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EDITOR'S NOTE

This issue of *Disarmament Forum* examines the relationship between human rights and human security. Human security and human rights share common values, and a discussion of one demands consideration of the other. It has been argued that human rights offer the conceptual and normative framework for implementing the concept of human security and that opportunities exist to build upon the fundamental connections between the two areas to strengthen this synergistic relationship. Others are more cautious, fearing that 'folding' human rights—a body of norms codified in international law—into the 'new' concept of human security could seriously weaken or minimize the importance of the human rights regime. This issue of *Disarmament Forum* explores these themes, as well as the links between human rights and WMD, the challenges of measuring human security, small arms control as a human rights issue, and a review of the existing human rights mechanisms from a human security perspective.

The next issue of *Disarmament Forum* will examine the state of the nuclear disarmament and non-proliferation regime, looking ahead to the 2005 NPT Review Conference. The recent Preparatory Commission in New York ended with adoption of only parts of its final report, and many key issues remain undecided regarding the Review Conference. In this issue we will be examining the current state of the regime—and exploring how the NPT could best react to recent events. Articles will focus on the criticisms of the NPT, recent developments, questions concerning supply networks, new responses (such as the Proliferation Security Initiative), disarmament obligations and safeguards.

The Group of Governmental Experts on the Relationship between Disarmament and Development concluded its work on 28 May with the adoption of the Chairman's Report. The Report will be presented to the fifty-ninth session of the General Assembly. UNIDIR served as consultant to the group.

In July UNIDIR will host a meeting with Dr George Perkovich to present the initiatives proposed by the Carnegie Endowment for International Peace (CEIP) to revamp non-proliferation strategy and the NPT, to address implementation and compliance, and to strengthen the UN component in nuclear non-proliferation. The CEIP's report, entitled *Universal Compliance: A Strategy for Nuclear Security*, is available at < wmd.ceip.matrixgroup.net/UniversalCompliance.pdf > .

In September UNIDIR will be presenting the results of its Weapons for Development project at a two-day conference in Tokyo entitled 'Towards Participatory Disarmament: Lessons Learnt from UNIDIR's Weapons Collection Programme Evaluation'. The conference will review the project's findings from Albania, Cambodia and Mali. The participants will discuss participatory designing and planning of weapons collection, incentives, assessment criteria, and funding and resource mobilization with the objective of refining approaches to weapons collection programmes.

During the production process, two errors were mistakenly introduced into the article by R. Roy-Chaudhury entitled 'The United States' Role and Influence on the India-Pakistan Conflict', which appeared in the last issue of *Disarmament Forum*. The corrected text is available on our website at < www.unidir.org/bdd/fiche-article.php?ref_article=2117> . Our apologies to the author for the errors.

Kerstin Vignard

SPECIAL COMMENT

I am pleased to be able to contribute to this issue of *Disarmament Forum*, which examines the relationship between human rights and human security.

Where should we begin, in general terms, to strengthen the links between human rights and human security? First, I believe, by broadening the definition of 'security'. The concept of human security was articulated in a compelling new way last year by the independent Commission on Human Security co-chaired by Amartya Sen and Sadako Ogata. In its final report, *Human Security Now*, the Commission noted that while in the past, debate on issues of security focused on state security, the international community urgently needs a new paradigm that shifts the emphasis from the security of states to the security of people—to human security.

If people are to be protected—the first key to human security—their basic rights and freedoms must be upheld. As the Commission stressed: 'To do so requires concerted efforts to develop national and international norms, processes and institutions, which must address insecurities in ways that are systematic not makeshift, comprehensive not compartmentalized, preventive not reactive.'

Human security also requires that people are able to act on their own behalf—and on behalf of others. That means ensuring respect for fundamental rights to education, proper nutrition and health care, and for individuals to participate in decisions which affect them—all of which empower people to lead productive lives and develop their full potential.

And what does this broader approach mean in the field of disarmament? By making the links between human rights and human security, we bring into sharper focus the most immediate threats that are present in people's daily lives.

Consider, for example, the fact that today threats of new terrorist attacks and the dangers of weapons of mass destruction dominate the headlines. While these threats to security must be confronted, we cannot lose sight of the fact that the weapons that threaten most people on the planet go largely unnoticed by those of us who live far from conflict and war. Those weapons are the 639 million small arms in circulation, and the at least 16 billion units of military ammunition produced every year.

During my five years as United Nations High Commissioner for Human Rights, I spent much of my time meeting people who were terrorized by armed violence. In places such as the Balkans, Cambodia, Colombia, the Democratic Republic of Congo and Sierra Leone, the proliferation of small arms threatens lives and puts fundamental human rights at risk.

The death and injury of millions of innocent civilians are not the only human rights consequences of small arms proliferation. In conflict-torn countries, governments dedicating limited resources to the weapons of war are much less able to meet long-term commitments to education, health care and adequate housing—all of which constitute internationally recognized economic, social and cultural rights.

Despite a growing awareness among some governments that small arms proliferation threatens human security by inhibiting humanitarian efforts and sustainable development, the impact on human rights is still often underestimated or overlooked. That is why Oxfam International, of which I am proud to serve as Honorary President, along with Amnesty International and the International Action Network on Small Arms, have banded together in a Control Arms Campaign to argue for greater international regulation in the form of an Arms Trade Treaty. The proposed treaty includes legally binding criteria, based on existing international law, to stop the flow of arms to human rights abusers, repressive governments and criminals. Governments would be required not to sell arms where they know that they would be used to violate human rights or international humanitarian law, at last injecting regulation into a dangerously unregulated trade.

The growing support among governments and civil society for such a treaty is a welcome sign. It would mark a significant step forward in recognizing and acting on the clear links between human rights and human security.

Mary Robinson

Executive Director, Ethical Globalization Initiative

Former United Nations High Commissioner for Human Rights

Human security, human rights and disarmament

Kevin BOYLE and Sigmund SIMONSEN

The concept of human security has emerged in recent years to re-balance debates on security away from an exclusive and excessive focus on military security of the state and its institutions, towards the people whom the state serves.¹ It has great potential in the era of globalization to renew our focus on global threats and challenges to human well being and advancement.

International human rights standards developed over fifty years derive from the concept of human dignity and worth. The range and depth of these standards has been a signal achievement of the international community. The translation of those standards from normative principles into legally binding obligations accepted by states both in times of peace and conflict has constituted a process of enormous importance to humankind. The creation of machinery for continuing supervision over the implementation of these rights by governments, however limited that machinery may be, is a gain that must not be diluted.

Human security and human rights do not mean the same thing. Nor are they overlapping concepts. They are separate ideas and have separate functions. However, an argument for strong conceptual links between human security and human rights can be made. It is clear, however, that cognate as the human rights and human security perspectives are, they have not been effectively brought together as yet. While the writing on human security acknowledges the importance of human rights, there has been little evidence to date that human rights theory or practice has responded.

This article is an initial exploration as to how conceptual links might be advanced to a practical stage through the promotion and protection mechanisms of the international human rights system. But it also suggests an additional area where combined analysis of human security and international human rights law could be productive and that is the field of disarmament. The involvement of an increasing number of governments in the Human Security Network² and the interest generated by the independent Commission on Human Security³ (CHS) give cause for hope that such renewed focus may also inspire action.

The relationship between human rights and human security

The 2003 Report of the CHS entitled *Human Security Now* rightly sees human security and human rights as complementary:

Human rights and human security are ... mutually reinforcing. Human security helps identify the rights at stake in a particular situation. And human rights help answer the question: How

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should human security be promoted? The notion of duties and obligations complements the recognition of the ethical and political importance of human security.⁴

A similar affirmation of the positive potential of the relationship, from a human rights perspective, was expressed at a workshop in Costa Rica convened by the CHS in 2001:

We reaffirm the conviction that Human Rights and the attributes stemming from human dignity constitute a normative framework and a conceptual reference point which must necessarily be applied to the construction and implementation of the notion of Human Security. In the same manner, while acknowledging that norms and principles of International Humanitarian Law are essential components for the construction of human security, we emphasize that the latter cannot be restricted to situations of current or past armed conflict but constitute a generally applicable concept.⁵

The CHS defines the purpose of human security as protecting 'the vital core of all human lives in ways that enhance human freedoms and human fulfilment.'⁶ The CHS Report points out that what puts people's security at risk include threats and conditions that have not always been classified as threats to state security. 'Human security is also concerned with deprivation: from extreme impoverishment, pollution, ill health, illiteracy and other maladies.'⁷ Human security thus means, 'protecting fundamental freedoms—freedoms that are the essence of life.'⁸

The International Commission on Intervention and State Sovereignty expressed the same thinking forcefully:

The traditional, narrow perception of security leaves out the most elementary and legitimate concerns of ordinary people regarding security in their daily lives. It also diverts enormous amounts of national wealth and human resources into armaments and armed forces, while countries fail to protect their citizens from chronic insecurities of hunger, disease, inadequate shelter, crime, unemployment, social conflict and environmental hazard. When rape is used as an instrument of war and ethnic cleansing, when thousands are killed by floods resulting from a ravaged countryside and when citizens are killed by their own security forces, then it is just insufficient to think of security in terms of national territorial security alone. The concept of human security can and does embrace such diverse circumstances.⁹

There is historical continuity in linking security to human rights. The core idea of human security can be found in the Four Freedoms proclaimed by Franklin D. Roosevelt in his State of the Union Address on 6 January 1941.¹⁰ Roosevelt's vision of 'a world founded upon four essential freedoms'—freedom of speech, freedom of religion, freedom from want and freedom from fear—was to become one of the cornerstones of the new United Nations.¹¹ In order to secure those freedoms the United Nations was given the purposes of maintaining international peace and security, promoting economic and social development along with human rights, goals to be achieved through international cooperation.¹² That generation recognized that war and hostilities, economic and social deprivation and gross human rights violations represented a breeding ground for insecurity, repression, want and fear. Reporting to the United States Congress in June 1945 just after the San Francisco Conference, American Secretary of State Edward Stettinius, Jr. put it as follows:

The battle of peace has to be fought on two fronts. The first is the security front where victory spells freedom from fear. The second is the economic and social front where victory means freedom from want. Only victory on both fronts can assure the world of an enduring peace No provision that can be written into the Charter will enable the Security Council to make the world secure from war if men and women have no security in their homes and their jobs.¹³

Human security therefore may be thought of as present day rediscovery of the essential linkages between the different purposes of the United Nations, and of the duty on Member States to cooperate in advancing those purposes coherently. The mainstreaming of human rights into all UN activities, following the Secretary-General's reform proposals in 1997, reflected similar thinking.¹⁴ The key concepts that the CHS Report suggests as the 'added value' of the human security idea are protection and empowerment. Human rights goals have come to be articulated in similar terms in the process of establishing the human rights contribution to development, conflict resolution, peacekeeping and peace-building for example. The time should be ripe therefore for the deployment of human security analysis, discourse and perspectives in human rights work. Some tentative ideas as to how such thinking might be stimulated are suggested below through a brief outline of the international human rights system.

The international human rights norms

The promotion and protection of human rights as a purpose of the United Nations brought concern for the individual directly to the international level.¹⁵ The main catalogue of human rights can be found in the Universal Declaration of Human Rights (UDHR).¹⁶ The UDHR is not *per se* legally binding. It is nevertheless widely considered as spelling out the rights that the UN Charter referred to. Over the years the core principles in the UDHR have come to be considered binding as customary international law and/or general principles of international law, and the principles are treated as such by the United Nation's most important monitoring and protection body, the Commission on Human Rights.¹⁷ The UDHR was reaffirmed with the adoption of two legally binding international covenants in 1966, on civil and political rights and on economic, social and cultural rights.¹⁸ Today more than 140 states have accepted to be bound by these treaties. These three instruments are together commonly referred to as the International Bill of Human Rights, and they constitute the foundations of international human rights law. On these foundations a great number of other international and regional human rights treaties have been built. International human rights law is, in principle, applicable to all at all times, i.e. both in peacetime and in times of internal and external conflict. The Geneva Conventions of 1949 added specific protections in the context of armed conflict while a legal regime for the protection of refugees was established by the 1951 Convention relating to the Status of Refugees.¹⁹

This edifice of human rights law provides legal guarantees that address, among many other rights, the rights to food, health, education, housing, and protection of the family. It extends protection to culture, democracy, participation, the rule of law and access to justice. It offers protection against enslavement, torture, inhuman or degrading treatment or punishment, freedom of thought and belief as well as the right to freedom of opinion and expression. The freedom to enjoy all such rights is an element of human security. The effective force of human rights undertakings by states, however, is dependent on the implementation of these rights by governments as well as on the effectiveness of the international human rights machinery set up to monitor and encourage national implementation.

Institutions and mechanisms for implementation of human rights

TREATY BODIES

The international UN-based human rights system is divided into the treaty-based protection mechanisms and those that have developed through the inter-governmental UN Commission on Human

Rights. There are now seven core universal human rights treaties each overseen by a 'treaty body', or a committee of independent experts.²⁰ Each has similar functions—broadly to monitor the implementation of the human rights provisions contained in those treaties. Four of the committees have also been given jurisdiction to receive and adjudicate on individual complaints from those states which accept this optional procedure. When a state ratifies an international treaty, it assumes the obligation to implement the provisions of the treaty at the national level. It also assumes the obligation to submit reports periodically to the relevant treaty body on the measures it has taken to ensure the enjoyment of the rights provided in the treaties. State reports are examined by the treaty bodies, along with information from a variety of sources, in the presence of a delegation from the reporting state. A committee's examination of such reports results in the adoption of 'concluding observations/comments', in which the treaty body presents its concerns and makes specific recommendations to the state party for future action. The state party is expected to implement the recommendation of the treaty bodies. The treaty bodies also adopt general comments or recommendations in which they offer guidance to states about the meaning of specific articles of the treaties.²¹

In practice the different treaty bodies address many dimensions of human security in their activities. In considering reports from states, their concerns span an enormous range of issues, including political violence and terrorism, torture and disappearances as well as forced evictions, poverty, health, housing, discrimination of all kinds as well as the rights of vulnerable groups.

There is ample scope for the committees to incorporate human security concerns and dimensions in the consideration of state reports. However, that is rarely—if ever—overtly done. On the other

There is equally great scope for those developing a human security approach to use and to gain insight for policy and strategies from the official government reports submitted to the committees and from the conclusions and recommendations of the treaty bodies.

hand, there is equally great scope for those developing a human security approach to use and to gain insight for policy and strategies from the official government reports submitted to the committees and from the conclusions and recommendations of the treaty bodies.

Perhaps the most effective way of changing practice would be if human rights NGOs, who are increasingly accepted as partners in the review process of state reports, raised human security concerns in their written critiques of states' reports. But that requires NGOs to be attracted to the idea of human security and to recognize its value in their work. A possible point of departure could be a response to the invocation by states of national security as grounds for limiting rights and the invoking of emergency powers—the abuse of which is so often the cause of serious human rights violations. In turn, treaty bodies could engage in dialogue with reporting states on the matter of national security, where that is expressed in defence of human rights failings.²² Such a dialogue could debate, for example, justifications for disproportionate expenditure on arms in the context of the wider concept of human security.

INTER-COMMITTEE MEETINGS

The treaty bodies have initiated an inter-committee meeting intended to draw the different bodies into a more coherent and cooperative approach in fulfilling their functions. These gatherings are one among several opportunities that could be the occasion for a debate on human security and the human rights mechanisms. Another might be the meetings between individual committees and the states who are parties to the particular treaty. In whatever setting, the interest of the committees will be only achieved if the larger framework of human security can be seen to practically enhance its dialogue with states on implementing their human rights protection obligations and challenges within their jurisdictions.

CHARTER BODIES

The principal UN Charter human rights organs are the Economic and Social Council (ECOSOC), the Commission on Human Rights and its Sub-Commission on the Promotion and Protection of Human Rights.²³ All are concerned with human rights protection globally and build their work upon the Universal Declaration of Human Rights. ECOSOC and the Commission on Human Rights are primarily fora for governments, where through speeches, statements and resolutions, the work of human rights protection, however modest in practice that may be, is carried out. It is in such contexts that interested governments could use the opportunity to introduce new thinking on human security and to address the importance of human security analysis as a reinforcement of the international human rights protection system. A beginning in this regard was made at the fifty-ninth session of the Commission on Human Rights when the Austrian Chair of the Human Security Network addressed the Commission.²⁴ Until the ideas about rethinking security are disseminated more widely, however, the question of the linkage of human rights norms and human security can make little headway.

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

One important option might be to seek to have the subject of human security and human rights added to the research agenda of the Sub-Commission. The Sub-Commission, a body of twenty-six independent experts, operates as a 'think tank' for the Commission and indeed the world on framing intellectual and policy responses to new human rights challenges. The Commission has requested particular studies to be undertaken and the Sub-Commission may also initiate research of its own. For example, in 2003 the Sub-Commission adopted the Norms on the Responsibilities of Transnational Corporations and other Business Enterprises, which have been forwarded to the Commission for consideration.²⁵ These proposals have provoked wide debate and exemplify the mission of the Sub-Commission in advancing thinking on human rights protection. A useful study could be undertaken on the concept of human security and its theoretical and policy implications for the enhancement of human rights protection. There could be no better way to engage the Charter human rights organs in focusing on the potential constructive relationship between this security concept and its implications for the international human rights system.

SPECIAL PROCEDURES

The Commission on Human Rights has established a system of 'Special Procedures'—geographic and thematic mechanisms consisting of variously described independent experts operating individually or in working groups mandated to examine and to report back on major human rights concerns.²⁶ In the case of the thematic mandates, the subject area will be with a category of human rights problems and violations wherever in the world they occur. In the case of the geographic mandates the focus will be on the human rights situation in particular countries. These mechanisms may take on or be granted a fact-finding and complaint-handling role.

The Working Group on Enforced or Involuntary Disappearances, created in 1980, was the first such mechanism to be established. By 1985, mechanisms dealing with summary or arbitrary executions and torture were added. Later mandates were created to address religious intolerance and the use of mercenaries. In the 1990s the number of special rapporteurs grew to report on the sale of children,

child prostitution and child pornography; arbitrary detention; internally displaced persons; freedom of opinion and expression; violence against women; the independence and impartiality of the judiciary; contemporary forms of racism; and the dumping of toxic waste. Mandates now also include certain economic, social and cultural rights, including the rights of migrants and of indigenous peoples, the right to food, to adequate housing and to health.²⁷

The thematic mechanisms have established a reputation for being one of the most effective tools of the United Nations in the promotion and protection of human rights. The Commission resolutions outlining their mandates are often worded in broad terms, thus giving the mechanisms a relatively large measure of freedom in developing their own working methods. 'For governments that seek their assistance in identifying solutions to human rights violations, the thematic mechanisms constitute a unique resource of human rights expertise'.²⁸ That resource can be of equal value in advancing human security policies and programmes.

A few examples might be given from reports considered at the sixtieth session of the Commission on Human Rights in 2004. The report of the Special Rapporteur on the Right to Health, Paul Hunt, addressed the link between the prevention of violence and the right to health. He notes that the World Health Organization has defined violence as a public health problem and argues that states have as part of the right to health an obligation to take measures to protect vulnerable groups, in particular women, children, adolescents and older persons.²⁹

The Special Rapporteur on the Right to Food, Jean Ziegler, in his fourth report to the Commission included accounts of his fact-finding missions to Bangladesh and the Occupied Palestinian Territories. He also expressed concern over what he sees as the halt in progress to reduce malnutrition and hunger in the world and reported on his reflections on food security and international trade.³⁰

In his annual report, the Secretary-General's Special Representative for Children and Armed Conflict, Olara Otunnu, provided depressing updates on the abduction, maiming and killing of children and their continued recruitment and use in armed conflict.³¹ It added as an appendix the lists of parties to armed conflict that recruit children.

These and other examples of human rights mechanisms that could be cited are clearly addressing dimensions of human suffering and human insecurity that would benefit from being addressed within the larger framework that can be supplied by the concept of human security. The human rights mechanisms need to explore the value of that wider framework in their work, which is also directed at the common goals of development, rights and freedom.

International peace and security

Roosevelt and the founders of the United Nations recognized the interdependency between human (individual), state (national) and international security.³² The security of individuals is dependent

The individual's human security can be threatened by their own state in many ways, for example through arbitrary killings and repression, but individuals can also be threatened through their state as a result of what is happening at the international level, such as the outbreak of war.

on the state. The individual's human security can be threatened by their own state in many ways, for example through arbitrary killings and repression, but individuals can also be threatened *through* their state as a result of what is happening at the international level, such as the outbreak of war. The connection runs not only from international events to the individual but from what happens at societal level to the international.³³ The arming of individuals and the level of violence within a state can threaten national security. In turn, where internal conflict or civil war breaks out, international

security can be affected in everything from globally interconnected terrorism and uncontrolled arms trade to refugee flows. Thus non-state actors operating within one country committed the Rwandan genocide, yet it was characterized by the Security Council as a threat to international peace and security.³⁴ International peace and security is thus dependent on national security and both are dependent ultimately on the individual's human security. Such interdependence signifies that neither the individual nor the state acting solely on their own can achieve security. Human security and freedom are not only the primary ends of national and international peace and security, they are also among its principal means. Viewing peace and security in those terms directs attention to the ends and overarching objective that make peace and security important, and put focus where it should be most concentrated—on human needs.

ARMS TRADE

A particular focus of common interest between human rights and human security advocacy has been on armaments and the arms trade. The Human Security Network was established in 1999 after successful efforts led by civil society and some governments resulted in the 1997 Mine Ban Convention. This success has also helped to lead to the current focus on the proliferation of small arms and light weapons. The 2001 UN Conference on the Illicit Trade in Small Arms and Light Weapons adopted a Programme of Action and some 138 governments participated in a review of actual progress on national regulation and control in a follow-up conference in July 2003.³⁵

DISARMAMENT

A further and perhaps more long-term agenda for interaction between the human security and human rights approaches is the relationship between respect for human rights, arms control and disarmament. Operationalizing and popularizing the idea of human security can help to clarify and to strengthen a human rights perspective on disarmament. Peace and international security and the promotion and protection of human rights are allied purposes of the United Nations. Human security has the potential to be the accessible idea that may bring out their linkage and thereby add popular engagement to the seemingly dormant ideal of global disarmament, in particular in respect of weapons of mass destruction.

Operationalizing and popularizing the idea of human security can help to clarify and to strengthen a human rights perspective on disarmament.

It is now possible—or more accurately, *acceptable*—to establish the link between the human rights and disarmament through the concept of human security. States claim that armaments are necessary to be able to defend vital interests such as territorial integrity and political independence, as well as protect its citizens. Armament may then be seen as necessary to fulfil human rights obligations—the responsibility to protect their citizens 'right to life, liberty and security of person'.³⁶ However, this argument has been extensively misused and it is deceptive. How can a government defend that it is necessary to spend more money to protect their citizens against undefined external military attack than to guard them against the omnipresent enemies of good health and other real threats to human security on a daily basis? It is also—at best—a misunderstanding of state responsibilities to protect flowing from the UN Charter and subsequent human rights instruments.³⁷

The Human Rights Committee, which was established to monitor the implementation of the Covenant on Civil and Political Rights and the Protocols to the Covenant, in an early General Comment

concluded that: 'The development and proliferation of weapons of mass destruction not only threaten human life but also absorb resources that could otherwise be used for vital economic and social purposes, particularly for the benefit of developing countries, and thereby for promoting and securing the enjoyment of human rights for all.'³⁸ This thinking also found expression in the Preamble of the 1986 Declaration on the Right to Development,³⁹ and the Final Document of the 1987 International Conference on the Relationship Between Disarmament and Development.⁴⁰

Human rights empower citizens to scrutinize their government's priorities—to consider among other things, military spending in relation to spending on other human security priorities.

Human rights empower citizens to scrutinize their government's priorities—to consider among other things, military spending in relation to spending on other human security priorities. The CHS Report called for an internationally accepted common reporting framework on military spending.⁴¹ Such a framework already exists in the form of the UN Standardized Instrument for Reporting Military Expenditures. However, participation is far from universal. When reviewing periodic state reports it would be appropriate for the human rights treaty bodies to raise question over budget priorities and compare expenditure on weapons with those for other human-centred security priorities.

The continued development and the proliferation of weapons of mass destruction (WMD) remains a formidable source of fear everywhere. Secretary-General Kofi Annan has expressed the issues succinctly:

In the twenty-first century humankind remains threatened by weapons of mass destruction, which could be deployed by design or mistake by a number of states, or spread to other states causing destabilization and tension or fall into the hands of dangerous non-state actors who are difficult to deter and unlikely to show restraint.⁴²

The concern over WMD is however wider than the current global fear over their spread to new states or use by non-state actors. The objective under international law should remain the *elimination* of such weapons. As Mohamed ElBaradei, Director-General of the International Atomic Energy Agency, has commented recently: 'We must abandon the unworkable notion that it is morally reprehensible for some countries to pursue weapons of mass destruction yet morally acceptable for others to rely on them for security—and indeed to continue to refine their capabilities and postulate plans for their use.'⁴³

In 2003, the UN Secretary-General established a high-level panel to examine new global security threats.⁴⁴ This initiative provides an opportunity to incorporate the human security concept and its relationship with human rights, not least because the panel's mandate extends to economic and social issues related to peace and security. The subsequent report will also hopefully renew the United Nations commitment to the goal of disarmament and to the elimination of nuclear and other WMD.

Perhaps the most effective initiative that the UN human rights programme could take in the short term would be to mandate a special rapporteur to explore afresh the question of securing human rights and disarmament as related goals of the international community. There is a clear need in international law for an authoritative interpretation of the human rights dimension of this aspect of international peace and security. Such an initiative would give a further impetus to the convergence of human security and human rights analysis.

Conclusions

The new thinking on human security can be of great value from a human rights perspective. The two concepts are not the same but can reinforce each other both at theoretical and practical levels. However a considerable distance remains between the two approaches. A practical way forward to

explore theoretical and practical dimensions of the relationship would be to have an expert of the UN Sub-Commission on the Promotion and Protection of Human Rights nominated to undertake more detailed consultations and thinking on how the two fields may offer support and strength to each other. In addition it has been suggested that there is a case for a separate special rapporteur or expert to examine the vital question of military disarmament, human rights and lasting peace.

Notes

1. 'States are now widely understood to be servants of their peoples, and not vice versa.' United Nations Secretary-General Kofi Annan, 1999, Message for the New Millennium, in *Imagining Tomorrow*, United Nations, p. 3.
2. The Human Security Network (HSN) is a group of like-minded countries from all regions of the world that maintains a dialogue on questions pertaining to human security. For the origins and activities of this network see < www.humansecuritynetwork.org > .
3. The Commission on Human Security was chaired jointly by Sadako Ogata, former UN High Commissioner for Refugees and Amartya Sen, Nobel Laureate. See Commission on Human Security, 2003, *Human Security Now*, New York, at < www.humansecurity-chs.org/index.html > .
4. Commission on Human Security, *op. cit.*, p. 10.
5. San Jose Declaration, 2 December 2001, at < www.humansecurity-chs.org/doc/sanjosedec.html > .
6. Commission on Human Security, *op. cit.*
7. *Ibid.*, p. 6.
8. *Ibid.*, p. 4.
9. International Commission on Intervention and State Sovereignty (ICISS), 2001, *The Responsibility to Protect*, Ottawa, p. 15, at < www.dfait-maeci.gc.ca/iciss-ciise/menu-en.asp > .
10. Franklin Delano Roosevelt, *State of the Union Address*, 6 January 1941.
11. Roosevelt, *ibid.*; Townsend Hoopes and Douglas Brinkley, 1997, *FDR and the Creation of the UN*, Yale University Press.
12. United Nations Charter, Article 1.
13. Cited in United Nations Development Programme, 1994, *Human Development Report 1994*, UNDP.
14. Secretary-General Kofi Annan, 1997, *Renewing the United Nations: A Programme for Reform*, United Nations document A/51/950.
15. UN Charter, Article 1.3, see also Articles 55 and 56.
16. Universal Declaration of Human Rights (1948).
17. See < www.unhchr.ch/html/menu2/2/chr.htm > .
18. International Covenant on Civil and Political Rights (1966) and International Covenant on Economic Social and Cultural Rights (1966).
19. See < www.unhchr.ch/html/menu3/b/o_c_ref.htm > .
20. In addition to the two covenants mentioned in note 18 these are: the International Covenant on the Elimination of All Forms of Racial Discrimination, The International Covenant on Elimination of All Forms of Discrimination against Women, The Convention on the Rights of the Child, The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
21. Office of the United Nations High Commissioner for Human Rights. See < www.unhchr.ch > .
22. See for example *Concluding Observations of the Human Rights Committee: Israel*, 21 August 2003, document CCPR/CO/78/ISR.
23. See < www.unhchr.ch/html/menu2/2/sc.htm > .
24. See Fifth Ministerial Meeting of the Human Security Network, Graz, 8–10 May 2003, at < www.humansecuritynetwork.org/meeting-e.php > .
25. E/CN.4/sub.2/2003/12/Rev.2 of 26 August 2003.
26. See < www.unhchr.ch/html/menu2/2/mechanisms.htm > .
27. See Amnesty International, *The United Nations Human Rights Mechanisms 2002*, which offers a good and comprehensive overview. See < web.amnesty.org/library/print/ENGIOR400092002 > .
28. Amnesty International, *ibid.*
29. E/CN.4 /2004/49, 16 February 2004.
30. E/CN.4/2004/10/Add.1 and Add. 2, 29 and 31 October 2003.
31. E/CN.4/2004/70, 28 January 2004.
32. Hans Kelsen, 1951, *The Law of the United Nations*, Stevens & Sons, London.

33. Barry Buzan, 1991, *People, States and Fear*, Harvester; B. Ramcharan, 2004, Human Rights and Human Security, *Disarmament Forum*, no. 1, pp. 39–47.
34. Security Council resolutions 918 (1994) and 929 (1994).
35. For the official report see A/CONF.192/BMS/2003/1.
36. Universal Declaration of Human Rights, Article 3.
37. See International Commission on Intervention and State Sovereignty, *op. cit.*
38. UN Human Rights Committee, General Comment No 14 (1982).
39. Declaration on the Right to Development, A/RES/41/128 adopted 4 December 1986.
40. A/CONF.130/39.
41. Commission on Human Security, *op. cit.*, p. 135.
42. Kofi Annan, 2004, Special Comment, *Disarmament Forum*, no. 1, pp. 3–4.
43. *International Herald Tribune*, 13 February 2004.
44. UN News Service, 4 November 2003.

Challenges and opportunities for defining and measuring human security

Taylor OWEN

As a concept that challenges the very core of the traditional security paradigm, human security has attracted strong critique. Prevalent among these many and often well-reasoned challenges are those that address its ambiguity. With the objectives of the security infrastructure widening well beyond the preservation of state integrity, critics rightly ask, what is and is not a security threat?

Addressing this concern directly must be a principle objective of human security proponents. *Laissez-faire* attitudes will undoubtedly lead to unclear policy directives and allow the dominant realist security paradigm to further dismiss the threats that fall outside of its narrow mandate.

Here I will address three interrelated issues, the history and definition of human security, the measurement of human security, and the relationship between components of human security, such as human rights, and the broader concept.

First, who has tried to define human security and what have they included as relevant threats? Within this section I will suggest that a hybrid definition, one that includes a broad range of threats but establishes a threshold of severity, is the most appropriate. Second, I will address the feasibility of empirically measuring human security. While not detailing a methodology here, I will argue that monitoring and empirically measuring are both possible and indeed critical to the normative future of human security. Third, I will use human rights abuses as an example of how a threshold-based definition sets criteria for the inclusion of some, but not all, threats in any different component of human security.

Human security defined: philosophic roots to a new definition

PHILOSOPHIC ROOTS

The debate over the referent object of security is not new. At its core, human security is a comparably undisciplined argument for a return to enlightenment liberalism.¹ Indeed, many of the basic principles of human security are crude reflections of Montesquieu, Rousseau and Condorcet, but so too are principles of state security rooted in the work of intellectuals such as Kant, Hobbes and

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Grotius, whose opposing state-centred worldview arguably prevailed over these more pluralistic beliefs. Since the debate over the relationship between the individual and state as the focus of security is not new, some comment on past perspectives is useful.²

One side of the security debate of the eighteenth century is rooted in pluralist beliefs focusing on the protection of the individual.³ For Montesquieu, this was a singular focus on freedom and the perceived rights of individuals over the dictated security provided by the state. Security for Adam Smith meant the protection of the individual from ‘sudden or violent attack on one’s person or property’—this security being the most important prerequisite for a successful and ‘opulent’ society. Similarly, Condorcet described a societal contract in which the security of the individual was the central principle. If freedom from fear is not guaranteed, he argued, then individuals could not be effective members of a political relationship.

This liberal perspective was widespread, but not unanimous. Although in agreement over the vital role of individual safety, others believed that this could best be achieved as a consequence of the security of the state—the state, thus, acting as protector from both external and internal threats.

For Hobbes, it meant little whether a man’s insecurity was at the hands of a local thief or an invading army. Protection from either, he believed, was the absolute responsibility of the state. For this protection, the citizen should give up any and all individual rights to his country, his protector—security prevailing over liberty.⁴ While also looking at the role of the state in providing individual security, Kant envisioned a higher authority still. He proposed a universalist international order: a global society, based primarily on the moral imperative of a common good as seen by its member nations.⁵ As a middle ground between the two, Grotius proposed a more moderate international dynamic, one not guided by supranational law, but by a balance of power amongst states and a social contract between them and their citizens. For Grotius, the mutual interests of independent but co-existing state entities would ensure the security of all.

Although each gave rise to a different school of international thought (Hobbes to realism, Kant to global security, Grotius to international security), all based the primary responsibility of protecting individual security in the hands of the state. This would become the dominant worldview, overtaking more liberal thinking, until the end of the Cold War.

FROM TRADITIONAL TO HUMAN SECURITY

Although human security’s ostensible roots can be found in early liberal philosophic writings, its practical manifestation is representative of a post-Cold War scepticism toward the dominant traditional security paradigm.

Traditional state-centred security reached a peak during the Cold War. For forty years, the major world powers entrusted the security of their populace, and to a certain extent of the world, to a balance of power among states. For this prevailing realist view, the referent object of security is the state and presumes, in a very Hobbesian fashion, that if the state is secure, then so too will those that live within it.⁶ This type of security relied primarily on an anarchistic balance of power (power as the sole controlling mechanism), the military build-up of two superpowers, and on the absolute sovereignty of the nation-state. States were deemed in the scholarly literature and security analysis to be entirely rational entities, with the maximization of power guiding national interests and policy.⁷ Security was seen as protection from invading armies; protection was provided by technical and military capabilities; and wars were never to be fought on home soil—rather, proxy wars were used if direct combat were necessary.

Table 1. Traditional and human security

Type of security	Referent object	Responsibility to protect	Possible threats
Traditional security	The state	The integrity of the state	Interstate war Nuclear proliferation Revolution
Human security	The individual	The integrity of the individual	Disease Poverty Natural disaster Violence Landmines Human rights abuses

With the fall of the Berlin Wall it became clear that despite the macro-level stability created by the East-West military balance of the Cold War, citizens were not necessarily safe. They may not have suffered from outright nuclear attack, but they were being killed by the remnants of proxy wars, environmental disaster, poverty, disease, hunger, violence and human rights abuses. Ironically, the faith placed in the realist worldview, and the security it provided, masked the actual issues threatening the individual. Once the central foci of security, the protection of the person was all too often negated by an over-attention on the state. By allowing key issues to fall through the cracks, 'traditional security' failed at its primary objective: protecting the individual.

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This led to the challenging of the notion of traditional security by such concepts as cooperative, comprehensive, societal, collective, international and human security.⁸ Although these concepts move away from a focus on inter-state relations, human security takes the most dramatic step by making the referent object not the state, society or community, but the individual. This shift is meant to direct research and policy towards the actual issues threatening peoples' lives.

As an example of the difficulty of articulating the concept, Rothschild describes human security philosophically as part of both a broadening and a deepening of what we once viewed as security. She argues that the focus on state security must be extended to include supranational systems as well as the individual condition, and the range of included harms must be broadened to include serious threats to either. Also, the responsibility to ensure security must be diffused to include local governments, international agreements, NGOs, public opinion, and the financial market. Although not an explicit definition, this conceptualization provides an example of how narrow the traditional paradigm has been, as well as how complex the expansion of the concept can become.⁹

Although many attempts have been made to more specifically define what is an inherently ambiguous concept (as it by definition encompasses a potentially unlimited list of threats), two conceptual schools of thought have emerged in which most definitions can be grouped. These are the broad and narrow conceptions of human security.¹⁰ A spectrum has been used to describe the possible definitions of human security. It can be seen in its broad sense as incorporating a long list of possible threats, from traditional security threats such as war to more development-oriented threats such as health, poverty and the environment. In its narrow sense, the spectrum, although still focused on the individual, and therefore incorporating many more threats than traditional security, is limited to violent threats such as landmines, small arms, violence and intra-state conflict.

HUMAN SECURITY DEFINED: THE BROAD CONCEPTION

Security can no longer be narrowly defined as the absence of armed conflict, be it between or within states. Gross abuses of human rights, the large-scale displacement of civilian populations, international terrorism, the AIDS pandemic, drug and arms trafficking and environmental disasters present a direct threat to human security, forcing us to adopt a much more coordinated approach to a range of issues.¹¹ Secretary-General Kofi Annan

Most of the definitions of human security are rooted in the broad school of thought. Although critics rightfully point to a potential ambiguity from grouping so many threats under one heading, clarity emerges if three key attributes of the broad conception are considered: its scope of coverage, its system-based approach to understanding causal relationships, and its focus on the vital core of the individual. These three critical aspects of broadly defined human security are exemplified by the concept of human security as advocated by the United Nations Development Programme (UNDP), Jorge Nef and the independent Commission on Human Security.

First, the UNDP conceptualization establishes human security's broad scope. The 1994 UNDP *Human Development Report* is generally seen as the first significant attempt at articulating the broad approach to human security. The report describes human security as having two principal aspects: the *freedom* from chronic threats such as hunger, disease and repression, coupled with the *protection* from sudden calamities. The report concedes that the definition is broad, but explains that this is simply a reflection of the number of significant harms that go unmitigated. As a conceptual structure, the UNDP proposes seven components of human security: economic, food, health, environmental, personal, community and political security.¹²

- Economic security threatened by poverty;
- Food security threatened by hunger and famine;
- Health security threatened by injury and disease;
- Environmental security threatened by pollution, environmental degradation and resource depletion;
- Personal security threatened by various forms of violence;
- Political security threatened by political repression;
- Community security threatened by social unrest and instability.¹³

What is important about this categorization is that it sets the boundaries of the definition very broadly, clearly separating itself from past security re-conceptualizations. Also, it forces other definitions of human security to justify their narrowing from this very broad starting point.

Second, there is the importance of a components-based approach to defining human security.¹⁴ Jorge Nef, for example, describes five interconnected sub-systems of human security: ecosystem, economy, society, polity and culture. For Nef, these five are all in complex interplay, their linkages defining the nature of systemic balance. More crudely, this points out that if causality is going to be addressed, then the system boundaries must be set very broadly in order to capture all of the possible significant variables. Acknowledgment of the interconnectedness of human security components, however defined, is absolutely critical both to understanding causality and properly addressing policy.

A third significant attribute of the broad conception of human security is its focus on the vital core of the individual. This is essential in order to separate 'human security' from 'human development', a term which is more linked with well-being than dire emergencies.¹⁵ The independent Commission on

Human Security, established at the initiative of the Government of Japan, stresses the importance of focusing human security on the vital core of the individual, rather than on anything and everything that can cause harm.¹⁶ Instead of providing a 'laundry list' of threats, the Commission sets criteria that, once surpassed, indicates an issue has become a threat to human security. They also presume that although institutions cannot be expected to protect people from all harms, they should at least address those that unnecessarily take lives.

With these three attributes in mind, the broad conception of human security becomes more clear. It must be inclusive, it must separate its components into different types of security in order to address causality, and it must set a threshold demarcating the vital core in order to separate itself from human development.

HUMAN SECURITY DEFINED: THE NARROW CONCEPTION

On the other end of the spectrum of human security definitions is the 'narrow' approach. By using a definition that primarily focuses on violent threats, the narrow approach clearly separates human security from the more expansive and already established field of international development. This approach acknowledges the broad conception as a phase in the development of human security, but envisions a much more focused definition, one centred on violent threats, as an instrument of policy.

The narrow definition, therefore, restricts the parameters of human security to violent threats against the individual. This can come from a vast array of threats, including the drug trade, landmines, ethnic discord, state failure, trafficking in small arms, etc. It must, as former Canadian Foreign Minister Lloyd Axworthy points out, be countered primarily by the use of soft power, such as diplomatic resources, economic persuasion, and the use of intelligence and information technology.¹⁷

The *Human Security Report* (first edition to be published mid-2004) at Centre for Human Security at the University of British Columbia¹⁸ uses a narrowly defined understanding of human security, limiting its scope for pragmatic and methodological reasons.¹⁹ For instance, pragmatically, the UNDP's annual *Human Development Report* already covers the freedom from want side of the spectrum, so they feel another such report would be redundant. Methodologically, the report proposal argues, understanding the relationship between underdevelopment and violence necessarily requires a separation of the dependant and independent variables.²⁰

A strong argument for the narrow conception is simply the number of successful international initiatives using its parameters. In fact, most of the significant policy advances achieved in the name of human security have used this narrow definition. For instance, the Mine Ban Convention, the International Criminal Court, as well as the recent international focus on child soldiers, small arms and the role of non-state actors in conflict, have all been undertaken using a narrow human security perspective.

A less dichotomous way to look at the human security spectrum is to assess how much of the possible range of threats each definition incorporates. Few conceptualizations incorporate the full range of seven threat categories originally noted by UNDP. Indeed, as the list of included harms increases, so to does the difficulty in articulating and measuring the concept. The resulting paradox—that the closer one gets the original conception of human security, the more difficult operationalizing it becomes—is a major stumbling block. However, the conceptual and practical difficulty of such a task is no excuse. If human security conceptualizations do not radically deviate from current understandings of traditional security or development, then they provide little added utility to the mechanisms already in place.

Despite principally aligned worldviews, proponents of the broad and the narrow definitions of human security have yet to come up with a single, consensus-commanding definition. In order for human security to have a meaningful impact, its proponents must agree upon a single definition and end what is a self-destructive debate.

A NEW DEFINITION

I propose that the broad versus narrow conceptualization, while theoretically useful, is practically counter-productive. It implies that the narrower the definition, the easier the threat assessment and indicator selection and the more precise the final account will be. This need not be the case. Human security threats should be included not because they fall into a particular category, such as violence, but because of their actual severity. In this conception, what human security means is not defined by an arbitrary list, but by what threats are actually affecting people.

With the goal of remaining both broad and concise, a 'hybrid' human security definition must recognize that there is no difference between a death from a flood or from a gun, all preventable harms should be considered threats to human security. However, as varying harms require dramatically different policy responses, any possible threat must be assessed based on its severity. Only those that surpass a threshold of severity should be included. Also, the definition needs conceptual differentiation—it must be able to separate and categorize all possible threats for meaningful analytic study. This is done by grouping human security threats into six categories. The definition takes two parts.

The first part of the definition is derived from the Commission on Human Security: *Human security is the protection of the vital core of all human lives from critical and pervasive threats*. The advantage of this definition is that it remains true to the broad nature of human security, while clearly separating it from more general concepts of human well-being and development. Making the referent object 'all human lives' both focuses on the individual while also indicating a universalism in its mandate. As the highest level of human insecurity is likely to occur in the developing world, this is particularly important.

The threshold for what is deemed a human security threat is set by the terms 'vital core' and 'critical and pervasive threats'.

The threshold for what is deemed a human security threat is set by the terms 'vital core' and 'critical and pervasive threats'. This is important in order to ingrain a necessary degree of severity within the concept. The vital core, as the Commission

on Human Security points out, is what constitutes a minimum level of survival. Reference to 'critical and pervasive threats' establishes both severity and immediacy. As there are an unlimited number of possible threats, only the most serious, those that take or seriously threaten lives, are included. This threshold is also critically important for the threat identification aspect of human security. Setting the parameter wide with the UNDP conceptualization one could imagine thousands of possible human security issues. However, following this definition, only those that are critical and pervasive, are considered threats to human security.

The second part of the definition addresses the issue of conceptual clarity. It establishes clear categories under which all human security threats are ordered. These categories are not threats themselves, but rather are conceptual groupings, providing a degree of disciplinary alignment to what is an overarching concept: *Individuals require protection from environmental, economic, food, health, personal and political threats*.

By grouping all possible threats into six categories, human security becomes both more manageable and analytically useful. These categories are based on the original UNDP definition discussed in the previous section.²¹ The final definition is therefore: *Human security is the protection of the vital core of all human lives from critical and pervasive environmental, economic, food, health, personal and political threats*.

Perhaps most importantly, this definition is dynamic. It refrains from simply listing threats, recognizing that no possible list can be conclusive, and that it is the protection of the individual that should be the focus.

Measuring human security

If we accept that certain conditions surpass a threshold of severity and become not only human rights' violations, environmental problems or isolated violent acts, but instead threats to human security, then we must have a very clear idea about what these threats are and where these exist. This, by nature, requires a method of empirically assessing, or measuring, human security.

While the validity of the normative interpretation of human security is relatively uncontested, at least among proponents of the concept, its analytic utility is fiercely debated. It is one thing to say that individuals are at risk from a much wider array of threats than the current security paradigm addresses—it is quite another to identify, measure and assess these many possible harms. Central to this debate are the parameters with which one selects human security threats. If, for example, a broad definition of human security is used, all threats that could potentially harm an individual should be included. A global assessment using this criteria is impossible. Quite simply, people can be harmed by such of vast array of threats that complete coverage is conceptually, practically and analytically unfeasible. Practitioners have circumvented this reality using two self-defeating qualifiers in their measurement attempts—researcher- and data-defined threat identification and inclusion. Both marginalize the very core principle of the human security concept, that actual insecurity must drive our response mechanisms.

One way to overcome an unmanageable list of possible human security threats is to simply list which threats will and will not be included in the research design. This 'laundry list' method is subject to the political, institutional and cultural biases of the research designer. Methodologies using this approach will inevitably leave out numerous causes of insecurity. For example, a violence-based measurement methodology doesn't account for the 18,000,000 annual deaths from communicable disease.

The second way around the broad nature of human security is to let data availability drive the assessment parameters. One could compile all available datasets depicting conceivable threats to human security. An assumption with this approach is that if a harm is serious enough, someone will most likely measure it. The problem with this is that it takes a considerable institutional capacity to compile a global scale data set. There are few institutions capable of doing this, and their mandates almost certainly dictate the types of threats they will prioritize. In addition, the very point of human security is to shift our attention to threats usually not considered, and most likely not measured, on a global scale. An unbalanced focus on economic data is also sure to occur in a data driven threat assessment.

The problem then is how can a measure stay true to the broad nature of human security, in other words not leave out any serious threat harming individuals, while at the same time limit or refine its included threats to a manageable and measurable list?

The solutions lie in the threshold set by the 'vital core' component of the proposed definition and by using a regional focus. The list of all possible threats to human security in the world is vast, the list of *relevant* harms for a particular region or country, however, is considerably more refined. Using regional relevance as the criteria for threat selection means that no serious harm will be excluded, staying true to the broad conception of human security, but also improves the chances of acquiring relevant data. Regionally relevant threats would be identified using the threshold of severity definition suggested above.

Further, I suggest that a human security assessment should use local-level, rather than national-level, data. The nature of human security is such that significant variance occurs not just between countries, but within them. Diseases, poverty, violence levels or the location of landmines vary dramatically throughout countries.

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A measure that fails to account for this nuance is simply using too coarse a resolution and blurs the human security picture.

Once data depicting the regionally relevant human security threats are collected, they can then be spatially analysed. This can be done in a Geographic Information System (GIS). Layering human security data in a GIS, whether they be hydrologic flood data, economic poverty data or epidemiological disease data, allows for innovative aggregation of information and powerful spatial analysis.

Further, spatial analysis can find 'hotspots' of aggregated human insecurity (regions suffering from multiple security threats) and can help us understand the spatial relationships between these threats. For example, using spatial statistics and building statistical models, one can determine correlations between the human security threats measured and a wide array of socio-economic variables.

Over the past two years I have developed such a methodology. Using Cambodia as a case study, this methodology has been tested and the threat data has gone through rigorous statistical analysis. The results is an interdisciplinary spatial database of broad ranging Cambodia-specific human security threats. These thirteen identified threats include landmines, flooding, HIV/AIDS and domestic violence. When spatially analysed, clear hotspots of human insecurity were identified and strong spatial correlations between threats emerged.²²

The broad conception of human security *can* be accurately measured. Threats must simply be limited using their severity and regional significance, rather than a preconceived list of threats or the global availability of data. Moreover, the strong correlations between threats, such as landmine and flood victims, or intensity of bombing campaigns and poverty severity, reinforce the importance of the inclusive nature of human security. Narrow definitions of the concept simply leave out too many critical threats and ignore too much valuable local data.

Human rights and human security

Part of the difficulty of the threshold-based human security measure is that certain aspects of each component of human security will not qualify as a security threat. By definition, only those threats that pose a critical and pervasive risk to the vital core are included. Others, while undoubtedly important, should be addressed using existing non-security mechanisms. The case of human rights abuses provides a difficult but useful example.

Human rights and human security are very different concepts. While rights signify the basic legal entitlements of individuals, security involves personal safety. Rights generally depict conditions in which all people are entitled to live, security addresses the very survival of those people.

As outlined in the human security definition proposed above, using the term security has certain prerequisites. Security carries with it a level of urgency that should only be used to address imminent disasters. Certainly some human rights abuses would qualify as human security threats, but not all. Mass human rights abuses against a group in a society is clearly a threat to human security. A suppression of religious freedom, while a concern, would not in most cases qualify as a human security threat.

The Universal Declaration of Human Rights, for example, lists many conditions that, while certainly harmful, do not surpass the threshold of severity to be treated as security threats rather than criminal, political or legal issues.

The idea of a threshold of severity, whereby human rights abuses manifest into something that might require action outside of the mandate of the legal charters meant to preserve them, is not new. The International Commission on Intervention and State Sovereignty (ICISS)²³ recently outlined conditions that must be met before international humanitarian intervention could be used to preserve a group's human rights. They explicitly argue that certain human rights abuses cross a line of severity and should trigger an international response and, if necessary, military intervention. I would argue that situations that meet the ICISS threshold are indeed human security threats.

What is most important is the recognition that protection from human rights' abuses is one component of insuring human security. Individuals also need protection from poverty, disasters, conflict and disease. Put another way, *protection from gross violations of human rights is a necessary, but not sufficient, condition of human security*. The same threshold must, of course, be applied to other human security categories. Just as the legal system, whether national or international, is the appropriate mechanism for addressing *most* human rights abuses, international environmental organizations and treaties are the appropriate institutions to deal with *most* environmental problems. Some, however, surpass a threshold and become human security concerns. When they do, we must have both a monitoring system that can identify them and a security infrastructure that can effectively mitigate the threat.

Conclusion

Although new in its present manifestation, the core principle of human security, that the individual rather than the state should be at the centre of security policy, has its roots in eighteenth century enlightenment liberalism. Although the ideas of Montesquieu, Rousseau and Condorcet have since been overshadowed by the dominant traditional state-based security paradigm, the end of the Cold War has provided room for a shift in security thinking. The majority of hardship and death in the world is not caused by inter-state war but rather by disease, poverty, natural disasters, civil conflict and small arms. As the primary threats have changed, so too must our security mechanisms.

Early conceptualizations of human security, all of which shift the referent from the state to the individual, have run into problems of definitional clarity and measurement methodology. It is proposed here that a threshold-based definition be used to let the actual risks determine what human security is and is not. From this, a regionally defined human security measure can be produced. This stays true to the original broad focus of the concept but renders it analytically and practically useful for addressing today's climate of insecurity.

The conception and apparatus of security should not be used to address every and all possible threats to the individual. It should, however, be capable of protecting people from the most serious harms they face. Until we can ensure that people are safe not just from inter-state war and nuclear proliferation, but also from preventable disease, starvation, civil conflict and terrorism, then we have failed in the primary objective of security—to protect.

Notes

1. E. Rothschild, 1995, *What is Security?*, *Daedalus*, vol. 124, no. 43, pp. 53–90.
2. The dichotomous nature of this debate is worth noting. It is a pattern seen in the traditional security versus human security debate as well as with the broad versus narrow conception of human security itself. As I will argue, only by returning to the core protection of the individual from all serious threats will we be fulfilling our societal responsibilities of protection.

3. See Rothschild, *op. cit.*
4. R. Ullman, 1983, Redefining Security, *International Security*, vol. 8, no. 1, pp. 129–53; and Thomas Hobbes, *The Leviathan*.
5. H. Haftendorn, 1991, The Security Puzzle: Theory Building and Discipline Building in International Security, *International Security Quarterly*, vol. 35, no. 1, pp. 3–17.
6. K. Bajpai, 2000, *Human Security: Concept and Measurement*, University of Notre Dame, Kroc Institute Occasional Paper no. 19, at < www.nd.edu/~krocinst/ocpapers/op_19_1.PDF> .
7. W. Kim, 2001, *Human Security Concerns in Global Politics*. Prepared for the Ninth Council for Security Cooperation in the Asia Pacific Working Group Meeting on Comprehensive and Cooperative Security, Novotel Wellington, New Zealand, April.
8. J. Baylis, 1997, International Security in the Post-Cold War Era, in John Baylis and Steve Smith (eds), *The Globalization of World Politics*, Oxford, Oxford University Press.
9. Rothschild, *op. cit.*
10. It should be noted that I feel that this categorization is far too simplistic. Not just because most of the literature is based on the broad conception, but because many of the definitions used in the literature incorporate elements of both want and fear. Also, while some definitions might be broad in that they stress human development priorities, they may in fact still be very narrow in the scope of the threats they include—such is the case with the King and Murray conception (G. King and C. Murray, 2000, *Rethinking Human Security*, Harvard University Program on Humanitarian Policy and Conflict Research). A large amount of literature has emerged on human security, thus a full review falls out of the reach of this paper. For the three good literature reviews on human security see: S. Alkire, 2003, Concepts of Human Security, in L. Chen, S. Fukuda-Parr and E. Seidensticker (eds), *Human Security in a Global World*, The Global Equity Initiative, Asia Center, Harvard University; O. Hampson and J. Hay, 2002, *Human Security: A Review of Scholarly Literature*, paper presented to the Canadian Consortium on Human Security Annual Meeting, Ottawa, April; and The Harvard Program on Human Security at < www.cbrss.harvard.edu/programs/hsecurity/hspapers.htm> .
11. *Report of the Secretary-General on the work of the Organization*, Official Records of the fifty-fifth session of the General Assembly, Supplement No. 1 (A/55/1) of 30 August 2000.
12. United Nations Development Programme, 1994, 'New Dimensions of Human Security', *Human Development Report 1994*, New York, Oxford University Press, pp. 22–25.
13. As summarized in Andrew Mack, forthcoming, 'Data Issues'.
14. J. Nef, 2003, *Human Security and Mutual Vulnerability, The Global Political Economy of Development and Underdevelopment* (second edition), Ottawa, IDRC Books.
15. This concept has been most recently articulated in Commission on Human Security, 2003, *Human Security Now: The Human Security Commission Report*, New York, at < www.humansecurity-chs.org/> .
16. *Ibid.*
17. L. Axworthy, 2001, Human Security and Global Governance: Putting People First, *Global Governance*, vol. 22, no. 1, p. 19.
18. See < www.ligi.ubc.ca/chs.htm> .
19. A. Mack, 2002, *A Report on the Feasibility of Creating an Annual Human Security Report*, Program on Humanitarian Policy and Conflict Research, Harvard University, February. The Human Security Report is now based at the Center for Human Security in the Liu Institute for Global Issue at the University of British Columbia.
20. I will argue that this ambiguity is only true of the broad conception when all components are aggregated together. If kept on their own, all under the heading of human security threats, then meaningful correlation is possible. In fact, the very fact that they are all deemed human security threats forces a degree of comparison that might otherwise go unnoticed.
21. It should be noted that 'community security' included in UNDP's conception of human security was omitted from my definition. This was done because I feel it conflicts with the first part of the definition, limiting human security to critical and pervasive threats to the vital core. I do not feel that integrity of culture, while undeniably important, fits within this conception.
22. Details on the methodology can be found in T. Owen and O. Slaymaker, forthcoming, Human Security in Cambodia: a GIS Approach, *AMBIO The Journal of the Human Environment*; and in T. Owen, 2003, Measuring Human Security: Overcoming the Paradox, *Human Security Bulletin*, vol. 2, no. 3 (October), at < www.prio.no/files/file44641_human_security_mapping.pdf> .
23. International Commission on Intervention and State Sovereignty, 2001, *The Responsibility to Protect. Report of the International Commission on Intervention and State Sovereignty*, at < www.dfait-maeci.gc.ca/iciss-ciise/pdf/Commission-Report.pdf> .

Weapons of mass destruction and human rights

Peter WEISS and John BURROUGHS

You can't trade your freedom for security, because if you do you're going to lose both.

Brandon Mayfield¹

With few exceptions those who think, write and speak about Weapons of Mass Destruction (WMD) live in a different world from those who think, write and speak about human rights.² WMD experts in the field of arms control consider such problems as how to abolish these weapons or at least reduce the risk of their being used, how to prevent their proliferation, what damage they cause to humans and other living things, etc. Human rights specialists contemplate which human rights are 'real', what should be their order of priority, how best to enforce them and whether a culture of human rights can be introduced into society. Rarely do these two communities consider the overlapping issues of their respective fields.

And yet the linkages between WMD and human rights are manifold, including the following:

- The incompatibility of the right to peace and the right to life with the existence of WMD;
- The vanishing line between the humanitarian law aspects of WMD and the human rights aspects in the strict sense;
- The fear engendered by the thought of WMD 'in the wrong hands', which has been used by governments as a justification for curtailing or suspending human rights; and
- The effect of WMD on the perpetuation of the war system and the resulting drain on resources that would otherwise be available for the implementation of economic and social human rights.

As this article will explore, the linkages have become more complex since the 11 September 2001 terrorist attacks and the invasion of Iraq. To be sure, much has not changed. The risk of nuclear war with which the world has lived since the Second World War remains. Shockingly, the United States and the Russian Federation, despite their apparent partnership, still are locked in a nuclear stand-off in which each side maintains many hundreds of warheads ready for launch at a moment's notice. India and Pakistan have more than once teetered on the brink of a major war that could go nuclear. Other scenarios for use of nuclear arms cannot be ruled out, for example on the Korean Peninsula or in a China-United States conflict over Taiwan. But the world now faces new consequences of states' reliance

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on WMD. The spectre of its spread to additional states has become a stated rationale for war. And the fear of its acquisition by Al Qaeda-like groups has given powerful impetus to the worldwide efforts to suppress terrorism.

While the category of WMD encompasses chemical, biological and nuclear weapons, it must be remembered that, while chemical and biological weapons have the capacity to cause great and indiscriminate harm, their overall effect is infinitesimal compared with that of today's strategic nuclear weapons, some of which have a destructive capacity thirty times or more that of the bombs the United States dropped on Hiroshima and Nagasaki in 1945.³ In this article, the emphasis will be on nuclear weapons.

WMD and the right to peace

While the UN Charter exudes a commitment to peace as its principal objective—from the first sentence of the Preamble, 'We the Peoples of the United Nations determined to save succeeding generations from the scourge of war', to the prohibition of aggression in Article 2(4) and the mandate for peaceful resolution of conflicts in Article 33—the right to peace as such is not found in the Universal Declaration of Human Rights, nor in any of the conventions that have evolved from it. The closest the Universal Declaration comes is Article 28, which provides that '[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.' However, this omission was cured by General Assembly resolution 39/11, adopted on 12 November 1984, the 'Declaration on the Right of Peoples to Peace'. It '[s]olemnly proclaims that the peoples of our planet have a sacred right to peace' and declares that 'the promotion of its implementation constitute[s] a fundamental obligation of each State.'⁴

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But the right to peace has fallen on hard times and WMD have played a central role in its demise. A section containing contributions on the legal aspects of the Iraq war in the July 2003 issue of the *American Journal of International Law* begins with the following words from the editors: 'The military action against Iraq in Spring 2003 is one of the few events of the UN Charter period holding the potential for fundamental transformation, or possibly even destruction, of the system of law governing the use of force that had evolved during the twentieth century.'⁵ These are strong words, to be sure, but justifiably so when seen in the context of the new doctrine of pre-emptive war propagated by the United States and accepted by a number of other countries, a doctrine which should more accurately be called preventive war and which bears a close connection to WMD.

In order to examine this connection we must first review briefly the principles that have governed the legality of going to war since the UN Charter came into force in 1945. The first is Article 2(4) of the Charter, which states that '[a]ll members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the purposes of the United Nations.'

Only two exceptions are allowed to this prohibition against the threat or use of force by one nation against another. Article 42 permits the Security Council to 'take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security' once it has determined that a threat to the peace, breach of the peace or act of aggression has occurred and that measures not involving the use of force would be or have proved to be inadequate to maintain or restore international peace and security. Article 51 states that '[n]othing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the UN, until

the Security Council has taken measures necessary to maintain international peace and security.' This Article is the codification of the definition of self-defence as it has existed in customary law since at least the famous *Caroline Incident* of 1837, when Daniel Webster, then the American Secretary of State, defined justifiable self-defence as requiring that it be 'instant, overwhelming and leaving no choice of means, and no moment for deliberation.'⁶

How far from the mandate of the Charter the new policy of preventive war digresses is made plain by President Bush's introduction to the *National Security Strategy* of 17 September 2002,⁷ in which he states: 'As a matter of common sense and self-defense, America will act against such emerging threats before they are fully formed.'

What are these emerging threats that, according to some, call for the scrapping of the fundamental structure of the UN Charter insofar as it relates to the use of force? We find the answer in the following comments by defenders of the legality of the Iraq war:

According to William Howard Taft IV and Todd F. Buchwald, the Legal Adviser and Assistant Legal Adviser of the United States Department of State: 'A central consideration, at least from the U.S. point of view, was the risk embodied in allowing the Iraqi regime to defy the international community by pursuing weapons of mass destruction.'⁸

Professor John Yoo of the University of California states: 'In addition to the probability of the threat, the threatened magnitude of harm must be relevant. The advent of nuclear and other sophisticated weapons has dramatically increased the degree of potential harm, and the importance of the temporal factor has diminished. Weapons of mass destruction threaten devastating and indiscriminate long-term damage to large segments of the civilian population and environment.'⁹

Professor Ruth Wedgwood of John Hopkins University uses President Kennedy's handling of the Cuban missile crisis as a precedent for President Bush's decision to invade Iraq: 'The introduction of nuclear weapons into Cuba', she writes, 'reducing Soviet launch time to seven minutes, would have destroyed any adequate interval for the assessment of nuclear warnings,' thus justifying the United States in imposing a defensive quarantine.'¹⁰

What about this new doctrine of pre-emptive/preventive war has made it palatable to so many people, despite the fact that it undermines the very essence of the United Nations Charter? Apparently it is the *magnitude* of the armed attack that the pre-emptor sees coming from the presumed attacker, as well as the impossibility of determining just when the attack will occur. It has been argued that the 11 September 2001 attacks on the United States radically altered interpretations of international law. It is doubtful that the United States would have felt justified in invading and occupying Afghanistan *before* the tragic events of 2001, simply on the speculation that a devastating terrorist attack might occur someday.

Thus, the characteristics of WMD, and of nuclear weapons in particular, provide both the magnitude and the condensed launch time that expand the concept of self-defence from a reaction to actual or imminent aggression to a preventive strike against aggression that may occur at any time in the future, be it weeks, months or years from now. What makes this frontal attack on the Charter's regime of *ius ad bellum* particularly invidious is that it leaves each state the sole judge of when preventive war is justified, even when, as in the case of Iraq, the 'emerging threat' proves eventually to have been based on faulty or deliberately misconstrued intelligence.¹¹

The mere invocation of the threat of nuclear weapons, whether delivered by plane, by missile or by suitcase, the rhetorical projection of a mushroom cloud over Manhattan—or London, Mumbai or

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any other city—tends to cut off rational discussion. It is likely, therefore, that the pre-emptive/preventive war doctrine will spread as long as the spectre of nuclear weapons in the arsenal of a state or in the hands of a non-state actor can be summoned up. It is worth noting in this connection that, according to United States Deputy Secretary of Defense Paul Wolfowitz, when justification for going to war with Iraq was being discussed at the highest levels of the American government, ‘For bureaucratic reasons, we settled on one issue, weapons of mass destruction, because it was the one reason everyone could agree on.’¹²

According to Mohamed ElBaradei, the Director-General of the International Atomic Energy Agency (IAEA), in addition to the known nuclear-weapons powers, ‘there are an increasing number of countries with the technological capability of making ... nuclear weapons.’¹³ This makes it imperative that the world community find a way to end, once and for all, the chimera of nuclear weapons as a deterrent and address in a serious way the mandate of the International Court of Justice ‘to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.’¹⁴

WMD and the right to life

In the contest for primacy among the variety of human rights, the right to life arguably occupies the highest rank. As provided by Article 6(1) of the International Covenant on Civil and Political Rights, ‘Every human being has the inherent right to life. This right shall be protected by law. *No one shall be arbitrarily deprived of his life.*’¹⁵

While there is clearly an overlap between the right to peace and the right to life, they are not coextensive. In the armed conflicts of today, increasing numbers of civilians are being deprived simultaneously of the right to peace and the right to life. However, the right to life survives in wartime, if only because of the humanitarian law prohibition of weapons and tactics that fail to discriminate between combatants and non-combatants.

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Although we are witnessing a strong trend towards the convergence and integration of human rights law and humanitarian law, it was not always so. The 1948 Universal Declaration of Human Rights and the 1949 Geneva Conventions were negotiated by separate bodies, the first in the UN General Assembly in New York, and the second in a diplomatic conference in Geneva with the assistance of the International Committee of the Red Cross, and mostly by different diplomats. There was little recognition of commonalities despite the fact that the Third and Fourth Geneva Conventions manifestly seek to safeguard the human rights of prisoners of war and of civilians in occupied territories.¹⁶ The initial division of the branches of international law arose from the newness of *international* human rights law and a desire in the wake of a disastrous war to focus on the maintenance of peace through the UN Charter and on respect for human rights during peacetime. The two branches also have differing approaches: one focuses upon the articulation of *rights* held by individuals vis-à-vis states; the other imposes *duties* upon states and their personnel in inter-state conflicts as well as in internal conflicts with organized armed forces.¹⁷

As human rights law grew in prominence, and as the necessity was recognized of limiting the ravages of war, especially internal conflicts, that persisted around the world during the Cold War, it became impossible to ignore the core idea shared by the two branches: the protection of the human person. In the case of humanitarian law, the idea is exemplified by the principle of civilian immunity—that civilians are never to be the target of attack and are additionally to be protected against the effects of warfare to the maximum extent possible consistent with military necessity.

In 1968, a resolution entitled 'Human Rights in Armed Conflicts' was adopted by the Teheran International Conference on Human Rights.¹⁸ The resolution began by observing that 'peace is the underlying condition for the full observance of human rights and war is their negation' but that 'nevertheless armed conflicts continue to plague humanity.' It went on to call for new or revised agreements 'to ensure the better protection of civilians, prisoners and combatants in all armed conflicts', as well as the 'prohibition and limitation of the use of certain methods and means of warfare'. By 1977, a comprehensive codification of humanitarian law protecting civilians against the effects of warfare had been negotiated, Protocol I to the Geneva Conventions. Agreements providing for the prohibition and elimination of weapons that inflict mass or indiscriminate destruction also were created, initially the 1972 Biological Weapons Convention, and later the 1993 Chemical Weapons Convention and the 1997 Mine Ban Convention.¹⁹

In the years following the Teheran conference, while the formal division between human rights law and humanitarian law remained, there was widespread recognition of their interdependence and common elements. This was spurred in part by the fact that in situations of internal strife, the distinction between the two branches becomes hard to maintain, as it is not always possible to determine whether or not violence has reached the level of intensity and organization qualifying as 'armed conflict' to which humanitarian law applies.²⁰ The close relationship is well illustrated by the fact that NGOs specializing in human rights, notably Human Rights Watch, have undertaken in-depth monitoring of compliance with humanitarian law requirements.²¹

In 1985, the UN Human Rights Committee, the body charged with overseeing implementation of the Covenant on Civil and Political Rights, strongly asserted the relevance of human rights law to the consequences of reliance on nuclear weapons, both in the context of war, traditionally the province of humanitarian law, and of international relations more generally. The Committee commented that:

It is evident that the designing, testing, manufacture, possession and deployment of nuclear weapons are among the greatest threats to the right to life which confront mankind today. This threat is compounded by the danger that the actual use of such weapons may be brought about, not only in the event of war, but even through human or mechanical error or failure.

Furthermore, the very existence and gravity of this threat generate a climate of suspicion and fear between States, which is itself antagonistic to the promotion of universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter of the United Nations and the International Covenants on Human Rights.²²

In 1994, overcoming the determined opposition of the nuclear-weapons states, non-nuclear weapons countries mustered a majority in the UN General Assembly for a resolution requesting the International Court of Justice to render an advisory opinion on the following question: 'Is the threat or use of nuclear weapons in any circumstance permitted under international law?' In vivid and extensive written and oral argumentation by more than forty states, the focus was mostly on the UN Charter, the requirements of necessity and proportionality for the lawful exercise of self-defence, and humanitarian law governing the conduct of warfare. But human rights arguments also had their part, with many states referring to the right to life, and some advancing comprehensive and sophisticated analyses encompassing economic and social rights.

Thus the Solomon Islands linked the right to life with the right to health and with international law requiring global protection of human health and the environment, arguing that a nuclear explosion—with effects well beyond the target state—would violate the human rights of persons in neutral as well as target states.²³ As the Solomon Islands noted, Article 12(1) of the International Covenant on Economic, Social, and Cultural Rights recognizes 'the right of everyone to the enjoyment of the highest attainable

standard of physical and mental health,' and mandates in Article 12(2)(b) that states take steps to accomplish 'the improvement of all aspects of environmental and industrial hygiene.' Article 25 of the Universal Declaration of Human Rights provides that '[e]veryone has the right to a standard of living adequate for the health and well-being of himself and his family'. A right to a clean and healthy environment has been implied from these provisions and other instruments of international law and policy.

Professor Philippe Sands commented regarding the counterarguments of the nuclear-weapon states France, Britain, the Russian Federation and the United States:

[T]hese are the same States which pride themselves—with some justification—on their role in promulgating the rule of law, promoting human rights, and preserving the environment. Yet when it comes to those very weapons of mass destruction which pose a greater threat to human rights and the environment than anything else imaginable, these States ask you to set aside that body of principles and rules so carefully put in place over the past 50 years. They ask you, in effect, to re-situate yourself in 1945, to ignore all subsequent developments and to follow Balzac's dubious proposition, 'that laws are spider webs through which the big flies pass and the little ones get caught.'²⁴

Arguing for Costa Rica, human rights specialist Carlos Vargas-Pizarro invoked a still larger frame, stating that 'nuclear threat or use cannot coexist with the achievement of a global order embodying common security that realizes the purposes of the United Nations and provides fundamental human rights for all persons ...'.²⁵

In its 1996 opinion, the International Court of Justice primarily addressed the human rights arguments under the rubric of the right to life.

In its 1996 opinion, the International Court of Justice primarily addressed the human rights arguments under the rubric of the right to life. The Court held that, contrary to the position advanced by some states, this fundamental human right applies in time of war as well as in time of peace, subject to the following qualification:

The test of what is an arbitrary deprivation, however, then falls to be determined by the applicable *lex specialis*, namely, the law applicable in armed conflict which is designed to regulate the conduct of hostilities. Thus, whether a particular loss of life, through the use of a certain weapon in warfare, is to be considered an arbitrary deprivation of life contrary to Article 6 of the Covenant [on Civil and Political Rights], can only be decided by reference to the law applicable in armed conflict and not deduced from the terms of the Covenant itself.²⁶

In other words, the interpretation of the human right to life in wartime depends on applicable principles of humanitarian law. Citing particularly the humanitarian law principles forbidding the infliction of indiscriminate harm and unnecessary suffering, the Court held the threat or use of nuclear weapons to be generally contrary to international law. It follows that use of nuclear weapons would necessarily entail a massive violation of the most basic of human rights, the right to life.²⁷

The human rights arguments also seem to have influenced the Court's strong discussion of the relevance of environmental law. The Court stated that the 'use of nuclear weapons could constitute a catastrophe for the environment' and observed that the environment 'represents the living space, the quality of life and the very health of human beings, including generations unborn'.²⁸ Further, in explaining the principles of humanitarian law upon which it primarily relied, the Court stated that there is broad adherence to the Hague and Geneva Conventions because 'a great many rules of humanitarian law applicable in armed conflict are so fundamental to the *respect of the human person* and "*elementary considerations of humanity*".²⁹

Why is it important to insist on respect for the human person and elementary considerations of humanity—on fundamental human rights—even during the chaos and intentional violence of war?

The international lawyer Henri Meyrowitz answers:

The true foundation of civilian immunity ... resides ... in what one could call the necessity of the long run, the necessity of beyond-war. ... [It] represents an indispensable barrier, which, due to its nature as a *recognizable threshold*, constitutes the unique means preparing civilization to survive in resisting the destructiveness, potentially unlimited, of modern war.³⁰

The political philosopher John Rawls, articulating a modern Kantian view, similarly holds: 'The aim of war is a just peace, and therefore the means employed must not destroy the possibility of peace and encourage a contempt for human life that puts the safety of ourselves and of mankind in jeopardy.'³¹

The essential fact about nuclear weapons is that they inherently surpass the boundaries of warfare and make impossible the resumption of civilized, peaceful life. That is why human rights law and humanitarian law join hands to condemn them; that is why, as the International Court of Justice unanimously affirmed, the world must create mechanisms for their elimination as has already been done in the conventions on chemical and biological weapons; that is why, ultimately, war must be abolished and the right to peace secured. As Kant presciently wrote, 'a war of extermination ... would allow perpetual peace only on the vast graveyard of the human race. A war of this kind and the employment of all means which might bring it about must thus be absolutely prohibited.'³²

WMD and civil and political rights

Since 2001, in many parts of the world the fear of terrorist attacks has combined with the fear of chemical, biological and nuclear weapons to produce a climate in which governments are increasingly prone to enact 'emergency measures' that infringe civil liberties and that citizens find increasingly difficult to undo. Terrorists acts of the past—assassinations, train derailments, arson—are as nothing compared with the technologically sophisticated and militarily coordinated mass assaults of Al Qaeda and its imitators.

Every time one of these dreadful incidents occurs, the natural reaction is to think 'What if?' What if it had been a nuclear device? What if the still-identified anthrax terrorist had managed to more widely distribute the substance? What if Aum Shinrikyo had succeeded in spreading sarin throughout the Tokyo subway system? It is a line of thinking to which only hyperboles can do justice. Thus, former United States Defense Secretary William Cohen, testifying on 23 March 2004 before the National Commission on Terrorist Attacks Upon the United States, stated that terrorism, combined with WMD, 'is likely to pose an existential threat to the world.'³³

It is also a line of thinking that leads people like Daniel J. Popeo, Chairman of the conservative Washington Legal Foundation, to run an advertisement on the Op-Ed page of the *New York Times* entitled "'Civil Liberties' for Terrorists?" and to conclude with the following rhetorical flourish: 'So it's time we got our priorities straight. Do we defer to the ideologues' rigid agenda of absolute "civil liberties" for all, including our enemies, or do we trust government officials and our military to use their powers wisely and protect us from the horror terrorists can unleash?'³⁴

When 'civil liberties' gets bracketed in quotation marks to indicate a concept dear to ideologues but alien to right-thinking lawyers, when citizens used to holding their leaders accountable for their actions are asked to put blind trust in government officials and the military, something serious has happened to the culture of human rights. Poorly conceived counter-terrorism efforts are encouraging this trend around the world.

Needless to say, there would be tension between security and human rights even if there were no WMD. However, as in the case of security and war, a whole new dimension is given to the security/human rights equation when WMD are factored in. In order to appreciate just how serious this phenomenon is, it is necessary to take a closer look at the impact on the observance of certain fundamental civil and political rights since 11 September 2001. These impacts have taken a variety of forms, from torture and degrading treatment of prisoners and detainees to privacy issues. A few are briefly mentioned here.

Article 7 of the International Covenant on Civil and Political Rights explicitly prohibits torture: 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.' A similar set of prohibitions is contained in the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to which 136 states were parties as of June 2004. As of this writing, it remains to be seen what various investigations currently underway will reveal about the level of command and authorization from which the culture of 'aggressive' interrogation and pre-interrogation measures of prisoners of war and other detainees by the American military in Afghanistan, Guantanamo and Iraq have emanated. What is already clear is that somewhere along the line the notion of fighting fire with fire, or terror with terror, replaced the notion of intransgressible norms of behaviour mandated by the Geneva Conventions and the above-mentioned treaties.³⁵ Thus Alan Dershowitz, the well-known Harvard law professor, has publicly taken the position that torture is justified when undertaken to prevent a terrorist nuclear attack.³⁶

A report issued on 2 June 2003 by the Inspector General of the United States Department of Justice confirmed that the treatment of large numbers of mostly illegal immigrants arrested in the United States since the 2001 attacks clearly exceeded the bounds of applicable legal and moral norms.³⁷ Additionally, the 'rendering' of prisoners to other countries known to practice torture, such as Jordan, Egypt and Morocco, is a particularly disturbing trend.³⁸

The instances above also involve violations of Art. 10(1) of the Covenant on Civil and Political Rights, which provides that '[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.'

Article 9(1) of the Covenant states that '[n]o one shall be subjected to arbitrary arrest or detention', while Article 16 guarantees that '[e]veryone shall have the right to recognition everywhere as a person before the law.' These articles are violated by the Kafkaesque rationale developed by some governments for holding large numbers of persons for long periods without charging them with a crime or other offence.

Much anti-terrorist legislation has been passed in many countries since 2001.³⁹ Some of these laws and regulations, like those aimed at drying up sources of terrorist funding or improved exchanges of information between various intelligence agencies, serve a useful and legitimate purpose. Others, however, are of doubtful international legal validity and may be tested in the courts for years to come.

WMD and social and economic rights

In 1998, Stephen I. Schwartz and nine other nuclear experts produced a book containing the results of an extensive study of the cost of the American nuclear weapons programme up to that year.⁴⁰ The figure they arrived at was 5.5 trillion US dollars. Imagine if one were to include the amounts spent on nuclear weapons programmes by other countries and the amounts spent by all countries on other WMD. It requires no particular proficiency in the art of economics to appreciate what this amount could have produced if used instead on providing millions of people with their right to health, housing, education, culture, social security and all the other desiderata guaranteed to them—on paper—by the International Covenant on Economic, Social and Cultural Rights.

The eighteen targets for implementation of the right to development to which the world community committed itself in the Millennium Declaration,⁴¹ including eradication of extreme poverty, full primary education, gender equality and empowerment of women, reduction of child mortality, combating HIV/AIDS and ensuring environmental stability, among others, still seem far out of reach, especially in the poorest countries. Yet billions of dollars go into the maintenance of nuclear arsenals, research into modified or new nuclear weapons, and measures to prevent or mitigate WMD attacks like research on vaccines. The G-8 meetings, originally intended to develop a common plan for meeting these goals, now seem increasingly concerned with questions of non-proliferation and counter-terrorism, at the expense of economic progress and human rights. As one non-governmental leader put it following the latest G-8 meeting in Sea Island, Georgia, in June 2004:

Bold action at this year's summit could have taken the issues of AIDS, debt-relief and peacekeeping off the table and offered new hope for those with so little. Instead, the people on the run from militias in Sudan or those dying from AIDS from lack of medicine will have to see whether they can stay alive until next year's summit.⁴²

Conclusion

There can be no doubt that a world rife with weapons of mass destruction is less safe a place than a world without them, a point only reinforced by the rise of catastrophic terrorism.

The elimination of WMD is a matter of political will. It can be achieved through full implementation of the Chemical Weapons Convention and the Biological Weapons Convention and the negotiation of measures to eliminate nuclear arms within the overarching framework of a convention. The nuclear-weapons states are pledged to negotiate in good faith toward this end, but so far have refused to honour their pledge. When they do, they will also be acting to uphold the human rights to life and peace.

The elimination of terrorism may be a more difficult goal to reach. When leaders speak of waging the war against terrorism to its final victory, one can only wince and wonder what they have in mind. What war? Where fought? Against whom? With what weapons?

The last question is probably the crucial one. Yes, competent intelligence and brute force can reduce the danger of terrorist attacks. But if there is one lesson that history teaches it is that social, economic, ethnic and religious differences can translate into feelings of powerlessness and give rise to violence—which the powerless call the search for justice and those at whom the violence is directed call terrorism.

This is where human rights come in. There may never be a world without terrorism. But it is reasonable to expect that the closer the world comes to realizing the full panoply of human rights enshrined in the Universal Declaration and the International Covenants, the closer it will be to freedom from terrorism, not least WMD terrorism. It is a goal worth striving for.

Notes

1. S. Kershaw and E. Lichtblau, 2004, Bomb Case Against Lawyer is Rejected, *New York Times*, 25 May, p. A16. Mr Mayfield is an Oregon lawyer who was arrested and released after two week's detention by order of a federal judge after the Federal Bureau of Investigation admitted that it had erroneously associated his fingerprints with those of another person found at the site of the Madrid train bombing.

2. One such exception is Douglas Roche, former Canadian Ambassador for Disarmament, author of *Bread Not Bombs* (University of Alberta Press, 1999).
3. 475 kiloton warheads are deployed on American submarine-based missiles. See NRDC Nuclear Notebook, US Nuclear Forces, *Bulletin of the Atomic Scientists*, May/June 2004, at <www.thebulletin.org/issues/nukenotes/mj04nukenote.html>. The Hiroshima and Nagasaki bombs had yields of 12–15 kilotons. In his recent book *Disarming Iraq*, Hans Blix says that '[w]hile nuclear weapons are routinely lumped together with biological and chemical in the omnibus expression 'weapons of mass destruction', it is obvious that they are in a class by themselves. The outside world's concerns about Iraq's weapons would never have been a very big issue if it had not been for Iraqi initiatives to acquire nuclear weapons capacity.' H. Blix, 2004, *Disarming Iraq*, Pantheon Books, p. 260.
4. See <www.unhcr.ch/html/menu3/b/73.htm>; J. Fried, 1994, *Toward a Right to Peace: Selected Papers of John H.E. Fried*, Aletheia Press, pp. 81–88.
5. L.F. Damrosch and B.H. Oxman, 2003, Agora: Future Implications of the Iraq Conflict, Editors' Introduction, *American Journal of International Law*, vol. 97, no. 3, p. 553 (emphasis supplied).
6. Letter from Daniel Webster to Lord Ashburton, 6 August 1842. See R.Y. Jennings, 1938, The Caroline and McLeod Cases, *American Journal of International Law*, vol. 32, pp. 82–99.
7. See <www.whitehouse.gov/nsc/nss.pdf>.
8. W. Taft and T. Buchwald, 2003, Preemption, Iraq, and International Law, *American Journal of International Law*, vol. 97, no. 3, p. 563.
9. J. Yoo, 2003, International Law and the War in Iraq, *American Journal of International Law*, vol. 97, no. 3, p. 572.
10. R. Wedgwood, 2003, The Fall of Saddam Hussein: Security Council Mandates and Preemptive Self-Defense, *American Journal of International Law*, vol. 97, no. 3, p. 584.
11. See 'The Deceptions Exposed' in B. Burrough et al., 2004, 'The Path to War', *Vanity Fair*, May, pp. 286–287.
12. *Associated Press*, 'Wolfowitz's comments revive doubts over Iraq's WMD', 1 June 2003, quoting from *Vanity Fair* interview.
13. Interview in *Der Spiegel*, 'America's sense of timing is different', September 2003.
14. International Court of Justice, Advisory Opinion, *Legality of the Threat or Use of Nuclear Weapons*, issued 8 July 1996 (hereafter cited as 'ICJ Opinion'), para. 105(2)E.
15. Emphasis supplied. Similar language is found in the American Bill of Rights: 'No person ... shall be ... deprived of life ... without due process of law.' United States Constitution, Amendment V.
16. R. Kolb, 1998, The relationship between international humanitarian law and human rights law: A brief history of the 1948 Universal Declaration of Human Rights and the 1949 Geneva Conventions, *International Review of the Red Cross*, no. 324, pp. 409–18.
17. See generally L. Doswald-Beck and S. Vité, 1994, International Humanitarian Law and Human Rights Law, *International Review of the Red Cross*, no. 293, p. 99.
18. Resolution XXIII of 12 May 1968. Adopted as United Nations General Assembly resolution 2444 (XXIII) of 19 December 1968.
19. See N. Deller, A. Makhijani and J. Burroughs (eds), 2003, *Rule of Power or Rule of Law? An Assessment of U.S. Policies and Actions Regarding Security-Related Treaties*, Apex Press.
20. See K. Watkin, 2004, Controlling the Use of Force: A Role for Human Rights Norms in Contemporary Armed Conflict, *American Journal of International Law*, vol. 98, no. 1, pp. 1–34.
21. See, for example, Human Rights Watch, 2003, *Off-Target: The Conduct of the War and Civilian Casualties in Iraq*, Washington, DC, at <www.hrw.org/reports/2003/usa1203/>.
22. *Report of the Human Rights Committee*, Official Records of the General Assembly, 40th Session, Suppl. no. 40, document A/40/40 of 1985.
23. Verbatim Record, hearing before the ICJ, 14 November 1995, 10h00 pp. 66–67 (Professor Philippe Sands); Solomon Islands' Written Observations regarding World Health Organization question on the legality of use of nuclear weapons in armed conflict (considered together with the question posed by the General Assembly which yielded the opinion on the merits), paras. 4.1–4.46, pp.76–95, esp. 86–87.
24. Verbatim Record, hearing before the ICJ, 14 November 1995, 10h00, p. 66.
25. Verbatim Record, hearing before the ICJ, 14 November 1995, 15h00, p. 31.
26. ICJ Opinion, *op. cit.* paras. 24, 25. Regarding the opinion generally, see L. Boisson de Chazournes and P. Sands (eds), 1999, *International Law, the International Court of Justice, and Nuclear Weapons*, Cambridge University Press; J. Burroughs, 1997, *The Legality of Threat or Use of Nuclear Weapons: A Guide to the Historic Opinion of the International Court of Justice*, Lit Verlag; V. Nanda and D. Krieger, 1998, *Nuclear Weapons and the World Court*, Transnational Publishers; P. Weiss, 2000, Book Review, *American Journal of International Law*, vol. 94, no. 4, pp. 815–18.
27. Except perhaps in the scenario which some WMD experts have dubbed 'The case of the mininuke in the Gobi Desert', i.e. a hypothetical situation in which a low-yield and fallout-free nuclear weapon is used in an area free of civilian population for a great distance.

28. ICJ Opinion, *op. cit.*, para. 29.
29. *Ibid.*, para. 79 (emphasis supplied).
30. H. Meyrowitz, 1981, Le bombardement stratégique d'après le Protocole additionnel I aux Conventions de Genève, *Zeitschrift Fur Ausländisches Öffentliches Recht Und Völkerrecht*, vol. 41, p. 26 (translation by J. Burroughs).
31. J. Rawls, 1971, *A Theory of Justice*, Belknap Press of Harvard University Press, pp. 378–79.
32. Immanuel Kant, *Perpetual Peace: A Philosophical Sketch*, in H. Reiss (ed.), 1970, *Kant's Political Writings* (trans. H.B. Nisbet), Cambridge University Press, p. 96.
33. See <cnnstudentnews.cnn.com/TRANSCRIPTS/0403/23/se.05.html> .
34. As printed in the *New York Times*, 22 March 2004 edition, p. A23. Full text available at <www.wlf.org/upload/3-22-04civilliberties.pdf> .
35. See the articles by S. Hersh in *The New Yorker*, editions of 10, 17 and 24 May, available at <www.newyorker.com/archive/previous/?040614frprsp_previous1> .
36. D. Glenn, 2002, A Civil Libertarian Wants Professors to Talk About Morality and Tactics, *The Chronicle of Higher Education*, 6 September.
37. See United States Department of Justice, Office of the Inspector General, 2003, *The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks*, June, Office of the Inspector General, at <www.usdoj.gov/oig/special/0306/index.htm> .
38. D. Priest and B. Gellman, 2002, US Turns to Torture to Crack Prisoners of War, *Washington Post*, 27 December, available at <www.smh.com.au/articles/2002/12/26/1040511135568.html?oneclick=true> .
39. For a country-by-country overview of measures to combat terrorism taken since 11 September 2001, see the reports submitted by states to the UN Counter-Terrorism Committee at <www.un.org/Docs/sc/committees/1373/submitted_reports.html> .
40. S.I. Schwartz (ed.), 1998, *Atomic Audit: The Costs and Consequences of U.S. Nuclear Weapons since 1940*, Brookings Institution Press, Washington, DC.
41. United Nations Millennium Declaration, General Assembly resolution A/55/PV.8 of 8 September 2000. See <www.un.org/millennium/declaration/ares552e.htm> .
42. D. Gartner, G-8 Summit: World Leaders Missed Good Opportunities on Several Issues, *Miami Herald*, 17 June. Gartner is policy director of the Global AIDS Alliance.

Small arms and light weapons: the tools used to violate human rights

Barbara A. FREY

The availability, transfer and misuse of small arms have dramatic adverse consequences on human rights. Hundreds of thousands of men, women and children are killed or injured each year by small arms and light weapons. The estimated number of firearms in circulation in the world is 640 million.¹ It is likely that the actual global stockpile of small arms is even greater. While small arms proliferation is not a new phenomenon, in the era of globalization there is growing concern that more guns are getting into more hands with fewer restraints. In today's world, small arms—including military-style weapons—are available to almost anyone who has the will to obtain them. These weapons, which are cheap, easy to transport and easy to operate, are used to violate human rights in every corner of the globe. A single weapon, misused, can change the fate of an individual, a family or even an entire community. A flood of small arms can shift the entire balance of power in a community, leading to a lack of personal security that destroys the rule of law.

While human rights can be violated with or without weapons, the lethal nature of small arms means that the weapons themselves must be singled out for examination under international law. Given technological developments in the field, small arms are growing more lethal and easier to operate even for unsophisticated and untrained users. This means that the scale and the pace of human rights violations can be adversely affected by the involvement of a firearm. Small arms have a transformative or multiplier effect on coercion and violence—the introduction of small arms into ethnic, political or religious conflicts, for example, has resulted in atrocities on a massive scale.

This article offers a summary of the human rights and humanitarian law implications of the small arms issue. It includes a brief overview of the human rights consequences of small arms availability, transfer and misuse. The article then analyses the responsibilities of states and private actors under international human rights and humanitarian law regarding the availability, transfer and misuse of small arms.²

Adverse consequences to human rights

The most direct impact of small arms on human rights is the sheer number of deaths and injuries incurred by their misuse. There are an estimated 500,000 persons killed annually and millions more injured, often disabled physically and emotionally for the rest of their lives.³ The right to life is guaranteed under international law, both in the Universal Declaration of Human Rights,⁴ Article III, and the International Covenant on Civil and Political Rights (ICCPR),⁵ Article VI. The right to life is also guaranteed

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in international humanitarian law. Wilful killing in international conflicts is prohibited by the Geneva Conventions as a grave breach.⁶ Common Article III of the Geneva Conventions addresses the rights of non-combatants, prohibiting murder of all kinds, including the carrying out of executions without previous judgment by a regular court. States, then, are responsible for protecting the right to life, even in times of public emergency, including armed conflict.

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Besides their misuse in deaths and injuries, small arms facilitate an entire range of human rights violations, including rape, enforced disappearance, torture, forced displacement, and forced recruitment of child soldiers.⁷ Landmine casualties continue to be reported in every region of the world.⁸ Even in genocidal conflicts, where people have been hacked to death with machetes or other non-ballistic instruments, the victims are often initially rounded up with firearms.

Small arms and the culture of violence that results, in part, from easy access to these weapons, also affect other human rights profoundly. The increase in state expenditures on arms that is often required due to deteriorating security conditions can result in decreased support for development and for economic, social and cultural rights. Communities that suffer from an atmosphere of armed criminal or political violence may suffer a wide range of violations to their international rights to education, healthcare, development and their right to participate in government—to name a few.⁹

The death and injury of productive individuals through small arms related violence places a double burden on communities, which suffer the loss of the person's direct contributions to his or her family, workplace and neighbourhood, and also lose the social stability that is needed to encourage social and economic development. The toll of arms-related violence is present in crime-ridden parts of urban areas as well as villages that are dominated by warlords. A study¹⁰ published in January 2003 by Oxfam regarding the impact of small arms on Medellín, Colombia, found the following: 61% of all deaths in the city are caused by homicide, making homicide the main cause of mortality. Ninety percent of homicides are perpetrated with firearms. The group with the highest casualty rate is men between the ages of 15 and 44. In addition to this deprivation of the right to life, many other rights are affected by the prevalence of gun violence. People living in Medellín have suffered from:

- forced displacement due to armed violence;
- partial closures of schools through armed confrontations;
- high incidence of rape of girls between 11 and 17; and
- restrictions on the ability to walk freely as a pedestrian, to use public transport, and to participate in group activities.

The Medellín example illustrates that it is not merely the body count from armed violence that tells the tale; armed violence weakens the very fabric of society so that no human rights can be guaranteed.

Normative framework regarding small arms

International human rights law and humanitarian law define the normative responsibilities of states with regard to the availability, transfer and misuse of small arms. International human rights law focuses primarily on the obligations of states to respect and protect the fundamental rights of individuals. Human rights law is codified in dozens of international and regional instruments including, of course, the Universal Declaration of Human Rights, the two human rights Covenants,¹¹ many thematic treaties,

international judicial decisions and interpretations, and customary international law as evidenced by the practice of states. International humanitarian law defines the rights and duties of belligerents in armed conflicts and provides safeguards for persons not participating in the conflict.

While the primary purpose of international law is to prescribe the conduct of states, international law is evolving to account for the indisputable role of individuals and other non-state actors in promoting and protecting human rights. The establishment of the International Criminal Court is the most obvious example of the trend to develop international standards to complement national standards regarding the criminal actions of individuals. This trend is critical in any analysis of small arms, because small arms are the tools that enable individuals and organized groups to inflict tremendous violence upon people and communities. In addition to examining state obligations, therefore, it is important to consider what legal obligations address abuses perpetrated by armed individuals and groups.

The human rights analysis regarding small arms is complicated by the many types of use—legal and illegal—of these arms. The act of discharging a weapon has varying legal significance based on the identities of the shooter and the victim, and the circumstances under which the shot was fired. The human rights and humanitarian norms that guide state action with regard to small arms differ in the following situations: misuse of small arms by state agents; misuse of small arms by private persons when the state fails to exercise due diligence; misuse of small arms by state agents in armed conflict; misuse of small arms by non-state actors in armed conflict; and small arms transfer with knowledge that arms are likely to be used to commit serious violations of international human rights and humanitarian law.

The human rights analysis regarding small arms is complicated by the many types of use—legal and illegal—of these arms.

Table 1 illustrates the sources of international human rights and humanitarian law relevant to the above five situations.

Human rights violations by state agents

The responsibilities of states regarding the misuse of small arms in peacetime are defined by international human rights law. States that are parties to binding multilateral human rights treaties are obligated to protect the rights defined in those treaties. The ICCPR, in Article IV, mandates state protection of several core rights even during states of emergency, including the right to non-discrimination, life, freedom from disappearance, freedom from torture, freedom from slavery, and freedom of thought, conscience and religion. Under the ICCPR, states may not use small arms to carry out violations of any of these non-derogable rights.

Despite these clear international standards, police, security forces or other state agents such as paramilitary groups, private security companies and armed body guards frequently commit serious human rights violations, often with small arms. Human rights groups have documented serious misuse of small arms by police and military officials, for instance, through use of excessive force against demonstrators or detainees and by committing extrajudicial executions of political opponents, street children and other groups deemed as 'undesirable'.¹² Governments provide arms to groups to foment racial, political or ethnic violence in support of their political ends.¹³

Small arms, of course, do have lawful uses, including use by law enforcement for peace and self-defence. However, along with the power to carry arms comes the obligation of states to ensure their agents are well-trained and that their use of small arms is in compliance with national and international standards.

Flowing from the right to life, international rules have been developed to govern the use of state-sponsored force including the use of weapons. In 1979 the United Nations General Assembly adopted

Table 1. Examples of international human rights and humanitarian law relevant to small arms availability and misuse

Situation	Examples of violations	Selected applicable laws
Misuse of small arms by state agents	Genocide Intentional killings Excessive force Torture Systematic rape Disappearance Arbitrary arrest Displacement, deprivation of economic rights	Universal Declaration of Human Rights (UDHR) Art. III (life), V (torture), IX (arbitrary arrest), and others; International Covenant on Civil Political Rights (ICCPR) Art. IV (non-derogable rights), VI (life), VII (torture), IX (arrest) and others; UN Code of Conduct for Law Enforcement Officials
Misuse of small arms by individuals or groups when the state fails to exercise due diligence	Killings motivated by ethnic, religious or social intolerance Terrorist acts Systematic criminal homicide Systematic domestic violence Systematic post-conflict violence Criminal trafficking in persons	UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials UDHR, Art. III (life), IV (slavery), V (torture), VII (non-discrimination), and others; ICCPR, Art. II (non-discrimination), VI (life), VII (torture), VIII (slavery), and others; 'Due diligence' standard, from the jurisprudence in the Human Rights Committee, Inter-American Court of Human Rights, European Court of Human Rights
Misuse of small arms by state agents in armed conflict	Genocide Grave breaches, including executing or torturing non-combatants and prisoners of war Attacking peacekeepers or humanitarian workers Committing atrocities against civilian populations Excessive or indiscriminate force Use of weapons causing superfluous injury or unnecessary suffering Use of child soldiers	Genocide Convention Geneva Conventions of 1949 and Additional Protocol I, grave breaches Geneva Conventions, common Article III Additional Protocol II to the Geneva Conventions, relating to the protection of victims of non-international armed conflict Rome Statute of the International Criminal Court Convention on the Rights of the Child, Art. 38 Optional Protocol on the involvement of children in armed conflict
Misuse by armed individuals and groups in armed conflict	Genocide, war crimes, crimes against humanity Attacking peacekeepers or humanitarian workers Use of child soldiers Hostage-taking Terrorism	Genocide Convention Rome Statute of the International Criminal Court Geneva Conventions, common Article III Additional Protocol II to the Geneva Conventions, relating to the protection of victims of non-international armed conflict Optional Protocol on the involvement of children in armed conflict, Art. IV
Arms transfers with knowledge that arms are likely to be used to commit serious violations of international human rights and humanitarian law	Violating arms embargoes Transfer to insurgent or criminal groups known to violate human rights Transfer to states known to violate human rights or humanitarian norms on a systematic basis	UN Charter, chapter VII Geneva Conventions, common Article I UN Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and Protection of their Independence and Sovereignty International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts

the Code of Conduct for Law Enforcement Officials, document A/34/46, a comprehensive code of ethics for police and other law enforcement personnel. The code is augmented by a very helpful commentary. Central to the code is the principle that the role of law enforcement officials is to serve and protect the rights of the community. Article III is the key tenet regarding the use of force, which states, 'Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.' The commentary to Article III explains that every effort should be made to avoid the use of firearms and that their use should only be allowed when a suspected offender offers armed resistance or jeopardizes the lives of others *and* less extreme measures are not sufficient.

The rules on firearm use were further defined in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, document A/CONF.144/28/Rev.1, which was adopted in 1990 by the Eighth UN Conference on Prevention of Crime and Treatment of Offenders. The Basic Principles reiterate the norm that had been set forth in the Code of Conduct, that law enforcement officials must not use force except when strictly necessary and to the minimum extent required under the circumstances. Basic Principles 9, 10 and 11 explain in detail the circumstances under which firearms should be carried and used by law enforcement. Basic Principle 9 states that 'intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.' Principle 10 provides that a clear and timely warning must be given unless it would be dangerous or pointless to do so. And Principle 11 sets forth requirements for internal guidelines necessary to oversee the appropriate use of firearms by law enforcement officials. Basic Principle 19 states that law enforcement officials must be trained and tested on the standards regarding the use of force and that officers who carry firearms should complete special training in their use.

In all suspected cases of extra-legal, arbitrary and summary executions, including those committed with small arms, states are required to conduct a thorough, prompt and impartial investigation in accordance with the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, document E/1989/89 (1989) (Extra-Legal Execution Principles). According to those Principles, the investigation shall determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide (Principle 9).

Abuses committed by armed individuals and groups

In addition to preventing violations committed by state agents, human rights law obligates states to use due diligence to prevent harm and to provide remedies for abuses caused by armed individuals and groups. There are more guns in the hands of private persons around the world than there are in the hands of state security forces.¹⁴ Private individuals account for about 55% of the total known global stockpile of firearms, a minimum of 305 million guns.¹⁵ While the link between accessibility of guns and levels of violence is not absolute, research shows that, in general, high rates of gun ownership are related to increases in the incidence of arms-related violence.¹⁶ Such violence includes both intentional and unintentional deaths and injuries. Guns end up in the hands of private persons by various means, including direct commercial sales, private transfers, theft, government sale or transfer, and failure to disarm in post-conflict situations. Tragic incidents of violence by armed individuals in various countries, particularly school killings, have drawn public attention to the problem. Unfortunately, these incidents represent only a small fraction of the deaths and injuries inflicted by individuals with easy access to guns.

Under international human rights law, the state can be held responsible for violations committed with small arms by private persons in two situations: when the armed individuals are operating under color of state authority; and when the state fails to act with due diligence to protect human rights.

Under international human rights law, the state can be held responsible for violations committed with small arms by private persons in two situations: when the armed individuals are operating under color of state authority; and when the state fails to act with due diligence to protect human rights.

In the first situation, armed individuals and groups, acting with the express or implicit permission of authorities, are themselves considered to be state agents. Under this theory, the state would be responsible, for example, for failing to prevent, investigate or prosecute vigilante groups or private militias that operate with the tacit or explicit approval of state agents to carry out ethnic or religious massacres, or 'social cleansing' of street children.

Under the second theory, states would also be held accountable for patterns of abuses committed by armed individuals or groups if a state failed to act with due diligence to prevent the abuses. Examples of failure to act with due diligence include the state's refusal to establish reasonable regulations regarding the private possession of small arms that are likely to be used in homicides, suicides and accidents; its failure to protect individuals from a pattern of domestic violence caused with small arms; and its failure to protect individuals from organized crimes include kidnapping and killing for ransom.

Under the due diligence analysis, states must take reasonable steps to prevent, investigate, punish and compensate with regard to human rights violations committed by armed individuals or groups. Due diligence 'results from more than mere negligence on the part of state officials... it consists of the reasonable measures of prevention that a well-administered government could be expected to exercise under similar circumstances.'¹⁷ Thus, under a due diligence standard, it is the omission on the part of the state, not the injurious act by the private actor, for which the state may be responsible.

Article III of the Universal Declaration of Human Rights and Article VI of the Civil and Political Covenant have been interpreted to require states to prevent acts of violence, including extra-legal, summary or arbitrary executions by private persons. States must design and implement adequate laws and regulations to protect the right to life. The Extra-Legal Execution Principles, Principle II, requires states 'to ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and firearms.' Under Principle IV, states must guarantee effective protection through judicial or other means to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, 'including those who receive death threats.' The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions is charged with enforcing state responsibility for the harm caused by private actors, including taking actions regarding 'deaths due to acts of omission on the part of the authorities, including mob killings. The Special Rapporteur may take action if the state fails to take positive measures of a preventive and protective nature necessary to ensure the right to life of any person under its jurisdiction.'¹⁸

The due diligence requirement has been interpreted by regional courts in the Americas and Europe. In the 1988 case, *Velásquez Rodríguez*, the Inter-American Court of Human Rights imposed liability on Honduras for its lack of due diligence in preventing unexplained 'disappearances' whether by the state or private actors.¹⁹ The European Court of Justice has also delineated the due diligence obligations of states under the European Convention on Human Rights.²⁰ In *Akkoç v. Turkey*,²¹ for instance, the European Court of Justice held that the state violated Article 2.1 of the European Convention on Human Rights²² when it failed to take reasonable measures to avert a real and immediate risk to life. The victim, Mr. Akkoç, was a Kurdish teacher who was shot and killed by unknown assailants. Mr. Akkoç had received death threats before he was killed and had reported those threats to the Turkish authorities. The Court interpreted Article 2.1 as involving a primary state duty to secure the right to life

by putting in place effective criminal law provisions to deter crimes. The Court found that the right to life under the European Convention imposed a positive obligation on authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.

Under the due diligence standard for determining state liability, therefore, a state may have an affirmative duty under the human rights instruments to ensure that small arms are not used by armed individuals and groups to commit human rights violations. Obviously the measures that a state might take to meet this obligation will be constrained by democratic principles and practical considerations of resources, however, sufficient measures, akin in scope to those required for the effective investigation of an individual's death, are not an unreasonable burden and are arguably required under international law.

Humanitarian law violations by state agents and by armed groups

International humanitarian law defines the rights and duties of belligerents and provides safeguards for non-combatants. The cardinal principles of international humanitarian law, which are relevant to small arms, include:

- the protection of civilian populations and civilian objects, requiring that a distinction be made between combatants and non-combatants (weapons that cannot distinguish between combatants and non-combatants are illegal); and
- the prohibition of superfluous injury and unnecessary suffering to combatants.²³

In addition to those two principles, international humanitarian law prohibits grave breaches to the Geneva Conventions including wilful killing, torture and inhumane treatment, unlawful deportation or transfer of protected persons, and extensive destruction or appropriation of property not justified by military necessity. These norms have been reaffirmed in the Rome Statute of the International Criminal Court,²⁴ and individuals—whether state agents or not—who use small arms to commit genocide, war crimes or crimes against humanity may be subject to prosecution under the provisions of the Rome Statute in national or international courts.

In the course of international and internal armed conflicts, states, through their security forces and other armed agents, have been documented to carry out grave violations of humanitarian law with small arms. Those violations include executions of non-combatants and prisoners of war, atrocities against civilian populations, forcible relocations of civilian populations, use of children in direct conflict, use of weapons that cause superfluous injury or unnecessary suffering, and use of excessive and indiscriminate force such as summary executions of captured combatants.

Most armed conflict now occurs within, rather than across, the borders of states. The nature of internal armed conflict today is characterized by the involvement of a wide range of actors including rebel and paramilitary groups, and criminal organizations—all of whom use small arms as their weapons of choice. Armed groups are documented to commit grave violations with small arms and light weapons including genocide, mass killings, systematic rape, kidnapping, disappearances, use of children as soldiers, hostage-taking, forced transfer of populations and terrorist acts.

The accountability and obligations of armed opposition groups with regard to violations of international human rights and humanitarian law is a legal area that is still in an early phase of development. At a minimum, belligerent groups can be bound by the provisions of the Geneva Conventions and Additional Protocol II, relating to the protection of victims of non-international armed conflict.²⁵

Prohibitions on transfer of small arms used to commit violations

The international community has expressed its concern regarding the 'excessive accumulation and uncontrolled spread' of small arms and light weapons which 'have a wide range of humanitarian and socio-economic consequences and pose a serious threat to peace, reconciliation, safety, security, stability and sustainable development.'²⁶ Despite these expressed concerns, however, many states are actively involved in the transfer of small arms to human rights violators. The Security Council has imposed arms embargoes under Chapter VII of the Charter of the United Nations approximately fifteen times since 1965. Under these embargoes, states are prohibited from transferring weapons to the embargoed state and they must also take the necessary measures to implement, apply and enforce the embargo internally to make it operative against private actors within their jurisdictions. As a measure of the seriousness with which the Security Council considers its embargoes, it has called upon states to adopt legislation making the violation of arms embargoes a criminal offence. Despite these efforts, violations against these embargoes are well documented and the Security Council has recently begun to try to improve methods of supervision in an ad hoc manner.²⁷

The ongoing work of the Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, held in New York in July 2001, is concerned with the security, humanitarian and economic consequences associated with the illicit trade in small arms as well as their excessive and destabilizing accumulation. The Programme of Action addressed the issue of transfer in general terms in Section II, paragraph 11, in which states agree to undertake measures to assess applications for export authorizations according to strict national regulations that 'are consistent with the existing responsibilities of states under relevant international law.' Under this provision, states should take into account as part of their export decisions, obligations under international human rights and humanitarian law.

Humanitarian law speaks directly to these export considerations. Common Article I of the Geneva Conventions, for instance, obligates states parties 'to respect and ensure respect' of humanitarian norms guaranteed by the Conventions. This commitment, to respect and ensure respect, has been highlighted by the International Committee of the Red Cross and other scholarly commentators to bar states from knowingly providing small arms to situations where serious violations of international humanitarian law occur or are likely to occur.

The International Conference of the Red Cross and Red Crescent adopted as part of its Agenda for Humanitarian Action in December 2003 Goal 2.3, which commits the conference 'to reduce the human suffering resulting from the uncontrolled availability and misuse of weapons.' To achieve this goal, the Conference agreed that 'states should make respect for international humanitarian law one of the fundamental criteria on which arms transfer decisions are assessed.'

When establishing export control measures, states are bound under human rights and humanitarian law not to participate in internationally wrongful acts, including the serious human rights violations of the recipient state.

When establishing export control measures, states are bound under human rights and humanitarian law not to participate in internationally wrongful acts, including the serious human rights violations of the recipient state. State responsibility for assistance in the commission of an internationally wrongful act was recognized by the International Law Commission (ILC) in 2001. The ILC's Draft Articles on Responsibility of States for Internationally Wrongful Acts, Article 16, states that: 'A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) That State does so with knowledge of the circumstances of the internationally wrongful act; and (b) The act would be internationally wrongful if committed by that State.'²⁸ Under the ILC's Draft Articles, serious violations of human rights, especially those constituting a consistent pattern of gross and reliably attested human rights violations are internationally wrongful acts that should prohibit arms exports to that state.

Conclusion

Small arms are the tools used to violate human rights. Existing legal obligations provide some important guidelines regarding state responsibility for protecting people from the adverse consequences of these lethal weapons. States must go further in acknowledging the linkage between control of small arms and protection of human rights, and in adopting concrete measures to prevent misuse by state agents, misuse by armed individuals and groups and transfer to human rights violators.

Notes

1. Small Arms Survey, 2002, *Small Arms Survey 2002: Counting the Human Cost*, Oxford University Press, p. 63. The figure does not include the estimated 230–245 million stockpiled landmines (United Nations High Commissioner for Refugees, 2000, *The State of the World's Refugees*, Oxford, Oxford University Press; International Campaign to Ban Landmines, 2002, *Landmine Monitor Report 2002: Toward a Mine-Free World*, Human Rights Watch). An alternative estimate of total global firearms is 594 million (G. Fetter, 2000, *Ordnance and Munitions Forecast: September*, Newtown, Forecast International). These figures vary depending upon the definition of small arms used in the estimate.
2. For a fuller examination of these issues, see B. Frey, *The Question of the Trade, Carrying and Use of Small Arms and Light Weapons in the Context of Human Rights and Humanitarian Norms*, United Nations, Economic and Social Council document E/CN.4/Sub.2/2002/39 of 30 May 2002, and Barbara Frey, *Preliminary Report on the Prevention of Human Rights Violations Committed with Small Arms and Light Weapons*, United Nations, Economic and Social Council document E/CN.4/Sub.2/2003/29 of 25 June 2003.
3. Small Arms Survey, 2001, *Small Arms Survey 2001: Profiling the Problem*, Oxford University Press, p. 59. The figure of 500,000 deaths from small arms includes approximately 300,000 killed in armed conflict and 200,000 killed in peacetime each year. A recent World Health Organization (WHO) study of fifty-two high- and middle-income countries concluded that more than 115,000 people died in those countries from firearm injuries in a one-year period in the mid-1990s, including 79,000 homicides, 29,000 suicides and 7,000 accidents or undetermined. WHO, 2001, *Small Arms and Global Health*, Geneva, WHO.
4. United Nations General Assembly resolution 217A (III), United Nations document A/810 at 71 (1948).
5. *International Covenant on Civil and Political Rights*, United Nations General Assembly resolution 2200 (XXI), United Nations document A/6316 (1966), entered into force 23 March 1976.
6. Grave breaches have been defined as the most egregious violations against protected persons in wartime, as set forth in the four Geneva Conventions of 1949 and Additional Protocol I, relating to the Protection of Victims of International Armed Conflicts. According to the ICRC, the assignment of certain grave violations as grave breaches is an articulation of those violations of the Conventions and the Protocol which, 'were they to remain unpunished, would signify the degradation of human values and the regression of the entire concept of humanity.' ICRC, *Basic Rules of the Geneva Conventions and their Additional Protocols*, < www.icrc.org/Web/Eng/siteeng0.nsf/html/57JMJR?OpenDocument > (accessed 6 February 2004).
7. See, for example, Amnesty International, 2001, *Human Rights Abuses with Small Arms: Illustrative cases from Amnesty International Reports 2000–01*, London. This report summarized case reports from over ninety countries in which law enforcement officials used small arms to violate international human rights law.
8. There are still an estimated 15,000–20,000 new landmine casualties each year. International Campaign to Ban Landmines, 2003, *Landmine Monitor Report 2003*, < www.icbl.org/lm/2003/findings.html > (accessed 6 February 2004).
9. See, generally, R. Muggah and E. Berman, 2001, *Humanitarianism Under Threat: The Humanitarian Impacts of Small Arms and Light Weapons*, Geneva, Small Arms Survey.
10. Oxfam, 2003, *The Impact of Small Arms on Health, Human Rights and Development in Medellin*, Boston, Oxfam, January.
11. The two Covenants are the *International Covenant on Civil and Political Rights*, *op. cit.*, and the *International Covenant on Economic, Social and Cultural Rights*, General Assembly resolution 2200 (XXI), United Nations document A/6316 (1966), entered into force 3 January 1976.
12. See, for example, 24 February 2003 statement of Ms. Asma Jahangir, United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, expressing deep concern at excessive use of government force

- resulting in more than 100 deaths in one month by Thai security forces engaged in a crackdown on the drug trade (United Nations press release of 24 February 2003, at <www.unhchr.ch/news>). She also reported that on 11 May 2003 a group of Rangers, a unit under the direct control of the Pakistani military, shot and killed an individual in a crowd demonstrating against the Rangers' excessive use of force on previous occasions (United Nations press release of 15 May 2003, at <www.unhchr.ch/news>).
13. The United Nations High Commissioner for Human Rights expressed grave concern in February 2003 over 'death squad' activities being carried out by the Government of Côte d'Ivoire aimed at inciting xenophobia and war (United Nations press release of 7 February 2003, at <www.unhchr.ch/news>); see also Human Rights Watch, 2002, *Playing with Fire: Weapons Proliferation, Political Violence, and Human Rights in Kenya*, New York, Human Rights Watch, May.
 14. Small Arms Survey, 2001, *op. cit.*, pp. 88–89.
 15. *Idem*. There are an estimated 234 million civilian firearms in the United States alone. Small Arms Survey, 2003, *op. cit.*, p. 61.
 16. See generally, Small Arms Survey, 2001, *op. cit.*, pp. 202–203.
 17. D.L. Shelton, 1990, Private Violence, Public Wrongs, and the Responsibility of States, *Fordham International Law Journal*, vol. 13, no. 1, pp. 21–22.
 18. Report of the Special Rapporteur, Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 2002/36, E/CN.4/2003/3 at para. 8(h).
 19. *Velásquez Rodríguez Case*, Judgement of 29 July 1988, para. 172, Inter-American Court of Human Rights, at <www.corteidh.or.cr/juris_ing/index.html>.
 20. *Case of X and Y v. the Netherlands*, ¶23, Application no. 8978/80, Strasbourg, 27 February 1985, <hudoc.echr.coe.int>; *Case of Plattform "Ärzte für das Leben"*, ¶32, Application no. 10126/82, Strasbourg, 25 May 1988, at <hudoc.echr.coe.int>.
 21. Application nos. 22947/93 and 22948/93, para. 97, Strasbourg, 10 October 2000.
 22. Article 2.1 of the European Convention on Human Rights provides: 'Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.'
 23. International Court of Justice, 1996, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996.
 24. United Nations document A/CONE183/9 (1998), entered into force 1 July 2002.
 25. Entered into force 7 December 1978.
 26. United Nations, 2001, *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, United Nations document A/CONE.192/15, Section I, para. 2.
 27. See, for example, United Nations, Security Council, *Report of the Panel of Experts on Violations of Security Council Sanctions against UNITA* (Fowler Report), Security Council document S/2000/203 of 10 March 2000, annex.
 28. International Law Commission, State responsibility—Titles and texts of the draft articles on Responsibility of States for internationally wrongful acts adopted by the Drafting Committee on second reading document, document A/CN.4/L.602/Rev.1 of 26 July 2001.

Human rights monitoring and armed conflict: challenges for the UN

Michael O'FLAHERTY

Issues of human rights and armed conflict interact in multiple ways.¹ Conflict frequently has its origins in patterns of human rights abuse—such as the systemic oppression of minorities or of other vulnerable groups. With conflict underway, the assault on human rights is evident. Firstly there is the direct targeting of civilians. Account needs also to be taken of the impact on people of the destruction of infrastructure and of a slide into humanitarian crisis. Efforts to resolve conflict can also cause the denial of human rights. Peace agreements may trade off human rights protection for some other goal, such as when they institutionalize arrangements that either reflect existing patterns of discrimination or create new ones. Peace processes can also exacerbate victimization by failing to address past patterns of abuse, above all when they fail to tackle issues of justice and of redress for victims. Conversely, the value of peace processes integrating attention to human rights is increasingly acknowledged—with the development of strong human rights institutions and the general promotion of a 'human rights culture' perceived to be central to the consolidation of peace.²

In recognition of the interaction of human rights and armed conflict, the United Nations (UN) increasingly inserts human rights programmes within the civilian components of its peace-related field missions.³ In March 2004 the UN Department of Peacekeeping Operations (DPKO) and the Department of Political Affairs (DPA) were either managing or coordinating the planning of fourteen such missions. The Office of the High Commissioner for Human Rights (OHCHR), as well as contributing to the guidance of these missions, was, at the same date, operating its own civilian peace-related missions in six countries. OHCHR has also placed human rights advisors on UN country teams in such war-affected countries as Nepal and Sri Lanka and supports the establishment of post peace mission human rights programmes in Angola, and soon in Guatemala and East Timor. Meanwhile some of the UN agencies integrate human rights approaches in their conflict-related protection and programming activities.⁴

Human Rights and Peace Missions 1991–2004

The UN's involvement in human rights field operations had its origins in the surge of optimism regarding its capacity as a peace-builder, which emerged with the end of the Cold War. The first specifically human rights mandated mission, established in 1991, was tasked with monitoring the

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implementation of the San Jose peace agreement in El Salvador (ONUSAL).⁵ In 1992 the UN established a mission to oversee the political transition in Cambodia (UNTAC), again with a human rights component. The following year saw the establishment, jointly by the UN and the Organization of American States (OAS), of the first exclusively human rights-focused mission, in Haiti (MICIVIH). Another dedicated human rights mission was established by the UN for Guatemala in 1994 (MINUGUA).

These first missions were realized within the framework of the UN's political programming. They were established under the authority of or otherwise in close consultations with the Security Council or, less frequently, the General Assembly, headquartered in New York and without the involvement of the Organization's human rights component, then called the Centre for Human Rights, located in Geneva. However, the Centre was itself starting to undertake the deployment of human rights monitors in the former Yugoslavia in support of the Commission on Human Rights' Special Rapporteur for that region⁶ and, in 1993, had assumed responsibility to take over the UN human rights programme in Cambodia upon the withdrawal of the UN Transitional Authority. In 1994, under the guidance of the newly appointed first UN High Commissioner for Human Rights, the Centre established a mission in response to the genocide in Rwanda.⁷ In 1995 the Centre deployed human rights monitors in Burundi. These missions were launched notwithstanding the Centre's lack of relevant experience and infrastructure and were funded by voluntary contributions rather than, as was the case for the New York-led operations, from the regular UN budget.⁸

By the mid-1990s⁹ commentators were drawing attention to a number of concerns regarding the development of human rights field operations. These included: the need to ensure that human rights

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be addressed in the design and operation of all New York-led peace missions rather than the handful that have been mentioned here; how best to involve the Geneva-based High Commissioner for Human Rights and the Centre in the guidance of these missions; the unsustainability of the Geneva-led voluntarily funded operations; how best to balance the monitoring functions of such missions with the delivery of capacity-building technical cooperation; and the extent to which regional organizations could or would mount human rights field operations.

These concerns came to be addressed within the context of a general move to operationalize the notion of human rights as a crosscutting responsibility in all the work areas of the United Nations—a concept that was articulated by the Secretary-General in his 1997 UN Reform Programme.¹⁰ In the first place, the Centre for Human Rights (from 1998 renamed the Office of the High Commissioner for Human Rights—OHCHR) adopted a policy of seeking, as far as possible, to insert human rights components in New York-led missions rather than itself mounting entire operations. New York departments, for their part, grew increasingly willing to insert human rights components as integral parts of peacekeeping and, to a lesser extent, peacemaking operations. It was in this context that human rights programmes were located in UN missions such as those for Georgia (UNOMIG),¹¹ Liberia (UNOMIL), Angola (UNAVEM III and MONUA), Sierra Leone (UNOMSIL and UNAMSIL), Guinea-Bissau (UNOGBIS), Democratic Republic of Congo (MONUC), and Ethiopia and Eritrea (UNMEE). Those UN missions that assumed transitional authority, such as in Kosovo (UNMIK) and East Timor (UNTAET), also included human rights components.

Within a number of missions components were also established outside the human rights programme but with a clear overlap of interest—such as for promotion of rule of law, protection of the rights of the child, and addressing gender considerations. Civilian police components also assumed clear human rights-related responsibilities—as illustrated by the establishment of a policing mission in post-conflict Bosnia and Herzegovina with a predominantly human rights-related mandate.¹²

During the period there continued to be cases of OHCHR establishing its own missions, such as in Colombia, Democratic Republic of Congo and Burundi. These missions have their origins in such considerations as specific initiatives of the UN Commission on Human Rights or of intended work areas, like human rights technical cooperation, which were not then seen as related to the competencies of the New York departments or for which OHCHR project funding would be required (see further below). Sometimes OHCHR programmes were established alongside the human rights operations of peace missions, as in the case of the OHCHR programme that supports the truth and reconciliation commission in Sierra Leone.

The development of a doctrine and methodology regarding human rights field operations received a stimulus in 2000 with publication of the Report of the Panel on United Nations Peace Operations¹³ (the 'Brahimi Report'), which undertook a thorough review of the UN's peace and security activities. The report emphasized the need for mission-wide team approaches to upholding the rule of law and respect for human rights.¹⁴ It also described the human rights component of a peace operation as 'indeed critical to effective peace-building'¹⁵ and observed that the operations should engage in both human rights monitoring and capacity-building. Management models were proposed whereby OHCHR would be a participant throughout the design and oversight of future UN peace operations.¹⁶ The publication of the report coincided with the finalization of a Memorandum of Understanding (MOU) between OHCHR and DPKO, which established a formal relationship between them for the design and operation of peacekeeping missions. There is no such MOU with DPA—apparently due to the desire of the latter to maintain the flexibility of the currently informal arrangements.

The report's proposals were first tested in 2002, with the design, under Brahimi's leadership, of a new UN mission in Afghanistan (UNAMA).¹⁷ In this case, OHCHR supported a mission design that 'mainstreamed' the human rights monitoring function and ensured a human rights capacity-building programme by means of a project to be funded by OHCHR. This design gave cause for comment¹⁸ because the mainstreaming of the monitoring function resulted in the absence from the mission of a dedicated human rights monitoring unit. Subsequent missions, such as those for Iraq (UNAMI),¹⁹ Liberia (UNMIL) and Côte d'Ivoire (UNOCI), have reverted to a model of including specific human rights units within the missions,²⁰ with the Côte d'Ivoire mission also innovatively giving access to the UN regular budget for the undertaking of capacity-building activities.

The human rights mainstreaming process received further impetus with the 2002 report of the Secretary-General, 'Strengthening of the United Nations: An Agenda for Further Change'.²¹ In this context, OHCHR has described its own field role as being primarily that of supporting human rights actions of other parts of the UN system and it reaffirmed its commitment to integrated post-Brahimi peace missions.²² It also commenced the deployment of human rights experts to serve as advisers within UN country teams, including in such conflict-affected countries as Sri Lanka and Nepal. In 2003, as a further development of this idea, a UN country-team level human rights capacity-building operation was established in Angola following the departure of the peace mission—with similar operations likely to commence soon in East Timor and Guatemala.²³

A survey of mainstreamed UN approaches to the human rights needs of conflict and post-conflict societies must also take account of the manner in which a number of UN agencies, including UNICEF, UNDP and UNHCR have already gone some distance in integrating human rights approaches in their work. These increasingly system-wide developments demand new partnership configurations and present other challenges for human rights field operations.

Beyond the context of UN operations there have been some regional inter-governmental initiatives: already in 1993 with OAS involvement in Haiti and, more recently in Europe where the Organization for Security and Co-operation in Europe (OSCE) deployed human rights missions in Bosnia and Herzegovina, Kosovo and elsewhere, sometimes in collaboration with the UN and other international

organizations. Since then there has been little further development at the regional level, other than the inauguration of dedicated training programmes by such regional organizations as the European Union and OSCE. A number of peace missions have also been assembled by specific clusters of interested states.²⁴ Similarly, a number of NGO-led peace missions have also been deployed.²⁵ These operations, while not tending to have explicit human rights mandates, do have objectives such as civilian protection that are consistent therewith.

The functions of the human rights components of peace missions

All of the functions of civilian human rights field operations are closely related to each other. One can however distinguish specific work areas, which may, depending on specific mandates, be found in the human rights programmes of peace missions: monitoring, reporting, advocacy and intervention, capacity-building, supporting rights-related work of humanitarian and development actors, participation in peace processes and support to programmes of transitional justice, and human rights sensitization within UN operations. Another function, participation in UN governance of transitional territories, much discussed but rarely applicable, is not explored here.

MONITORING

Monitoring provides the basis for all other human rights work of a mission since programming of any kind needs to be based on reliable information. Monitoring may also contain within it a preventive function in that the very presence of monitors can deter human rights violations.²⁶ The implementation of a monitoring mandate can prove extremely challenging. In terms of the nature of the mandate such issues arise as the identification of whom to monitor. Should both government and non-state armed groups be monitored? How can monitoring be even-handed when the mission has varying levels of access across a given country? Should peacekeepers themselves be subject to monitoring? Which rights should be monitored—what is the role of a mission in terms of the monitoring of economic, social and cultural rights? When and how should it monitor the implementation of international humanitarian law? How should the monitoring be undertaken—should it seek to establish personal responsibility for actions and collect court-ready evidence or instead simply map out patterns of human rights abuse? When is it appropriate to monitor individual cases—are these cases the actual object of the monitoring exercise or are they instead intended to serve as illustrations of broader phenomena—or is this even a valid distinction? When should past situations be monitored/recorded and when should the focus be on contemporary abuses?

Turning to monitoring capacities, the issue arises of how to monitor a situation with the typically modest human rights team of a mission. What can be done when the mission lacks the requisite skills to monitor certain phenomena—for instance economic rights, sexual abuse or the rights of the child? How can monitoring be done in a manner that does not expose victims, witnesses or monitors to harm, or jeopardize programmes and operations?

Missions, on a case-by-case basis, seek to respond to questions such as these. They are hampered by a lack of agreed or shared doctrine. OHCHR did produce a human rights monitoring manual in 2001 but this, while containing much that is of value, does not chart a route through many of the complex challenges that a mission will confront in practice.²⁷

REPORTING

Good information is useless unless it gets to where it is needed. The UN has had difficulties in addressing this truism. There is still not a standard model for human rights reporting and instead each mission adopts its own style and approach²⁸—not always a bad thing but inevitably at odds with the development of system-wide methodologies. Turning to the transmittal of reports, many missions have encountered the problem that insufficient human rights information or excessively redacted information is transmitted to headquarters. The identity of recipients of internal information has caused some controversy and the practice of copying reports to the High Commissioner for Human Rights, now more or less in place, took a number of years to evolve. There remains uncertainty regarding when and how to share internal reports with UN Member States, including at the level of the Security Council. The issue also arises at the local level in terms of what information to share with the government and with diplomats and which parts of government and which diplomats to share it with. Regarding public reporting, there is the question of how much data to put in the public domain, taking account not least of such prosaic considerations as the current restrictions on the length of UN reports.²⁹ More importantly, the UN still lacks the sort of public information programme that can ensure that reports generate timely media attention. Instead it is often the case that NGOs are credited with the exposure of human rights situations that the UN may have already been reporting on for some time—not in itself a problem but nevertheless diminishing perceptions of the UN's engagement with these situations.

ADVOCACY AND INTERVENTION

Forms of advocacy and intervention have always been integral to UN human rights operations and have taken multiple forms, from quiet diplomacy to forceful condemnations. They have been undertaken at local, national and international levels. They have been targeted directly to perpetrators and also to other actors who can bring pressure to bear. Here again, there remains a lack of systems and methodologies. It is rare, for instance, that a mission will have intervened or done advocacy on the basis of a carefully worked out power and vulnerability analysis of a given location/situation. Sometimes intervention may be directed to quick resolution in a manner that undermines long-term capacities—such as when judicial solutions are bypassed or when military actors are asked to deal with situations best left to the police. And the issue again arises of how to deal with individual cases—how can the mission be both compassionate in the face of individual suffering and retain the capacity and resources to address all parts of its mandate? Within a mission it will not always be clear who should undertake a specific intervention—whether it should be the mission head, the human rights component, the police or military elements or otherwise. It may even be the case that multiple or inconsistent interventions may be undertaken by mission elements unfamiliar with each other's initiatives. Sometimes a mission will want to involve another actor in an advocacy/intervention. This will be the case, for instance, when it draws situations to the attention of UN Special Rapporteurs or treaty bodies³⁰—a practice that has seen a welcome growth in recent years—or when it encourages the direct engagement of the UN Secretary-General.³¹ But it is not always clear when and how to deal with actors outside the mission—when, for instance, is it appropriate to refer matters to national human rights institutions and to NGOs? Finally, the UN, like many NGOs, does not have systems in place to specifically evaluate the effectiveness of its advocacy and intervention.

Sometimes intervention may be directed to quick resolution in a manner that undermines long-term capacities—such as when judicial solutions are bypassed or when military actors are asked to deal with situations best left to the police.

CAPACITY-BUILDING

As has been already noted, commentators have drawn attention to the need for the UN to undertake human rights capacity-building in conjunction with its monitoring and reporting activities. A number of hurdles have had to and are still being negotiated. One of these has been the view that it is not possible to undertake capacity-building in times of conflict. This perception is at odds with experience

Elements of civil society may remain vigorous even in moments of turmoil and be keen to receive training and other support.

and overlooks the manner in which elements of civil society may remain vigorous even in moments of turmoil and be keen to receive training and other support. The perception also overlooks the many instances of programming in such contexts. A converse problem is the perception that in post-conflict scenarios the monitoring, reporting and advocacy/intervention functions can be terminated and be replaced by exclusively technical cooperation activities—it may be that this understanding is informing the current UN tendency, described above, to address the human rights needs of certain conflict and post-conflict situations by deployment of advisors within UN country teams.³²

Capacity-building has been hampered by the lack of resources within peace missions funded by the regular UN budget. Instead, the missions' human rights programmes have had either to rely on OHCHR to devise voluntarily funded projects or had themselves to enter into complicated and fragile relationships with local donors and service providers.³³ This problem is now being addressed and will hopefully soon be a thing of the past.

A further challenge is that of the relationship between human rights capacity-building and broader development and humanitarian programming.³⁴ Until recently the former was considered to be somewhat distinct, focusing on a limited range of activities such as human rights education and development of standard operating procedures for key professions and sectors including police, lawyers, judiciary and NGOs. This is no longer tenable in light of new perceptions of human rights as cross-cutting all humanitarian and development sectors and of the related impossibility of viewing 'human rights activities' as discrete and divisible from other programming areas. There clearly remains a role for the specializations that the human rights programmes can bring to the humanitarian and development tables—but within the context of new and broad partnerships.

ENGAGING WITH HUMANITARIAN AND DEVELOPMENT PARTNERS

The theoretical links between human rights and humanitarian and development programming have not yet been matched by widespread patterns of partnership between peace mission human rights teams and their counterparts in the UN agencies and elsewhere. Instead there remains considerable mutual mistrust and a lack of understanding of the tangible forms that the partnerships might take.³⁵ Humanitarian and development actors occasionally fear that engagement with the human rights actors might bring them into conflict with local authorities and have a negative impact for their programmes. They sometimes also fail to see the added value that human rights bring to their work. The human rights community frequently lacks an understanding of humanitarian and development action or of the links with their own work. Both communities have for a long time been without tools to help them in bridging the sectors. Fortunately this situation is beginning to change. The experience in a number of countries of partnerships between peace missions and UN agencies have been documented³⁶ and tools are becoming available.³⁷

SUPPORT TO PEACE PROCESSES AND FOR TRANSITIONAL JUSTICE

On a broad level of analysis, everything that the human rights components of peace missions do may be seen as contributing to conflict resolution and the establishment of sustainable peace. They have also assumed more specific peace-related tasks, such as provision of advice to peace negotiations and oversight of implementation of elements of peace settlements and agreements. Practice has developed in a somewhat *ad hoc* manner. Broad guidance to UN peace negotiators regarding their human rights-related responsibilities³⁸ has not always been matched by the presence in negotiation teams of human rights specialists. Peace agreements themselves sometimes address and sometimes ignore issues of human rights. Those that address human rights sometimes do so in a controversial or eccentric manner.³⁹ The agreements in certain cases invest human rights actors, including in peace missions, with specific monitoring and other roles—they do not always identify where the resources and capacities will come from to carry out these roles. In still other cases the human rights actors assume such implementation and supervisory roles in situations where the peace agreements have failed to address the issue.⁴⁰

In one area of peace-related activity, that of transitional justice, considerable progress is being made in clarifying doctrine and practice to guide human rights missions.⁴¹ The principle now seems to be established that the UN will not countenance impunity for perpetrators of war crimes and crimes against humanity and a range of tools and lessons-learned are emerging to guide UN action across the spectrum of transitional justice. Much has been learned from the UN experience in the former Yugoslavia, Rwanda, East Timor and Sierra Leone.⁴² OHCHR is preparing a set of guidelines intended to assist field personnel address such issues as the relationship between judicial processes and non-judicial accountability and on how to address the needs and rights of victims.⁴³ But there is still a long way to go. The UN is not consistent in its approach—there are situations, such as in Afghanistan, where it has been exceptionally timid in addressing transitional justice.⁴⁴ There remain elements of doctrine and methodology that are unclear—such as how to ensure that processes are locally owned and not seen as international impositions. There is the reality that a sincere *de jure* rejection of impunity may only very rarely convert into a *de facto* prosecution of all key perpetrators. Difficult issues of the relationship between judicial and non-judicial procedures remain to be resolved.⁴⁵ There is uncertainty regarding the nature of justice for victims or at least regarding how to ensure it.⁴⁶

IN-MISSION SENSITIZATION

The role of the human rights unit of a peace mission in sensitizing other mission personnel regarding human rights is one of those functions that is generally assumed but only occasionally reflected specifically in a mission mandate. It tends to have a dual nature. In the first place it concerns the raising of awareness throughout a mission of the human rights implications of mission activities, as well as concerning the standards that mission personnel should abide by—no small task given the nature of peace operations and the scandals reported through the 1990s.⁴⁷ General issues of human rights tend to be addressed as well as such specific topics as child protection and the avoidance of any form of sexual abuse.⁴⁸ Secondly, human rights sensitization is often undertaken with a view to building monitoring, reporting and other partnerships—very important in the context of missions that, typically, will have considerably more police and military observer personnel than human rights officers. In-mission sensitization has taken on new significance in light of the Brahimi Report's emphasis on the mission-wide responsibility to promote human rights, and resources have been invested in the development of manuals and training materials for the various mission components. For instance, there is currently an initiative to create a training module on human rights for senior mission management.

The UN has also yet to identify how best to assist military peace operations that are not under its direct authority, such as in the case of deployment of a regional peacekeeping force side-by-side with a UN civilian mission, as was the case in Sierra Leone until 1999.

Such achievements notwithstanding, challenges remain as to how best to train military and police personnel who rotate in and out of missions very frequently and how to achieve the balance between training undertaken before and during deployment. The UN has also yet to identify how best to assist military peace operations that are not under its direct authority, such as in the case of deployment of a regional peacekeeping force side-by-side with a UN civilian mission, as was the case in Sierra Leone until 1999.

Challenges confronting human rights field operations

Much has been achieved in the short history of human rights programming within peace missions. Dozens of UN and regional operations have been deployed and have been administered by many hundreds of dedicated personnel. These programmes have evolved into multifaceted operations that more or less keep pace with changing perceptions of the nature of conflict and of the relevance of international human rights law for its resolution. Notwithstanding these achievements there are a number of challenges that require attention.⁴⁹

The first challenge is that of the professionalization of the sector through the clarification of overarching principles, goals and methods—to describe the core ‘doctrine’ of human rights fieldwork.⁵⁰ The present situation is very far from this point. Yes there is the underlying body of international human rights law. Certainly there are some components of an operational doctrine in place—such as those provided by the Brahimi Report. There are even a few helpful ‘best practice’ reviews of certain peace missions⁵¹ and a number of discrete methodological tools have been devised. But there remain vast gaps—entire work areas where no guidance is available and the practitioner is obliged to proceed in a trial and error process of experimentation. As a corollary to the lack of guidance there is a dearth of performance indicators whereby fieldwork can be properly evaluated.⁵²

That we should be so little advanced in terms of the articulation of a doctrine is perhaps not surprising given the youth of the sector—good practice can only emerge from a phase of case-specific experimentation. Such a phase though will prove to be wasteful and harmful if it is not matched by an ongoing and system-wide assessment of good and bad practice whereby overarching principles may emerge. It is suggested therefore that it is high time for existing achievements and efforts to be placed in the context of a much more ambitious scheme—in essence to map out a new profession and, in so doing, to identify and describe the human rights professional, clarify the human rights role of other actors in the context of mainstreamed approaches to human rights work, and propose models for the forms of partnership required. This exercise would require to address UN practice, the experience of regional human rights operations and that of NGOs and others as relevant. And it needs to be an ongoing process that takes account of changing circumstances and undertakes continuous review of whatever tools and guidance may be produced.

The process of clarification of core doctrine must be matched by comprehensive professional training programmes of a type conducive to the maintenance of a professional consistency and coherence. Here again it is not that there are not already a number of fine initiatives—many institutions worldwide have established relevant training programmes in recent years and the UN itself has taken impressive strides⁵³—however these programmes and the related training materials have been developed in response to specific situations and demands and without the benefit of the single organizing framework that the process of professionalization would provide.

Professionalization and harmonized training of the sector will not be enough. These have to be matched by consistent application in practice of human rights approaches regardless of the nature or the location of a given armed conflict. The survey of peace missions contained in this paper illustrates the extent to which the present reality falls far below this goal. While it is beyond the scope of this paper to essay political strategies to universalize human rights approaches, it is possible to point towards a number of concrete and achievable actions. In the first place, the UN Security Council can ensure that all of its peace missions contain, as a matter of course, human rights components and that these be adequately supported and resourced. Secondly, in the absence of peace missions, the UN needs to identify ways in which to place or support the placement of sturdy human rights programmes in conflict-affected countries with mandates to undertake monitoring, reporting, capacity-building, advocacy/intervention and other activities. The present UN approach of inserting small human rights programmes within the UN country teams should be re-examined. Thirdly, the increasing number of regional organizations, states and non-governmental bodies that engage in peace operations of one kind or the other can learn from and build on the experience of past missions by themselves also ensuring that human rights issues are comprehensively addressed in their initiatives. Here too the UN has a clear leadership and mentoring role.

Conclusion: the role of the High Commissioner for Human Rights

The addressing of the challenges identified in this paper will require action from myriad actors at the political, technical and educational levels, nationally, regionally and internationally. However, it will only succeed if it is strongly and coherently led in a manner that integrates attention to the political/policy and the technical/programmatic aspects.

The role of the UN High Commissioner for Human Rights is compelling. The High Commissioner is vested with the overarching responsibility to promote human rights approaches across the UN system and to be a voice of principle and guidance on human rights for all parts of the international community. Only the High Commissioner has the status, authority and comprehensive mandate to articulate the vision and guide the action that will be required.

Needless to say, the High Commissioner's task would be a daunting one. It would have to be undertaken as a core priority of OHCHR, at the expense of whatever other issues are competing for attention. It would require ongoing and well-informed policy-level dialogue with the UN Security Council, the Secretary-General, relevant UN departments and agencies as well as with the leadership of other international and regional organizations, governmental and non-governmental. It would demand frequent intervention with governments of war-affected countries and with other states. There would be the need for rounds of international consultation and reflection. At the technical level it would necessitate augmentation of OHCHR's existing specialist human resources at the headquarters level, as well as the building of new academic, professional and other partnerships. Current operational policy would require to be adjusted: the task as envisaged in this paper would go beyond just catalysing and supporting partners. It would, for instance, on occasion, require OHCHR to mount its own human rights operations in situations where the necessary sturdy response will not be undertaken by any other actor—with all that this entails in terms of OHCHR's operational capacity. There would be need to reallocate existing resources and identify new funding. And all of these efforts of the High Commissioner and OHCHR would have to be maintained over a sufficiently lengthy period to allow for the putting in place of sustainable systems.

At the time of writing of this paper Justice Louise Arbour has been appointed to the post of High Commissioner. As she prepares to assume this office, Justice Arbour has the opportunity to assess and

review the priorities and the operations of OHCHR. In so doing she is presented with an opportunity to assert the leadership role described in this paper. The present writer hopes that she may take on this challenge—the investment is significant but so too are the opportunities.

Notes

1. See B. Ramcharan, 2004, Human Rights and Conflict Resolution, *Human Rights Law Review*, Summer; D. Carment and A. Schnabel, 2003, *Conflict Prevention: Path to Peace or Grand Illusion*, Tokyo, UNU; H. Thoolen, 2001, *Early Warning and Prevention*, in G. Alfredsson et al. (eds), *International Human Rights Monitoring Mechanisms: Essays in Honour of Jakob Th. Moller*, The Hague, p. 301; L. Mahoney, 2003, Unarmed Monitoring and Human Rights Field Presences: Civilian Protection and Conflict Protection, *The Journal of Humanitarian Assistance*; E. Lutz et al., 2003, Human Rights and Conflict Resolution from the Practitioners' Perspective, *The Fletcher Forum of World Affairs*, vol. 27, no. 1 (Winter/Spring); J. Saunders, 2002, *Bridging Human Rights and Conflict Prevention: A Dialogue between Critical Communities*, Carnegie Council on Ethics and International Affairs, at <www.cceia.org/viewMedia.php/prmTemplateID/1/prmID/161>; M. O'Flaherty, 2004, Sierra Leone's Peace Process: The Role of the Human Rights Community, *Human Rights Quarterly*, vol. 26; M. O'Flaherty, 2003, Future Protection of Human Rights in Post-Conflict Societies: the Role of the United Nations, *Human Rights Law Review*, Spring.
2. M. O'Flaherty, 2003, *op. cit.*
3. For an overview of current UN programmes see OHCHR, *Annual Appeal 2004*, Geneva, pp. 32–33, at <www.unhcr.ch/html/menu2/9/fundrais/fundr.htm>. See also <www.unhcr.ch/html/menu2/5/field.htm>.
4. See, for example, regarding UNICEF <www.unicef.org/rightsresults/index.html>; and regarding UNDP <www.undp.org/governance/humanrights.htm>.
5. A description of this and all other UN peacekeeping missions can be found at <www.un.org/Depts/dpko/dpko/home.shtml>.
6. A similar scheme was envisaged to support the mandate of the Special Rapporteur on Iraq but deployment to that country was not feasible.
7. Human Rights Field Operation for Rwanda (HRFOR).
8. With the single exception of the Cambodia office, the core costs of which are met from the UN regular budget.
9. See the papers presented at meetings in 1995 and 1998 contained in A. Henkin (ed.), 2000, *Honoring Human Rights*, The Hague; D. Garcia-Sayan, Human Rights and Peacekeeping Operations, *University of Richmond Law Review*, vol. 29, p. 45; D. Little, 1996, Protecting Human Rights During and After Conflicts: The Role of the United Nations, *Tulsa Journal of Comparative and International Law*, vol. 4, p. 87; W. Clarence, 1997, Field Strategy for the Protection of Human Rights, *International Journal of Refugee Law*, vol. 9 no. 2; I. Martin, 1997, *Human Rights Monitoring and Institution-Building in Post-Conflict Societies: The Role of Human Rights Field Operations*, paper delivered to USAID Conference, Promoting Democracy, Human Rights and Reintegration, 30–31 October, on file with the author, and I. Martin, 1998, A New Frontier: The Early Experience and Future of International Human Rights Field Operations, *Netherlands Quarterly of Human Rights*, vol. 16, no. 2, p. 121. See also W.G. O'Neill, 2001, Gaining Compliance Without Force: Human Rights Field Operations, in S. Chesterman (ed.), *Civilians in War*, Lynne Rienner.
10. K. Annan, *Renewing the United Nations: A Programme for Reform*, UN document A/51/950 of 14 July 1997.
11. The human rights component of this mission is jointly staffed by UN and OSCE human rights officers.
12. The United Nations International Police Task Force (IPTF).
13. United Nations, *Report of the Panel on United Nations Peace Operations*, document A/55/305 S/2000/809 of 21 August 2000, <www.un.org/peace/reports/peace_operations/>.
14. *Ibid.*, para. 40.
15. *Ibid.*, para. 41.
16. *Ibid.*, para. 244.
17. The United Nations Assistance Mission in Afghanistan. See <www.unama-afg.org/about/index.html#structure>.
18. See M. O'Flaherty, 2003, *op. cit.*; Centre for Humanitarian Dialogue, 2003, *Politics and Humanitarianism, Coherence in Crisis?*, Geneva, ch. 5.
19. The United Nations Assistance Mission for Iraq. See <www.uniraq.org/>.
20. With regard to Iraq, human rights was first integrated in UN programming in 2002 by mean of secondment of OHCHR staff to the Office of the UN Humanitarian Coordinator for Iraq (UNOHC). See OHCHR, 2004, *op. cit.*, p. 53.
21. UN document A/57/387 of 9 September 2002.

22. B. Ramcharan, 2003, The Future Directions of Human Rights Field Presences, address at the opening of the Annual Meeting of OHCHR Field Presences, Geneva, 17 November, at < www.unhchr.ch > .
23. OHCHR, 2004, *op. cit.*, pp. 32–33.
24. See L. Mahoney, *op. cit.* and L. Mahoney, 2004, *Promoting Unarmed Monitoring: Thinking Long-term*, informally distributed essay on file with the author, dated 5 January.
25. See L. Mahoney, 2004, *op. cit.*
26. *Ibid.*
27. OHCHR, 2001, *Training Manual on Human Rights Monitoring*, New York and Geneva.
28. Though elements of standardization of publicly issued reports is emerging in the context of an OHCHR effort to place regular information regarding its field operations on its website. See < www.unhchr.ch/html/menu2/5/field.htm > .
29. A problem which may be overcome by means of the innovative OHCHR practice of publishing regular web-based informal reports of its field operations.
30. See M. O’Flaherty, 2000, Treaty Bodies Responding to States of Emergency, in J. Crawford and P. Alston (eds.), *The Future of UN Human Rights Treaty Monitoring*, Cambridge.
31. See M. O’Flaherty, 2003, *op. cit.*
32. The approach is described in B. Ramcharan, 2003, *op. cit.* It is commented on by L. Mahoney, 2004, *op. cit.*
33. See T. Howland, 2004, UN Human Rights Field Presence as Proactive Instrument of Peace and Social Change: Lessons from Angola, *Human Rights Quarterly*, vol. 26, no. 1.
34. See the various papers at < www.unhchr.ch/development/approaches.html > ; M. O’Flaherty, 2003, *op. cit.*; U. Jonsson, 2003, *Human Rights Approach to Development Programming*, UNICEF Nairobi.
35. See J. Darcy, 2004, Human Rights and Humanitarian Action: A Review of the Issues, paper delivered to a workshop on human rights and humanitarian action convened by OHCHR, UNICEF and ICVA, Geneva, April.
36. See, in particular, Inter-agency Standing Committee (IASC), 2002, *Growing the Sheltering Tree*, New York, UNICEF.
37. These include human rights-related elements of the guidelines for the humanitarian consolidated appeal process (CAP), see < www.humanitarianinfo.org/iasc/publications.asp > ; the Common Country Assessment/United Nations Development Assistance Framework (CCA/UNDAF) as well as human rights guidelines for UN Resident Coordinators, see < www.undg.org/recent.cfm > ; and for UN Humanitarian Coordinators (in the process of being drafted by the IASC Working Group).
38. I. Martin, 2000, *Justice and Reconciliation: Responsibilities and Dilemmas of Peace Makers and Peace-Builders*, paper delivered to an Aspen Institute meeting, ‘The Legacy of Abuse—Justice and Reconciliation in a New Landscape’, November 2000, on file with the author.
39. See M. O’Flaherty, 2001, Human Rights and the General Framework Agreement for Peace in Bosnia and Herzegovina, in G. Alfredsson et al, *op. cit.*; and C. Bell, 2000, *Peace Agreements and Human Rights*, Oxford University Press.
40. M. O’Flaherty, *ibid.*
41. See M. O’Flaherty, 2003, *op. cit.*
42. See the various materials and links at < www.ictj.org/research > .
43. See OHCHR, 2004, *op. cit.*, p. 106. This project is underway.
44. See for instance the criticisms levelled by the human rights NGO, Human Rights Watch, at < hrw.org/english/docs/2003/12/31/afghan6991.htm > .
45. See W. Schabas, 2003, The Relationship Between Truth Commissions and International Courts: The Case of Sierra Leone, *Human Rights Quarterly*, vol. 25, no. 4.
46. For a recent discussion of the range of issues see Redress, 2003, *The International Criminal Court’s Trust Fund for Victims*, London, at < www.redress.org > .
47. See, for instance, the materials accessible at < www.globalpolicy.org/security/peacekpg/general/ > and at < www.reliefweb.int/w/rwb.nsf/0/2fcd11349cbccdd85256b6e007d2765?OpenDocument > .
48. The latter having received considerable attention in 2002 following allegations of sexual abuse by humanitarian workers in West Africa. See UNHCR and Save the Children-UK, 2002, *Note for Implementing and Operational Partners by UNHCR and Save the Children-UK on Sexual Violence & Exploitation*, available at < www.reliefweb.int/w/rwb.nsf/vID/6010F9ED3C651C93C1256B6D00560FCA?OpenDocument > and *Secretary-General’s Bulletin on Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, ST/SGB/2003/13 of 9 October 2003.
49. Some of the ideas that follow have been stimulated by the writings of L. Mahoney, 2003 and 2004, *op. cit.*
50. For a useful and apposite discussion of the nature of professionalism and the requirements for development of the profession of humanitarianism see P. Walker, 2004, What Does it Mean to be a Professional Humanitarian?, *The Journal of Humanitarian Assistance*, January, available at < www.jha.ac/articles/a127.htm > .
51. DPKO has established a best practices unit. See < www.un.org/Depts/dpko/lessons/ > .
52. See the interesting discussion of performance indicators in W.G. O’Neill, 2001, *op. cit.*
53. See < www.peacekeepingbestpractices.unlb.org > .

Human rights 'lite'? Thoughts on human security

'Human security' is an idea that has, for the most part, found easy acceptance among those concerned with international social and humanitarian issues. The basic premise underlying the notion of human security—that there should be a reorientation in foreign policy from a focus on states to a focus on individuals—fits comfortably with a wide range of global agendas for change. The simple idea that it is the security (and insecurity) of individual human beings that ought to be the priority for international policy-setting can be readily embraced by a diverse group of activists, scholars and decision-makers. No doubt it is precisely this that lies behind the popularity of the concept. Indeed, the idea is so familiar to those who are active on global social issues, that it hardly seems new at all.

For those working on human rights issues, this familiarity lies behind the appeal of human security approaches. The focus on individuals and the explicit effort to challenge state-centric security doctrines are key human rights themes. Familiar too is the notion of a holistic approach, as both human rights and human security are relevant across a range of global issues. It would seem that there is a natural alliance between the two concepts. Human rights actors ought, therefore, to welcome the human security approach and, indeed, the folding in to this approach of various actions dedicated to the protection of human rights.

The purpose of this short note is to sound a note of caution and challenge moves to ally human rights too quickly with human security. It suggests that, on close examination, human security is too vague and imprecise to offer much of substance to efforts to advance protection of human rights. Further, where there is precision in the term it appears in many cases simply to be re-stating already accepted human rights principles, and there seems little to be gained by re-packaging these principles as 'human security'. There are advantages to identifying a theme, such as human security, to link and unify action across a broad range of global issues, but there are also risks. The precision and legality of the human rights framework could suffer if too closely allied with the ambiguity and mere rhetorical appeal of human security.

Exploring definitions

One cannot explore the relationship between human rights and human security without first trying to define the scope and content of both concepts. What are we comparing and contrasting? It is here where the difficulty starts. What does it mean to say one is adopting a 'human-security approach'?

There is no accepted definition. Beyond an agreement on the idea of shifting the foreign policy focus from state security to individual security, there is little in common among proponents of human security about what, in practice, this would mean.

The 1994 *Human Development Report* of the United Nations Development Programme (UNDP) was the first major international effort to articulate human security as including specific *programmatically* elements, that is with components requiring action by governments and international organizations. The 1994 Report spoke of human security as including ‘... two major components: freedom from fear and freedom from want’. Flowing from these were ‘... four essential characteristics’, these being that the concept was of universal relevance, that its components were interdependent (threats to either set of freedoms would affect enjoyment of the other), that the best way to ensure security was to take preventive action, and that such action must be people-centred.

For human rights actors, this is a familiar list, freedom from fear and want being two of the four key freedoms underlying the 1948 Universal Declaration of Human Rights. Universality, interdependence, preventive action, and the primacy of individuals are all key elements of any effort to promote and protect human rights. So familiar was the description, in fact, that many of those who read the 1994 Report assumed ‘human security’ was simply, in the days before a UN commitment to mainstreaming human rights, UNDP-speak for human rights. There was, however, one significant drawback. The ‘major components’ in the 1994 Report did not explicitly include the other two essential freedoms underlying the 1948 Declaration, namely freedom of expression and religion. Freedom of expression, as expanded and developed in the Universal Declaration, included basic rights to free speech, association, assembly and political participation.

If we use the definition in the 1994 Report there would be considerable disadvantages in allying human rights and human security approaches. The latter would appear to be a watered down version of the former. Human security would appear as a sort of ‘human rights lite’, more palatable perhaps to governments (for whom talk of ‘rights’ might be threatening) but also lacking a crucial focus on those very freedoms which protect rights to participation and empowerment.

Almost ten years after the 1994 Report, the independent Commission on Human Security defined its subject in ways that sought to embrace the missing freedoms, stressing participation and empowerment as key elements of human security, and indeed aligning human security very closely to the language of human rights. In the view of the Commission, human security ‘... seeks to protect people against a broad range of threats to individuals and communities and, further, to empower them to act on their own behalf. ... Human security means protecting fundamental freedoms—freedoms that are the essence of life.’ A human security approach aims ‘... to protect the vital core of all human lives in ways that enhance human freedoms and human fulfilment’. If the human security approach means no more (nor less) than protecting individual rights and freedoms, then the distinction between it and the human rights approach is unclear.

The manner in which the Commission’s report addresses various pressing threats or insecurities strengthens the link to human rights, as many of the most substantial and specific policy recommendations concern measures to implement, monitor or strengthen human rights commitments. The very title of the Commission’s report, ‘Human Security Now’, appears to deliberately push this linkage, as it invokes the language of the Amnesty International music tour of the 1980s (Human Rights Now!).

Recognizing the need for at least some clarity and definition, Commission co-chair Amartya Sen contributes in the first pages of the report a short note on ‘Human rights and human security’. In it he sets out the obvious points of complementarity, but then argues the ‘significant contribution’ that human security brings:

The basically normative nature of the concept of human rights leaves open the question of which particular freedoms are crucial enough to count as human rights that society should acknowledge, safeguard and promote. This is where human security can make a significant contribution by identifying the importance of freedom from basic insecurities—new and old.

Sen's point seems to be that human security approaches will give greater content to human rights principles. This is a bizarre claim. Leaving aside the point that there is no agreed list of human insecurities (so how to choose at an international level which to include?), it is simply wrong to assert that the existing human rights framework 'leaves open' what freedoms deserve protection. On the contrary, a detailed, established and internationally agreed set of legal standards provide impressive detail and clarity on this point. The International Bill of Human Rights, comprising the Universal Declaration of Human Rights and the two International Covenants, on Civil and Political, and Economic, Social and Cultural Rights respectively, protect the whole range of human rights and freedoms. These general instruments (the latter two of which have been ratified by over three-quarters of the world's governments) are complemented by specific treaties to prevent discrimination and torture and to protect women's, children's and migrant's rights. There are in addition dozens of internationally agreed standards relating to the protection of human rights in wartime, in the administration of justice, in relation to minorities, and on economic and social entitlements. There are also internationally appointed quasi-judicial and expert panels that regularly apply these many standards, and in doing so create a rich and expanding jurisprudence of human rights.

There are many interesting points in the Commission's report. It does not provide much, however, that would add real value for human rights actors. It deals with familiar themes (migration, post-conflict reconstruction, protection of civilians, education and health) but in many cases in ways that simply reassert the need to respect or fully implement existing international human rights, humanitarian, and refugee law commitments. Furthermore, no clear rationale is provided for why some 'insecurities' are included in the report and others left out, fuelling the suspicion that re-packaging the precision of rights in the rhetoric of 'human security' allows for a pick-and-choose approach.

Where's the beef?

Perhaps it is unfair to base a critique of human security on these two reports. No doubt the expanding academic literature on human security provides more cogent explanations of the distinctions between it and the human rights concept. There is also nothing particularly wrong with using the term 'human security' to describe what amount in effect to human rights principles, where doing so is necessary to advance respect for those principles. That is, if it can be shown that the discourse of 'human security' is an effective means of advancing respect for human rights, then advocates for the latter should not be unduly troubled. After all, the language of individual human rights, and its emphasis on law, is less familiar in some cultural settings. A yearning for human *security* may be a more universal emotion.

Seen from the perspective of human rights advocates, however, one can understand why there would seem little point in adopting a 'human security approach'. The human rights framework is more holistic than 'narrow' human security definitions, which encompass freedom from fear and want, but not free expression and participation rights. Broader definitions of human security, on the other hand, seem to encompass the fuller rights agenda but in ways that suggest nothing more than old wine in new bottles.

For those who find rights language legalistic, overly western or politically difficult, such re-packaging has an advantage. Human rights advocates, however, could be forgiven for failing to see the point. One of the common objections to 'rights talk' is, upon closer examination, an enormous advantage, namely that human rights are grounded in law. There is a significant body of *international* law, negotiated and agreed to by states, that sets out in detail the human rights and freedoms that are protected and the steps governments need to take to give effect to those rights. The advantage this offers should be obvious. Insofar as the targets of a human security approach are governments, the language of law and obligation is extremely compelling, in a way that the rhetoric of human security cannot match.

Looked at more positively, there are components of human security that go beyond human rights, even if the latter are defined broadly. The broad disarmament and sustainable development agendas, for example, could be comfortably housed in the human security framework. At their core, these agendas include much which is about protecting human rights but also go much further. The inherent elasticity in the human security approach necessarily allows for such expansiveness, and this approach is certainly comprehensive. The advantage of this is, as the Commission on Human Security argues, that it '... integrat[es] today's fragmented efforts to protect and empower people exposed to severe threats to their survival, livelihood and dignity'. The appeal for human rights actors is that the human security approach, through integration, allows them to understand the relationship between their work and work on other human security themes (peace and conflict, disarmament, development, etc.).

As an organizing principle, therefore, human security may offer some advantage, by clearly linking work to protect human rights to other global agendas for change. It should be pointed out, however, that human rights groups—especially at the local level—have been making such linkages for many years. Even large, so-called 'classic' human rights groups are increasingly linked into and contribute actively on disarmament, peace, poverty, social justice, environment and humanitarian issues. We should welcome any assistance the human security concept provides in this regard, but shy away from any grand claims that such a unifying concept is necessary for integration.

In sum, whatever claims a 'human security approach' may advance in relation to pressing global issues, it is likely to continue to be met with scepticism by human rights advocates. It appears to offer little more *in substance* than the rights approach, and in any case does so in ways that are less precise and compelling than the legal rules of international human rights and humanitarian law. As a unifying theory, or organizing principle, for global agendas for change, a human security 'approach' might play an important role, but it would be a mistake to subsume human rights claims within this framework if in doing so the precision of such claims were lost.

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This is a personal contribution, and does not reflect the position of the Centre for Humanitarian Dialogue.

Analysis of the National Reports Submitted by States to the First Biennial Meeting of States on the UN Programme of Action on Small Arms (July 2003)

In 2002, UNIDIR, the United Nations Development Programme and the UN Department for Disarmament Affairs initiated the project 'Capacity Development for Reporting to the UN Programme of Action on Small Arms' to help developing countries with their reporting obligations on implementation of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons. The Geneva-based Small Arms Survey was appointed as technical consultant to the project.

In the project's initial phase leading up to the First Biennial Meeting of States in 2003, the assistance package developed by the project proved to have a significant role in enhancing both quantitative and qualitative national reporting. Based on the positive feedback received from assisted countries and the funders, the project was expanded and extended for at least two additional years.

Since then, the project has analysed all of the national implementation reports submitted to date, which will help in the preparation for the 2005 Biennial Meeting and for the first Review Conference in 2006. The researchers have identified areas where the international community could act to enhance the capacity of states to implement and report on the Programme of Action. With its publication later in the year, the project's analysis will both increase transparency and help to identify areas for cooperation and assistance.

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