION & STATE SOVEREIGNTY, *supra* note 95, at 15.

[136] *Id.* at 6.

[137] Thomas and Tow, *supra* note 51.

[138] INT'L COMM'N ON INTERVENTION & STATE SOVEREIGNTY, *supra* note 95, at 57.

warranted.[139] The importance of the report to our matter is that it refers to the development of a norm of the collective responsibility to protect. This norm includes not only the right of a state to intervene, but also the responsibility of all states to do so when what is at stake is the prevention of peoples' suffering as a consequence of a preventable disaster.[140] This conclusion was adopted in the UN Secretary General's report "In Larger Freedom,"[141] which promoted the idea that threats on humanity can be solved through a collective action and urged the adoption of the R2P doctrine.[142]

In 2005, the UN General Assembly endorsed Resolution 60/1 – the R2P doctrine – in the World Summit's concluding document. According to the document, every state carries the responsibility to protect its citizens from genocide, war crimes, ethnic cleansing, and crimes against humanity. The international community also carries the responsibility, through the UN, to use diplomatic, humanitarian, and other peaceful means to assist in the protection of citizens. Where such peaceful means fail and the state is unable to protect its citizens from the aforementioned crimes, the international community is willing to collectively use force, according to the UN Charter, in the appropriate cases, through the UN Security Council with the cooperation of regional mechanisms.[143] The UN Security Council reconfirmed these rules in Resolution S/Res/1674 regarding the protection of civilians in armed conflicts.[144]

In January 2009, the UN Secretary General Ban Ki-moon, published a report entitled "Implementing the Responsibility to Protect," which was presented before the UN General Assembly in July that year. [145] Three months later, in Resolution A/Res/63/308, the General Assembly declared that the international community acknowledges the

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[139] The criteria are: 1) The gravity of the threat (for instance, is a genocide or ethnic cleansing taking place?); 2) A proper purpose – is it clear that the main aim of the military action is to stop or prevent the threat? 3) Is the use of force being exercised only after all other peaceful means for resolving the conflict have been exhausted? 4) The military action has to be proportionate to the threat; 5) Is it likely that that military intervention will accomplish the purpose and in the balance of interests, the implications of the military intervention will not be more severe than non-intervention?

[140] INT'L COMM'N ON INTERVENTION & STATE SOVEREIGNTY, *supra* note 95, §§ 3.42–.43.

[141] *In Larger Freedom*, *supra* note 97.

[142] *Id.* ¶¶ 18–22, 135.

[143] 2005 World Summit Outcome, *supra* note 128, ¶¶ 138–39.

[144] S.C. Res. 1674, U.N. Doc. S/RES/1674 (Apr. 28, 2006).

[145] U.N. Secretary-General, Implementing the Responsibility to Protect: Rep. of the Secretary-General, U.N. Doc. A/63/677 (Jan. 12, 2009).

importance of the responsibility to protect and that it is obliged to debate issues related to the doctrine.[146]

As the above international documents demonstrate, it appears that the concept of human security, in its narrow sense of relating to protecting the individual in armed conflicts, began to be accepted – or at least, seriously debated – within the international community. Thus far, states and regional institutions hesitated to adopt "human security" as a doctrine, but this concept now functions as a certain catalyst within the normative framework that refers to states' duties and principles of state's sovereignty.[147] The R2P doctrine in particular, symbolizes a substantial shift in international law, especially in the increasing tendency to recognize that the principle of national sovereignty finds its limits in the protection of human security.[148]

III. GENERAL CRITICISM OF THE HUMAN SECURITY CONCEPT

In previous sections, I have elaborated on the potential of the concept of human security and its development in the international arena. In the rest of this article, I will take a more precautionary approach and opine that one has to think twice before abandoning traditional concepts in favor of promoting new ones. Normatively, the idea of human security is captivating as it provides optimism. And, surely it is desirable to protect and improve the security of human beings. However, it may well be that the disadvantages of an approach that supports human security eventually outweigh its advantages.[149]

The concept of human security suffers from an analytical weakness,[150] as it lacks an accepted and coherent definition.[151] The threats

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[146]   G.A. Res. 63/308, U.N. Doc. A/RES/63/308 (Sept. 14, 2009).

[147]   Paul Evans, *Asian Perspectives on Human Security: A Responsibility to Protect?*, *in* INTERNATIONAL CONFERENCE ON HUMAN SECURITY IN EAST ASIA, *supra* note 87, at 35, 36–37, 49–53.

[148]   Carsten Stahn, *Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?*, 101 AM. J. INT'L L. 99, 100–01 (2007).

[149]   For a summary of the criticism against human security, see Owen, *supra* note 85, at 378–80. For a review and response, see Richard Jolly, Deepayan Basu Ray, *Human Security – National Perspectives and Global Agendas*, 19 J. INT'L DEV. 457 (2007).

[150]   Edward Newman, A Normatively Attractive but Analytically Weak Concept, 35 SECURITY DIALOGUE 358 (2004).

[151]   William W. Bain, *Against Crusading: The Ethic of Human Security and Canadian Foreign Policy*, CAN. FOREIGN POL'Y, Spring 1999, at 85. For a general discussion, see Gary King & Christopher J. L. Murray, *Rethinking Human Security*, 116 POL. SCI. Q. 585 (2001-2002)

that endanger human security are indeed grave but seemingly endless: wars, drugs, organized crime, diseases, hunger, crime, terror, traffic accidents, environmental crises, economic crises, and many others, all of which are covered by the concept of human security. This wide and vague definition has lead critics as such Roland Paris to ask: what is not included within human security?[152]Similarly, Keith Krause criticizes the concept, arguing that eventually it is no more than a "shopping list" of "bad things" that can happen to people.[153] Therefore, an "all or nothing" approach may itself fail. The concept's analytical weakness is especially manifested in three major challenges: the analytically ambiguity of the concept; risks in over-securitizing threats; and the concept's illusory nature.

A.   FREEDOM FROM FEAR OR WANT; RIGHTS OR NEEDS?

The wide definition of the concept of human security can be seen as an attempt to evade the traditional antagonism towards social and economic rights through their securitization.[154] In other words, by using the magic word "security," attention and resources can be relocated from state security to the promotion of, *inter alia*, social, economic, and environmental rights.[155] Indeed, this is a very positive aspect of the concept of human security. Human security can assist in bridging the

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(proposing at 593 that only the cases that people will be willing to fight for can be included within human security).

[152]   Roland Paris, *Human Security: Paradigm Shift or Hot Air?*, INT'L SECURITY, Fall 2001, at 87, 92. "Existing definitions of human security tend to be extraordinarily expansive and vague, encompassing everything from physical security to psychological well-being, which provides policymakers with little guidance in the prioritization of competing policy goals and academics little sense of what, exactly, is to be studied." *Id.* at 88.

[153]   Keith Krause, *Is Human Security "More than Just a Good Idea?"*, *in* PROMOTING SECURITY: BUT HOW AND FOR WHOM? CONTRIBUTIONS TO BICC'S TEN-YEAR ANNIVERSARY CONFERENCE BICC 43, 44 (Michael Brzoska & Peter J. Croll eds., Brief 30, 2004).

[154]   The term "securitization" is taken from BARRY BUZAN ET AL., SECURITY: A NEW FRAMEWORK FOR ANALYSIS (1998). For the use of this term, see Ralf Emmers, *Securitization*, *in* CONTEMPORARY SECURITY STUDIES, *supra* note 50, at 109.

[155]   So, for instance, it was argued that the idea of human security can assist in diverting the focus from physical conflicts to world poverty, and especially to the extent that human resources are being controlled and consumed by a small and rich minority, which has to take responsibility for the poor, desperate, and often deadly circumstances of the world's majority. *See* Edna Keeble, *Canadians and Global Beneficence: Human Security Revisited, in* ENGAGED PHILOSOPHY: ESSAYS IN HONOUR OF DAVID BRAYBROOKE 101, 112 (Peter Schotch & Susan Sherwin eds., 2007).

distinction between "generations" of human rights[156] since it reintroduces the organic unity of various human rights[157]and refutes the traditional dichotomy between negative and positive rights.

However, although human security can assist in treating the unity of human rights more seriously and in promoting the idea that there is one set of rights and that all rights are "indivisible and interdependent and interrelated,"[158]   the concept is internally divided between two approaches. A discrepancy exists between the Canadian approach, which focuses on human security as freedom from fear, and the Japanese approach, which focuses on human security as freedom from want.[159] This discrepancy between the different approaches toward human security, which derives from and is facilitated by the concept's vagueness, does not pronounce any "organic unity of various human rights;" rather, it perpetuates the distinction between different set of rights.[160] Therefore, alas, the promise of human security to negate the traditional dichotomy between negative and positive rights has not yet been fulfilled.

From a different aspect, rights have traditionally been divided into two categories: rights from something (to protect) and rights to something (to provide).[161] The first set of rights functions as a means to provide protection by the state (or from the state when necessary). These include rights such as the right to life, freedom of speech, freedom of movement, and the prohibition on torture. The second group represents rights to resources or services that the state has to make available or provide, such as health services, employment, and education.[162] Today, the traditional distinction between rights from something and rights to something is blurred and there is an increased recognition that both sets

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[156] I refer here, of course, to the traditional distinction, proposed by Karel Vasak and based upon the principles of the French Revolution, between civil and political rights, which are first generation rights (*liberté*), social, economic, and cultural rights, which are second generation rights (*égalité*), and group rights, which are third generation rights (*fraternité*). *See* 1 THE INTERNATIONAL DIMENSIONS OF HUMAN RIGHTS (Karel Vasak & Philip Alston eds., 1982).

[157] Alkire, *supra* note 84, at 38.

[158] *See* Henry J. Steiner et al., International Human Rights In Context – Law, Politics, Morals 370 (3d ed. 2007).

[159] *See* Acharya, *supra* note 85; GLOBAL ISSUES COOPERATION DIV., MINISTRY OF FOREIGN AFFAIRS OF JAPAN, *supra* note 87, at 3; Fukushima, *supra* note 87; Edström , *supra* note 87.

[160] *See* Oberleitner, *supra* note 30.

[161] On positive and negative rights, see JACK DONNELLY, UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE 42–43 (3d ed. 2013).

[162] *See* Paul Sieghart, The Lawful Rights of Mankind: An Introduction to the International Legal Code of Human Rights 107 (1985).

of rights include negative and positive aspects,[163] as both are necessary and together compose the basis for human security.[164]

One possible problem with using the concept of human security in order to overcome the traditional dichotomy between rights is based in the distinction between a "*rights based approach*" and a "*needs based approach*." The former treats humans as holding inalienable rights and that *preventions of needs* can be deemed a negation of rights. So, for instance, it may be argued that clean drinking water is not only a basic need, but also a basic human right. But rights and needs are not identical. Rights go beyond physical needs to include a wider vision of human beings and their civil, political, social, economic, and cultural roles.[165] Finally, and most importantly, rights – as Wesley N. Hohfeld teaches us – are accompanied by duties.[166] This is not necessarily the case with needs. Therefore, any debate on rights necessitates a debate regarding who carries the duty to realize these rights.[167] The existing fear is that looking at human rights from a human security perspective might cast doubt upon a rights based approach and turn human rights – in the human security context – into needs that need to be fulfilled.[168]

The focus of human security on freedom from want and development issues according to the Japanese approach may also lead to the demotion of state representatives' responsibility and divert the attention from domestic human rights violations.[169] Hence, as I argue in the next subsection, international efforts should focus on accomplishing different sets of fundamental rights and their promotion.

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[163]   For a debate, see Conor Gearty & Virginia Mantouvalou, Debating Social Rights (2011).

[164]   John F. Jones, *Human Security and Social Development*, 33 DENV. J. INT'L L. & POL'Y 92, 96–102 (2004).

[165]   On Basic Needs Approaches vs. a Human Rights Approach, see URBAN JONSSON, HUMAN RIGHTS APPROACH TO DEVELOPMENT PROGRAMMING 20 (2003).

[166]   See Wesley Newcomb Hohfeld, Fundamental Legal Conceptions as Applied in Judicial Reasoning, 26 YALE L.J. 710 (1916-1917).

[167]   JAKOB KIRKEMANN BOESEN & TOMAS MARTIN, APPLYING A RIGHTS-BASED APPROACH – AN INSPIRATIONAL GUIDE FOR CIVIL SOCIETY 10 (2007); On a rights based approach, see Fiona Robinson, *The Limits of a Rights-Based Approach to International Ethics*, in HUMAN RIGHTS FIFTY YEARS ON 58 (Tony Evans ed., 1998). When basic human needs are provided, individuals might feel thankful. This is different when human rights are respected because rights are accompanied by duties.

[168]   Oberleitner, *supra* note 78, at 606. *See also* Rhoda E. Howard-Hassmann, *Human Security: Undermining Human Rights?*, 34 HUM. RTS. Q. 88, 108 (2012).

[169]   Howard-Hassmann, *supra* note 168, at 107.

B.   THE RISKS OF OVER-SECURITIZATION

As noted earlier, the concept of human security is the securitization of topics that were not previously considered within a security framework.[170] Yet, the wide definition of human security and its vagueness raise the question: is it not the case that all possible threats are being over-securitized? And if so, what is the problem with this over-securitization?

The widening of the concept of "security" has been accompanied by challenging existing international law norms regarding the use of force and collective security.[171] The more the concept of human security becomes a dominant element within international law and international relations, the more it will provide a conceptual framework for international actions, including military actions.[172] The concept of human security will enhance the legitimacy of armed humanitarian intervention as a (moral/political/legal) duty when states are unwilling to or incapable of protecting their own citizens. Due to the complexity of the concept of human security, the idea of humanitarian intervention may encompass a different, wider content that includes both political-military intervention and interventions that aim to reduce human suffering by other means. Therefore, a major fear of over-securitization is that the idea of human security will become an easy excuse for the use (or abuse) of force. Such use of force can take place by means of humanitarian intervention as part of the R2P doctrine.[173] This is the internal paradox of human security: in order to protect human security, states would often have to act in ways that threaten security.

The elaboration of the aims of humanitarian interventions from pure survival support to rehabilitation, peace-building, and development might lead to a dilution of the commitment to basic humanitarian

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[170]   *See supra* Part I.A.

[171]   Hitoshi Nasu, The Expanded Conception of Security and International Law: Challenges to the UN Collective Security System, AMSTERDAM L. F., Summer 2011, at 15.

[172]   *See* INT'L COMM'N ON INTERVENTION & STATE SOVEREIGNTY, *supra* note 95, at 14; Ved P. Nanda, *Preemptive and Preventive Use of Force, Collective Security, and Human Security*, 33 DENV. J. INT'L L. & POL'Y 7 (2004-2005); Richard L. Bowes, *Sacrifice and the Categorical Imperative of Human Security*, 56 INT'L J. 649 (2001).

[173]   *See, e.g.*, Don Hubert & Michael Bonser, *Humanitarian Military Intervention*, *in* HUMAN SECURITY AND THE NEW DIPLOMACY: PROTECTING PEOPLE, PROMOTING PEACE, *supra* note 68, at 111–13; Oberleitner, *supra* note 116, at 193–95; Kees Homan, *The Military and Human Security*, 19 SECURITY & HUM. RTS. 73, 75–79 (2008); Upadhyaya, *supra* note 102, at 79, 81–85.

principles.[174]   Additionally, in the absence of clear rules, a wide definition of human security might elaborate the emerging humanitarian exception to the prohibition on the use of force.[175]The fear is that including all concerns within the concept of security will lead to the use of force for solving not only survival humanitarian crises, but also a wide range of crises such as political, economic, or social emergencies.[176] This possibility of abusing the concept human security in order to justify humanitarian intervention also raises the fear that human security represents a certain neo-colonialism.[177]

Fairly, this difficulty may be assuaged. Any debate regarding human security ought to investigate which peaceful positive duties are applied upon states, such as the duty to assist economically or humanitarianly, for example, by granting a wide allowance of asylum. [178]In addition, the international community and academic debate must focus on marking clear guidelines and limitations as to the use of force in order to protect human security.[179] Not only should the limitations on the use of force in order to protect human security be considered, but also what might be the implications of a military intervention itself on the human security of the people who are in the conflict zone. What is important to remember is that any concept of security carries with it a certain burden that may lead in problematic directions.[180]Therefore, any justification to use force in humanitarian intervention to protect human security should be treated with care.[181]

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[174]   Philip White & Lionel Cliffe, Matching Response to Context in Complex Political Emergencies: 'Relief', 'Development', 'Peace-building' or Something In-between?, 24 DISASTERS 314 (2000).

[175]   *See* debate *supra* Part II.C.

[176]   YUEN FOONG KHONG & S. NEIL MACFARLANE, HUMAN SECURITY AND THE UN: A CRITICAL HISTORY 237–43 (2006). *See also* Frerks *supra* note 75, at 13.

[177]   *See* Priyankar Upadhyaya, Human Security, Humanitarian Intervention, and Third World Concerns, 33 DENV. J. INT'L L. & POL'Y 71 (2004).

[178]   Indeed, the Responsibility to Protect report referred not only to military intervention, but also to a strategy of intervention that includes political, economic, and legal elements. *See* INT'L COMM'N ON INTERVENTION & STATE SOVEREIGNTY, *supra* note 95, at 23.

[179]   These limitations can be similar to those remarked above regarding the responsibility to protect doctrine. So, for example, the use of force in order to protect human security should be a last resort. *See* INT'L COMM'N ON INTERVENTION & STATE SOVEREIGNTY, *supra* note 95.

[180]   VON TIGERSTROM, *supra* note 55, at 44–45.

[181]   *See* Susan L. Woodward, *Should We Think Before We Leap?*, 30 SECURITY DIALOGUE 277 (1999); Wayne Nelles, *Canada's Human Security Agenda in Kosovo and Beyond*, 57 INT'L J. 459 (2002).

C.   THE ILLUSIONARY PROMISE OF HUMAN SECURITY

On top of the ambiguity problem, it has been argued that the wide approach toward human security does not assist in examining the improvement or deterioration of human security's conditions in light of the shortage of concrete indices for its measurement. Since human security includes so many issues, it is almost impossible to develop such indices and recognize the concept's utility. Security is a relative concept (a secure environment for one person may be an insecure environment for another person). Hence, any debate regarding security (or its absence thereof) requires a deep and comprehensive analysis of the power relations within the environment where people live.[182] The aims to which the concept of human security aspires require, for their fulfillment, the demarcation of the term, its nature, and scope in order to allow for applicable decision‑making and a quick and efficient solution to a security concern.[183]

Another important question is to what extent the concept of human security is real or simply illusionary. Securitization of topics, it may be argued, does not serve insecure victims, but creates false hopes. As Yuen Foong Khong wonders: "Is it not the case that, from the human security perspective, every threat to the well‑being of every individual in every state is a security issue? Ironically, in making all individuals a priority, none actually benefits."[184] Even if human security is not illusionary, and we agree or decide that it includes protection from hunger, disease, terrorism, poverty, and more, a public or foreign policy always requires the prioritization of certain topics over others.[185] No matter how much we wish, granting an equal attention to all topics is simply unmanageable. Finally, even if today people are more threatened by their own state than by other states, this does not mean that the state

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[182]   Ashforth, *supra* note 80, at 100. John Jones adds, in this respect, that as there are many relations and overlaps between the different threats on human security (he refers to hunger, diseases, poverty, unemployment, and environmental hazards), a failure in one of the categories inevitably influences other forms of human security. *See* Jones, *supra* note 164, at 103.

[183]   Hasan Mahmud et al., Human Security or National Security: The Problems and Prospects of the Norm of Human Security, J. POL. & L., Dec. 2008, at 67, 69. See generally Hans van Ginkel & Edward Newman, In Quest of "Human Security", 14 JAPAN REV. INT'L AFF. 59 (2000). In contrast, one may argue that it is precisely the relative dynamic of the concept which allows flexibility and adjustments to a variety of scenarios and this is its virtue. See Gerd Oberleitner, The OSCE and Human Security, 19 SECURITY & HUM. RTS. 64, 65 (2008).

[184]   Yuen Foong Khong, Human Security: A Shotgun Approach to Alleviating Human Misery?, 7 GLOBAL GOVERNANCE 231, 233 (2001).

[185]   *See* KHONG & MACFARLANE, *supra* note 176.

does not have a positive and important role to play in achieving security. Perhaps the contrary is true, and efforts should be aimed precisely at identifying the strategies for coping with insecurity threats within the state's framework.[186]

IV. A DOUBLE-EDGED SWORD? ON HUMAN SECURITY AND HUMAN RIGHTS

As elaborated in section II, the concept of human security is highly important for international law. This section focuses on the relationship between human security and human rights, and questions whether using the new concept might bring about human rights' infringements rather than improving and promoting human rights.

A. LIMITATIONS OF RIGHTS FOR ACCOMPLISHING HUMAN SECURITY

At first look, the human security debate may substantially contribute to the protection and promotion of human rights. However, while international human rights discourse has developed tremendously in recent decades, human rights still retreat when they clash with the state's security interests.[187] During emergencies, human rights law allows the derogation of certain human rights,[188] although rights such as the right to life and freedom from torture are exceptional and their derogation is prohibited.[189]

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[186]   Alex J. Bellamy & Matt McDonald, 'The Utility of Human Security': Which Humans? What Security? A Reply to Thomas & Tow, 33 SECURITY DIALOGUE 373 (2002).

[187]   Peter Hough, *Global Steps Towards Human Security*, 19 SECURITY & HUM. RTS. 15, 23 (2008).

[188]   *See, e.g.*, International Covenant on Civil and Political Rights art. 4(1), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR] ("In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."); European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 art 15(1), Nov. 4, 1950, 213 U.N.T.S 221, E.T.S. 5 [hereinafter ECHR] ("In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.").

[189]   ICCPR, *supra* note 188, art. 4(2) ("No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision."); ECHR, *supra* note 188, art. 15(2) ("No

Rights' derogation during emergencies is an example of a case where human security may lead to rethinking established convictions. In the case of the derogation of rights' protection, a state's security supersedes human rights in the balance between the two. Derogation provisions themselves surely include certain limitations; yet, a wide discretion and margin of appreciation are granted to the states depending on the circumstances; for example, where there is a "public emergency that threatens the lives of the nation."[190] What is interesting here is that such derogation is occurring against threats that are conceived as threats to the very existence of the state rather than as a threat to the security of the state's citizens. It is in this regard that Gerd Oberleitner notes that:

> if human security were to gain a foothold as a principle to be observed alongside national security, invoking security concerns to suspend human rights would meet with different thresholds. . . . With this, the concepts of human security and human rights could start a mutually benefiting conversation in this field.[191]

This is indeed an option; yet, there is also the possibility that the new concept might involve wider limitations on human rights.

In contrast to human rights limitations during rights' derogation emergencies,[192]   human security is supposed to apply at all times. Using human security relatively or temporarily would make it devoid of content and would prevent it from accomplishing its idealistic aims. Therefore, even hypothetically, a state would be able to claim that it was taking certain measures that violate basic rights (directly or indirectly) not in order to protect state's security, but to protect the human security of its own citizens. Thus, it might be argued that the derogation need not occur according to the existing rules regarding derogation of rights in times of

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derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.").

[190] *See* U.N. Human Rights Comm., *CCPR General Comment No. 29, States of Emergency (Article 4)*, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (Aug. 31, 2001); Lawless v. Ireland (No. 3), App. No. 332/57, para. 28 (1961). On derogation more generally, see Rosalyn Higgins, *Derogations Under Human Rights Treaties*, 48 BRITISH Y.B. INT'L L. 281 (1976-1977); Thomas Buergenthal, *To Respect and to Ensure: State Obligations and Permissible Derogations*, *in* THE INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS 72–91 (Louis Henkin ed., 1981); Christoph Schreuer, *Derogation of Human Rights in Situations of Public Emergency*, 9 YALE J. WORLD PUB. ORD. 113 (1982-1983).

[191] Oberleitner, *supra* note 78, at 603.

[192] *See, e.g.*, ICCPR, *supra* note 188, art. 4(1); ECHR, *supra* note 188, art. 15(1); R. St. J. Macdonald, *Derogations Under Article 15 of the European Convention on Human Rights*, 36 COLUM. J. TRANSNAT'L L. 225 (1998); Joan F. Hartman, *Derogation from Human Rights Treaties in Public Emergencies*, 22 HARV. INT'L L.J. 1 (1981).

national security. Consequently, the securitization of new issues should not necessarily be regarded as a positive advance, but rather as a failure to confront such concerns through normal politics and international relations.[193]

B. HUMAN SECURITY: A RIGHT OR AN INTEREST?

Indeed, a state invoking rights' infringement in order to protect human security might face different thresholds of scrutiny than if the protected interest was national security. But do these thresholds automatically benefit human rights? Not necessarily. They might work to the detriment of rights. A fascinating example of this is seen in Israel's famous *Adalah* case.[194]

The *Adalah* case involved the Nationality and Entry into Israel (Provisional Measure) Law, 2003.[195] This provisional law generally restricted, with certain limited exceptions, the ability to enter into Israel from the West Bank and the Gaza Strip, especially in cases of familial unification and immigration for the purpose of marriage. The expressed object of the law was national security due to the increase in number of Palestinians, who held Israel identity cards by reason of families' unification, involved in terrorist acts.[196] This temporary law provoked considerable discussion and criticism as it involved serious constitutional issues.[197] In 2006, the Israeli Supreme Court gave its decision regarding the constitutionality of the law. Although many of the judges severely

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[193] BUZAN ET AL., *supra* note 154, at 19, 24–29

[194] *See generally* HCJ 7052/03 Adalah v. Minister of Interior 61(2) PD 202 [2006] (Isr.) [hereinafter *Adalah*].

[195] *See id. See generally* The Citizenship and Entry into Israel Law (Temporary Provision) 5763-2003, SH No.1901 p. 544 (Isr.).

[196] For a good short summary of the law, see Ruth Lapidoth & Ofra Friesel, *Some Reflections on Israel's Temporary Legislation on Unification of Families*, 43 ISR. L. REV. 457 (2010).

[197] For some of the academic writings on this issue, see *id.*; Guy Davidov et al., *State or Family? The 2003 Amendment to the Citizenship and Entrance to Israel Law*, 8 MISHPAT U'MIMSHAL 643 (2005) [Hebrew]; Amnon Rubinstein & Liav Orgad, *Human Rights and National Security— The Case of Israeli Restrictions of Family Reunification During Armed Conflict*, 48 HAPRAKLIT 315 (2006) [Hebrew]; Yaffa Zilbershats, *Coping with the Non-Jewish Immigration to Israel (Case Comment),* 10 MISHPAT U'MIMSHAL 87 (2006) [Hebrew]; Daphne Barak-Erez, *Citizenship and Immigration Law in the Vise of Security, Nationality, and Human Rights*, 6 INT'L J. CONST. L. 184 (2008); Liav Orgad, *Immigration, Terrorism and Human Rights: Admission Policy and the War on Terror*, 25 MEHKAREI MISHPAT 485 (2009) [Hebrew]; Barak Medina & Ilan Saban, *Human Rights and Risk-Taking: On Democracy, Ethnic-Profiling and the Limitation Clause (Following the Decision on the Validity of the Citizenship and Entry into Israel Law)*, 39 MISHPATIM 47 (2009) [Hebrew].

criticized the law for its rights' violation, a narrow majority of six to five decided not to declare it unconstitutional. The majority decided that the law does not violate constitutional rights, and, even if it did, such a violation is proportionate. The relevant debate for our matter is the argument between the judges as to the protected interests.

As Justice Rivlin explained in his judgment, defining public interest as distinct from the individuals' rights is often done artificially. The public interest is, in fact, an accumulation of individual's rights. For example, the public interest of security is the right of each member of the public to life and to safety.[198] Clearly, the "public" that owns the interest is composed of many individuals – each possessing rights.[199] In effect, the sum of each individual's right to personal security creates the interest, which is then called public security. This is because the same interest can be viewed from various perspectives. The individual's right to life can be presented as an individual interest, but also as a social interest for guarding lives in society.[200] Rights' protection is not merely a matter of the individual, but of the society as a whole.[201] For example, as Justice Rivlin noted, the threat of terrorism is a threat to public safety, but since "public security is speaking here of the actual right to life" of those specific people who might be harmed in the next act of terror, "the dividing line between the public interest and the right of the individual loses its strength in this case."[202]

Why does the distinction between rights and interests matter? It matters because we live in the "age of balancing."[203] The question whether the competing values are classified as a general interest of public security or as a personal right to life may have significance with regard to the appropriate balancing test. For example, within a vertical balance, in the clash between an individual value (a basic right) and a public or social interest, one is superior to the other if certain conditions are fulfilled according to the balancing formula (such as the probability of the infringement of the public or social interest and its intensity).

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[198]   *Adalah*, *supra* note 194, para. 15 of the judgment of Justice Rivlin.

[199]   *See* HCJ 6126/94 Szenes v. Broad. Auth. 53(3) PD 817, 833 [1999] (Isr.).

[200]   YORAM DINSTEIN, FOUNDATIONS OF LAW 77 (1993) [Hebrew]. For a discussion on the distinction between rights and interests, see Oren Gazal-Ayal & Amnon Reichman, *Public Interests As Constitutional Rights?*, 41 MISHPATIM 97 (2011) [Hebrew].

[201]   CrimFH 2316/95 Ganimat v. State of Israel 49(4) PD 589, 649 [1995] (Isr.).

[202]   *Adalah*, *supra* note 194, para. 16 of the judgment of Justice Rivlin.

[203]   *See generally* T. Alexander Aleinikoff, *Constitutional Law in the Age of Balancing*, 96(5) YALE L. J. 943 (1987).

However, if the two values have the same normative status within the constitutional hierarchy, such as a conflict between different basic rights, a horizontal balance will take place in which the balancing formula will examine the mutual regression of each right.[204]

Thus, the process of scaling competing values does not only signify the interpretive starting point, but also the final point since in the balance between competing values, choosing specific terminology can lead to a specific result. The method that we choose for solving a problem shapes to a great deal the content of the solution.[205] When deciding upon conflicting values, there is substantial importance in analyzing the guiding methods for the proper balancing since classifying a concept as a right or as an interest dictates the balance that leads to the result.[206]

This is well demonstrated in the *Adalah* case as the use of different terminology led to different results. In arguments between the judges, President (ret.) Barak described the protected interest as a public interest – public security. [207] He presented the conflicting values as a right versus an interest, and – using a vertical balance – reached the result that the law is unconstitutional.[208] Conversely, Deputy President (ret.) Cheshin focused on the rights of the citizens to life and to live securely versus the right to family. [209] He used a terminology of two conflicting rights within a horizontal balance, and concluded that the law is

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[204]   On balancing formulas and vertical and horizontal balance, see AHARON BARAK, THE JUDGE IN A DEMOCRACY 170–72 (2009).

[205]   Michael Birnhack, Constitutional Geometry: The Supreme Court's Methodology in Value Judgments, 19 BAR-ILAN L. STUD. 591 (2003) [Hebrew].

[206]   *Id.* at 606 ("Interests, values and rights can be presented, in different levels of abstraction, in two contrary directions: A presentation of a right as an interest detracts from its power, whereas a presentation of an interest as a right or as a value raises its degree. The possibility of presenting different concepts in different ways commands the type of the balance that needs to apply, and this balance in its turn, pretty much commands the result of the conflict.") (my translation).

[207]   *Adalah*, *supra* note 194, paras. 107–08 of the judgment of Justice President Barak.

[208]   *Id.*, paras. 112–14 of the judgment of Justice President Barak.

[209]   *Id.*, para. 120 of the judgment of Justice Vice-President Emeritus Cheshin ("In truth, arguments concerning 'life' and 'security' do not override others as if by magic, and we are obliged to examine and check them thoroughly and closely. But past experience has shown that we are really speaking about life, that we are concerned with life. Life and death. It is the right of the residents of the state to live. To live in security. This right of the individual to life and security is of great strength. It has chief place in the kingdom of rights of the individual, and it is clear that its great weight is capable of determining the balance between damage and benefit decisively. This right to life, which is the purpose of the legislation, is capable of telling us that the scope for making the balancing will be quite broad.").

constitutional.[210] Obviously, as Roscoe Pound cautioned us already in 1943, the way in which we define concepts may determine the result.[211]

How is this debate related to human security? The lesson to be learned is that if we modify the protected value from the public interest of state security to the individual interest of the human security,[212] we might face less severe scrutiny. This is because we then shift balancing formulas. We move from a vertical balance in which we have to prove probability, to a horizontal one, similar to that which takes place between conflicting rights. Subsequently, in certain balance formulas, balancing human security and human rights might lead to wider limitations of rights than if the conflicting value had been the public interest of security.

C.   HUMAN RIGHTS AND HUMAN SECURITY – THE SAME OLD THING UNDER A DIFFERENT CLOAK?

Lastly, a genuine and cogent discourse on the promotion of human rights might make the human security approach superfluous. Indeed, the Commission on Human Security elaborated on the reciprocation between human rights and human security and how the two concepts mutually support and reinforce each other. Among others, it was argued that human security can assist in identifying the rights that are in danger in certain circumstances and that human rights can assist in

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[210] To this analysis President Barak replies, "Indeed, I accept that if we weigh life against quality of life — life will prevail. But is this the proper comparison? . . . The proper way of posing the question is by means of the level of the risks and the likelihood that they will occur, and their effect on the life of society as a whole." *Id.*, para. 110 of the judgment of Justice President Barak.

[211] Roscoe Pound, *A Survey Of Social Interests*, 57 HARV. L. REV. 1, 2 (1943) ("When it comes to weighing or valuing claims or demands with respect to other claims or demands, we must be careful to compare them on the same plane. If we put one as an individual interest and the other as a social interest we may decide the question in advance in our very way of putting it. . . . If the one is thought of as a right and the other as a policy, or if the one is thought of as an individual interest and the other as a social interest, our way of stating the question may leave nothing to decide.") On the importance of legal definitions, see generally Yaniv Roznai, *A Bird is Known by Its Feathers – On The Importance and Complexities of Definitions in Legislation*, THEORY & PRAC. LEGIS. (forthcoming 2014).

[212] According to Pound, a legal system achieves its goals by recognizing three types of interests: individual interests (such as protection of life, personal liberty, privacy, freedom of belief and expression); public interests, which are peoples' aspirations from a perspective of a politically organized society (such as protection against treason, an effectively functioning governmental system, etc.); and social interests, which are demands that are required for maintaining the society (such as security of property, security of social institutions, protection of public morals, public feeling, national treasures, etc.). *See* ROSCOE POUND, THE SPIRIT OF THE COMMON LAW 91–92 (1921).

understanding how human security should be promoted.[213] Similarly, it was argued that the protection of human rights should be regarded as a measure to ensure human security and human security should be regarded as the aim of human rights' protection.[214]

Both human security and human rights place the individual in the center. But are they the same? Human rights have always focused on the security of the individual.[215] International human rights law (which arrived at least four decades before the human security discourse) defines the meaning of human security.[216] The UDHR and most, if not all, of international instruments on human rights are meant to protect the security of the person through the protection of his basic rights.[217] Article 3 of the UDHR explicitly refers to security within human rights law: "Everyone has the right to life, liberty and the security of person."[218] The drafters of the UDHR had a wide and comprehensive sense of security, as one can learn from the UDHR's *travaux préparatoires*.[219] The spirit of Article 3 was transferred to other human rights instruments, which support different concepts of security: personal security,[220] social security,[221] and international security.[222] Article 28 of the UDHR,

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[213] COMM'N ON HUM. SEC., HUMAN SECURITY NOW 10 (2003). *See also* Tim Dunne & Nicholas J. Wheeler, *'We the Peoples': Contending Discourses of Security in Human Rights Theory and Practice*, 18 INT'L REL. 9, 18 (2004); Wolfgang Benedek, *Human Security and Human Rights Interaction*, *in* RETHINKING HUMAN SECURITY 7, 16 (Moufida Goucha & John Crowley eds., 2008).

[214] Bertrand G. Ramcharan, Human Rights and Human Security 3–10 (2002).

[215] *See* Ramcharan, *supra* note 17, at 39–40.

[216] *Id.*

[217] *Id.*

[218] Universal Declaration of Human Rights, G.A. Res. 217 (III) A, art. 3, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

[219] *See* Lars Adam Rehof, *Article 3*, *in* THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A COMMENTARY 73, 75 (Asbjørn Eide et al. eds., 1992).

[220] *See* ICCPR, *supra* note 188, art. 9(1) ("Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention"); ECHR, *supra* note 188, art. 5(1) ("Everyone has the right to liberty and security of person."); African (Banjul) Charter on Human and Peoples' Rights art. 6, June 27, 1981, O.A.U. Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) [hereinafter African Charter] ("Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained."); Organization of American States, American Convention on Human Rights art. 7(1), Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 ("Every person has the right to personal liberty and security.").

[221] Universal Declaration of Human Rights, *supra* note 218, arts. 22, 25; International Covenant on Economic, Social and Cultural Rights art. 9, Dec. 16, 1966, 993 U.N.T.S. 3; American Declaration of the Rights and Duties of Man, art. 16, O.A.S. Res. XXX, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (May 2, 1948); Additional Protocol to the American Convention on Human

according to which "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized," is crucial to the promotion of human security,[223] since the realization of substantive and procedural human rights (such as the right to a fair trial and the non-refoulement principle) is essential for the protection of human security.[224]

Gerd Oberleitner argues that personal security is not identical to human security.[225] Personal security, in its traditional sense within international law, is narrow in its scope and it does not support a wider view of the term "security" other than freedom from fear.[226] Likewise, social security, while central to the human security's agenda, is not identical to it. Yet, when all three branches of security – personal, social, and international – are taken together, they support the human security approach from a human rights perspective.[227] Is not this fact alone enough to make the concept of human security redundant? If focusing on human rights as anchored in various international instruments can achieve what is now called "human security," why do we need an extra concept?

One possible answer is that human security is a wide and inclusive concept, which includes basic rights as well as basic needs and capabilities.[228] Human security relates to threats that are not the focus of human rights law, such as environmental disasters, and its scope encompasses both state and non‐state threats. Therefore, it does not necessary focus on the existing distinction, within human rights law, between the private and the public. Human rights, according to this approach, form only a part of human security[229]

While there is much sense in this argument, I do not find it totally convincing. Human rights law does not deal exclusively in the

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Rights in the Area of Economic, Social, and Cultural Rights "Protocol of San Salvador" art. 9, Nov. 17 1998, O.A.S.T.S. No. 69, 28 I.L.M 1641.

[222] Universal Declaration of Human Rights, *supra* note 218, art. 28; African Charter, *supra* note 220, art. 23.

[223] Ramcharan, *supra* note 17, at 40.

[224] *See generally* MAY, *supra* note 101, at 221–28.

[225] Oberleitner, *supra* note 30, at 16–18.

[226] *Id.* For a critical analysis of broadening the content of the right to security *see* Liora Lazarus, *The Right to Security – Securing Rights or Securitising Rights?* in EXAMINING CRITICAL PERSPECTIVES ON HUMAN RIGHTS 87 (Rob Dickinson et al. eds., 2012).

[227] *Id.* at 17–18. *See also* Mattar, *supra* note 66, at 250–52.

[228] *See* Oberleitner, *supra* note 30, at 17–18.

[229] *See id.*

distinction between private and public, and has gradually developed to protect individuals from non‐state actors as well.[230] Furthermore, international human rights law now also imposes obligations and duties on states to protect human rights from violations caused by the actions of individuals.[231] More importantly, if the aim within human security is to fill in gaps within human rights doctrine then these areas that are not sufficiently covered by existing international human rights law should be addressed instead of areas which are already covered, or at least supposed to be covered, by human rights law.[232]

Moreover, even if human rights do not deal mainly with environmental disasters, neither does human security; this is merely one of the threats that the concept – with its wide scope – aims to confront. Moreover, simply because human rights law does not focus on environmental disasters does not mean that it completely ignores this concern. Surely, rights such as the right to life, dignity, proper housing and living environment, and migrants' rights, etc. are strongly connected to environmental disasters. An increasing number of international and regional human rights instruments specifically include a right to environment, and the United Nations Commission on Human Rights has proclaimed the connection between the promotion of human rights and the preservation of the environment.[233] In addition, in many constitutions, emergency situations in which rights can be derogated include

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[230] *See generally* NON-STATE ACTORS IN THE HUMAN RIGHTS UNIVERSE (George Andreopoulous et al. eds, 2006).

[231] *E.g.* ICCPR, *supra* note 188, art. 19(3)(a) (stating that the right to freedom of expression carries special responsibilities and may be limited "for respect of the rights or reputations of others").

[232] On addressing the human rights gap in disaster relief, see, e.g., Human Rights and Natural Disasters – Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster (2008).

[233] Rep. of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights, ¶ 18, U.N. Doc. A/HRC/10/61 (Jan. 15, 2009) ("While the universal human rights treaties do not refer to a specific right to a safe and healthy environment, the United Nations human rights treaty bodies all recognize the intrinsic link between the environment and the realization of a range of human rights, such as the right to life, to health, to food, to water, and to housing."). On the right to environment in international law, see, e.g., Dinah Shelton, Human Rights, Environmental Rights, and the Right to Environment, 28 STAN. J. INT'L L. 103 (1991); Günther Handl, Human Rights and Protection of the Environment: A Mildly "Revisionist" View, in HUMAN RIGHTS, SUSTAINABLE DEVELOPMENT AND THE ENVIRONMENT 117 (Antônio Augusto Cançado Trindade ed., 1992); Michelle Leighton Schwartz, International Legal Protection for Victims of Environmental Abuse, 18 YALE J.INT'L L. 355 (1993); DONALD K. ANTON & DINAH L. SHELTON, ENVIRONMENTAL PROTECTION AND HUMAN RIGHTS (2011).

circumstances of environmental disasters.[234]Likewise, according to international law, certain environmental disasters could be regarded as emergencies that justify the derogation of rights.[235]

Walter Dorn adds that the novelty and advantage of human security is the contribution and roles of non-state actors.[236]According to this argument, human security is not only wider in its scope than human rights, but it is also broader in the context of actors who take a role in its protection and promotion. If human rights law focuses on the state's protection then human security focuses on the detachment from the state in a more pronounced international intervention, whether by NGOs or regional and international organizations, for its protection.

This argument is also deficient. Indeed, a major challenge of the human rights approach is that it places the responsibility for rights' protection in the hands of the states – which very often fail in this task. Certainly, placing the responsibility for human security in the hands of the international community is a solution, not a problem. However, it is not clear how the classification of threats as threats on human security, rather than as threats on rights, diverts the protection duty from states to the international arena.[237]

It is similarly important to remember that in the context of human rights discourse, international and regional organizations substantially contribute to the promotion of human rights.[238] This contribution may take place through international and regional instruments and international rights' enforcement mechanisms.[239]

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[234] Oren Gross & Fionnuala Ní Aoláin, Law in Times of Crisis: Emergency Powers in Theory and Practice 43–44 (2006); Oren Gross, *Constitutions and Emergency Regimes*, *in* Comparative Constitutional Law 334, 336–37 (Tom Ginsburg & Rosalind Dixon eds., 2011).

[235] Hartman, *supra* note 192, at 16; Joan Fitzpatrick, Human Rights in Crisis: The International System for Protecting Rights During States of Emergency 56 (1994).

[236] WALTER DORN, HUMAN SECURITY: AN OVERVIEW (2001), *available at* http://walterdorn.net/pub/23. *See also* Thomas & Tow, *supra* note 51.

[237] Howard-Hassmann, *supra* note 168, at 100–01.

[238] *See, e.g.*, WALTER KÄLIN & JÖRG KÜNZLI, THE LAW OF INTERNATIONAL HUMAN RIGHTS PROTECTION (2009); Peter J. Spiro, *NGOs and Human Rights: Channels of Power*, *in* RESEARCH HANDBOOK ON INTERNATIONAL HUMAN RIGHTS LAW 115, 121–24 (Sarah Joseph & Adam McBeth eds., 2010). I have elsewhere written about the still deficient ability of international law to protect rights vis-à-vis domestic legal systems. *See* Yaniv Roznai, *The Theory and Practice of 'Supra-Constitutional' Limits on Constitutional Amendments*, 62 Int'l & Comp. L.Q. 557 (2013).

[239] Examples for enforcement mechanisms are the courts' system, which is responsible for rights' protection (such as the European Court of Human Rights, The Inter-American Court of Human Rights, and the African Court on Human and Peoples' Rights), the various Human Rights Treaty bodies, and the UN Human Rights Council. On the UN Human Rights Council, see, e.g., BERTRAND G. RAMCHARAN, THE UN HUMAN RIGHTS COUNCIL (2011); ROSA FREEDMAN, THE

Moreover, NGOs, such as human rights organizations, contribute substantially and significantly to the protection and promotion of international human rights.[240] Therefore, in so far as the importance of human security lies in the role and contribution of non-state actors, it is not clear why effort should not instead be put in supporting and improving these actors' roles in the protection of human rights.

It may well be that the answer is elsewhere. Perhaps the two areas – human rights and human security – occupy completely separate spheres. International human rights law is composed of legal norms and focuses on the implementation, advancement, and enforcement of legal rights and duties. Human security, in contrast, is not aimed to be a cluster of norms, but a concept to be implemented in various ways, *inter alia*, through the interpretation and development of legal norms.[241]

According to another approach, an integrated approach, human rights – which are universal, indivisible, interdependent, and interrelated – are all at the center of human security. The remarkable thing about human security is its potential to bridge human rights and the risks that place human beings in circumstances of vulnerability, which are interconnected. The result of examining the connection between rights and regarding them from an integrated perspective can be considered "human security." This way, human security relates not only to the protection from risks, but it also becomes a necessary condition for the full enjoyment of human rights by all peoples.[242]

What is clear is that respect for human rights is at the base of the protection of human security.[243] Disregarding human rights – be they political, civil, economic or social – hinders the development of societies, which in turn threatens human security.[244]However, the

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UNITED NATIONS HUMAN RIGHTS COUNCIL: A CRITIQUE AND EARLY ASSESSMENT (2013); Yaniv Roznai & Ido Tzang, *The United Nations Human Rights Council and Israel: 'Sour Old Wine in a New Bottle'?*, 5 HUM. RTS. & GLOBALIZATION L. REV. (forthcoming 2014).

[240] *See* Peter Baehr, *Human Rights NGOs and Globalization*, *in* RESPONDING TO THE HUMAN RIGHTS DEFICIT: ESSAYS IN HONOUR OF BAS DE GAAY FORTMAN 31 (Karin Arts & Paschal Mihyo eds., 2003).

[241] VON TIGERSTROM, *supra* note 55, at 42–43.

[242] E. DOROTHY ESTRADA-TANCK, HUMAN SECURITY AND HUMAN RIGHTS UNDER INTERNATIONAL LAW: CROSSROADS AND POSSIBILITIES 30–31 (2010) *available at* http://www.operationspaix.net/DATA/DOCUMENT /4553~v~Human_Security_and_Human_Rights_under_International_Law__Crossroads_and_Po ssibilities.pdf.

[243] Ogata & Cels, *supra* note 33, at 275.

[244] Louise Doswald-Beck, *Human Security: Can It Be Attained?*, 97 AM. SOC'Y INT'L. L. PROC. 93, 101 (2003).

question is: should the international community focus on promoting existing concepts, such as human rights, or shift the focus of its attention to a novel concept – human security? Lyal Sunga claims that a concept of human security must be based on human rights law, humanitarian law, international criminal law, refugee law, and the laws regarding the use of force.[245] Since these existing branches of international law represent the objective political will of states and not the wishful thinking or conceptions of scholars, basing human security upon these established notions will be, in the long term, valuable to international law in theory and in practice.[246] Therefore, Sunga believes international law should form the ground-base for human security discourse, a discourse which will focus on the superiority of human dignity over state sovereignty, market capitalism, military considerations, etc.[247]

I also trust that a true protection of human security will be achieved through the constant strengthening, advancement, and enforcement of existing international law, and especially international human rights law. Most of the threats on human security – even in its broadest terms – are human rights violations, conditioned in "taking seriously"[248] the universal character of human rights and to include within them political, civil, social, economic, cultural, and development rights.[249]

Furthermore, it might even be claimed that a human rights approach is deeper and more protective than that provided by human security. Rhoda Howard-Hassmann explains that hundreds of millions of human beings live without poverty or fear in the sense that their basic needs are fulfilled and they are not afraid of state action. But this is a narrow vision of human rights. In the Western world, Howard-Hassmann claims women from middle- to upper- class backgrounds live without fear or shortage, but still without a substantial fulfillment of their rights. Human rights, in that respect, are more than just freedom from fear and freedom from want.[250] I thus agree with Christian Tomuschat that almost

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[245] Lyal S. Sunga, *The Concept of* Human Security*: Does It Add Anything of Value to International Legal Theory or Practice?*, *in* POWER AND JUSTICE IN INTERNATIONAL RELATIONS: INTERDISCIPLINARY APPROACHES TO GLOBAL CHALLENGES 131, 144 (Marie-Luisa Frick & Andreas Oberprantacher eds., 2009).

[246] *Id.*

[247] *Id.*

[248] Compare with Ronald Dworkin, Taking Rights Seriously (1978).

[249] *Cf.* Rebecca J. Cook, *Human Rights Dimensions of Health Security*, 97 AM. SOC'Y INT'L. L. PROC. 101 (2003) (regarding the right to health).

[250] Howard-Hassmann, *supra* note 168, at 107.

all security issues are no more (and maybe even less) than a reflection of the existing treaties regarding human rights. There is no real need to coin new concepts.[251]

V.   CONCLUSION

The notion of human security has recently become a key concept in the global discourse regarding the changing meaning of the term security. Human security is supposed to be a useful entry point for security issues of our time, i.e., the security of the people. It represents a theoretical shift from the traditional appeal to the state for protection. By focusing on the people who are the victims of security threats, human beings' protection needs can be identified. Also, examining people, their different desires, and their mutual relationships may expose the social, economic, and political factors that promote or endanger their security.[252]

In the last two decades, the concept of human security formed as an academic idea that aims to change our way of thinking about security and human rights issues and as a political policy aimed to change global thinking with regards to foreign policy and international relations. It therefore carries great significance to international law as well.[253] The concept of human security is supposed to – and in the future might indeed – bring about a real revolution in international security discourse.[254] It should be noted, in this context, that a step-by-step conceptual change through analogies and metaphors (and here the term

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[251] Christian Tomuschat, *Between Idealism and Realism*, *in* THE COLLECTED COURSES OF THE ACADEMY OF EUROPEAN LAW 56 (Philip Alston et al. eds., 2003).

[252] Ogata, *supra* note 63, at 10.

[253] Oberleitner, *supra* note 116, at 198 ("Human security—as both an academic concept and a political agenda that takes up, reinforces, and underlines ongoing developments in international law—has the potential to become a new organizing principle of international relations. In this respect, human security seems to be a natural step in further moving international law beyond being concerned with national security toward including the fate of individuals as the ultimate beneficiaries of law.").

[254] For elaboration of human security approaches in Europe, Latin American, Africa, and Asia, see MARY MARTIN & MARY KALDOR, THE EUROPEAN UNION AND HUMAN SECURITY (2010); Bernardo Sorj, *Security, Human Security and Latin America*, 3 SUR – INT'L J. ON HUM. RTS. 39 (2005); Sung Won Kim, *Human Security with an Asian Face?*, 17 IND. J. GLOBAL LEGAL STUD. 83 (2010); COMMON SECURITY IN ASIA: NEW CONCEPTS OF HUMAN SECURITY (Tatsuro Matsumae & L. C. Chen eds., 1995); PROTECTING HUMAN SECURITY IN AFRICA (Ademola Abass ed., 2010).

"security" is used), even if it seems *prima facie* evolutionary, may eventually turn into a real revolutionary change.[255]

The aim of this article was to present the concept of human security from a critical perspective. True, we have a responsibility to protect the human security of mankind. But we also have "a responsibility to rethink" the necessity of new concepts, to borrow from Julie MacArthur.[256]Human security allows us to better understand what security is and what the causes for insecurity are. But the concept of human security is still controversial with regards to its definition, scope, and utility.[257] Even in 2013, it is "still an inscrutable concept."[258]To emphasize, there is huge importance in an approach that places the individual – and not the state – at the center of our actions. As Albert Einstein famously declared, "the state exists for man, not man for the state."[259] This is the essence of human security.[260]

International cooperation and the promotion of international organizations and institutions are also to be welcomed. Nonetheless, most of the threats on human security, as encompassed within the wide definition of the concept, can be considered violations of international law, and especially humanitarian, criminal, and human rights law. If the aim is to protect human security in its wider sense, the international community should focus its efforts in the promotion and realization of the totality of human rights and to strengthen the enforcement of international law. A true protection of man's dignity, life, health, proper environment, etc. will bring about man's real security – human security.

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[255] *See* Matti Sintonen, *Scientific and Conceptual Revolutions*, *in* REVOLUTIONS IN LAW AND LEGAL THOUGHT 11 (Zenon Bankowski ed., 1991).

[256] Julie MacArthur, A Responsibility to Rethink? Challenging Paradigms in Human Security, 63 INT'L J. 422 (2008).

[257] *See* Richmond, *supra* note 102, at 77.

[258] *See* Roland Paris, *Still an Inscrutable Concept*, 35 SECURITY DIALOGUE 370 (2004). *See also* Howard-Hassmann, *supra* note 168, at 110 ("[A]t the moment it appears that anyone can jump on the human security bandwagon, advancing her own preoccupations as causes of human insecurity.").

[259] THE ULTIMATE QUOTABLE EINSTEIN 251 (Alice Calaprice ed., 2011) (quoting Albert Einstein, *The Road to Peace*, N. Y. TIMES MAG. (Nov. 22, 1931)).

[260] *See* Kofi A. Annan, *Foreword* to HUMAN SECURITY AND THE NEW DIPLOMACY: PROTECTING PEOPLE, PROMOTING PEACE, *supra* note 68, at xx.