

THE UNIVERSITY OF HULL

Human Security in International Law: The Role of the United  
Nations

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by

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*For Conleth*

*With thanks to my supervisor Dr Richard Burchill, my family and my friends*

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## ABBREVIATIONS

CHR	Commission on Human Rights
CHS	Commission on Human Security
CoE	Council of Europe
DPKO	Department of Peacekeeping Operations
EAD	Electoral Assistance Division
ECOSOC	Economic and Social Council
GA	General Assembly
HDR	Human Development Report
HLP	High-Level Panel on Threats, Challenges and Change
HR Council	Human Rights Council
HRC	Human Rights Committee
HSN	Human Security Network
ICISS	International Commission on Intervention and State Sovereignty
MDG	Millennium Development Goals
OAS	Organisation of American States
OHCHR	Office of the High Commissioner for Human Rights
RHSC	Regional Human Security Centre
SC	Security Council
SG	Secretary-General
UNDP	United Nations Development Programme
UPR	Universal Periodic Review
WGAT	Working Group on the Arab Territories
WGC	Working Group on Chile
WGEID	Working Group on Enforced and Involuntary Disappearances
WGSA	Working Group on South Africa

## ADVISORY OPINIONS, CASES AND DECISIONS

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<i>Convention on the Prevention and Punishment of the Crime of Genocide</i> (Advisory Opinion) 1951 (1951) ICJ Rep 15; < <a href="http://www.icj-cij.org/docket/files/12/4283.pdf">http://www.icj-cij.org/docket/files/12/4283.pdf</a> > accessed 28 August 2007	120, 159, 165, 186, 174
<i>Loizidou v. Turkey</i> (Preliminary Objections) (1995) 20 EHRR 99	177, 180, 182
<i>Restrictions to the Death Penalty</i> , Advisory Opinion OC-3/83, Inter-American Court of Human Rights Series A No. 3 (8 September 1983)	168
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<i>The Effect of Reservations on the Entry into Force of the American Convention on Human Rights</i> , Advisory Opinion OC-2/82, Inter-American Court of Human Rights Series A No. 2 (24 September 1982)	178, 182
<i>Tunis-Morocco Nationality Decrees</i> (Mertis) (1923) PCIJ Rep Series B No 5	91

## LIST OF INTERNATIONAL TREATIES AND INSTRUMENTS

- 1941 Declaration of Principles, known as the Atlantic Charter, by the President of the United States and the Prime Minister of the United Kingdom
- 1942 Declaration by United Nations
- 1945 United Nations Charter
- 1950 European Convention on Human Rights
- 1948 Universal Declaration of Human Rights
- 1965 International Convention on the Elimination of All Forms of Racial Discrimination
- 1966 International Covenant on Civil and Political Rights
- 1966 International Covenant on Economic, Social and Cultural Rights
- 1969 American Convention on Human Rights
- 1969 Vienna Convention on the Law of Treaties
- 1979 International Convention on the Elimination of Discrimination against Women
- 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- 1989 Convention on the Rights of the Child
- 1990 Convention on the Protection of the Rights of all Migrant Workers and members of their Families
- 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction
- 1998 Rome Statute of the International Criminal Court

## SELECTED UN GENERAL ASSEMBLY RESOLUTIONS

GA Res 60/251, 'Human Rights Council' (15 March 2006) UN Doc A/RES/60/251

GA Res 60/1, '2005 World Summit Outcome Document' (16 September 2005) UN Doc A/RES/60/1

GA Res 58/188, 'Respect for the purposes and principles contained in the Charter of the United Nations to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms and in solving international problems of a humanitarian character' (22 December 2003) UN Doc A/RES/58/188

GA Res 56/169, 'Comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities' (19 December 2001) UN Doc A/RES/56/168

GA Res 55/2, 'Millennium Declaration' (8 September 2000) UN Doc A/RES/55/2

GA Res 49/30, 'Support by the United Nations system for the efforts of Governments to promote and consolidate new or restored democracies' (7 December 1994) UN Doc A/RES/49/30

GA Res 48/131, 'Enhancing the effectiveness of the principle of periodic and genuine elections' (20 December 1993) UN Doc A/RES/48/131

GA Res 48/141, 'High Commissioner for the Promotion and Protection of all Human Rights' (20 December 1993) UN Doc A/RES/48/141

GA Res 46/137, 'Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections' (17 December 1991) UN Doc A/RES/46/137/1992

GA Res 41/128, 'Declaration on the Right to Development' (4 December 1986) UN Doc A/RES/41/128

GA Res 32/197, 'Restructuring of the Economic and Social Sectors of the United Nations System' (20 December 1977) UN Doc A/RES/32/197

GA Res 2625 (XXV), 'Friendly Relations Declaration' (24 October 1970)

GA Res 2443 (XXIII), 'Respect for and Implementation of Human Rights in Occupied Territories' (19 December 1968)

GA Res 2688 (XXV), 'The Capacity of the United Nations Development System' (11 December 1970)

- GA Res 2029 (XX), 'Consolidation of the Special Fund and the Expanded Programme of Technical Assistance in a United Nations Development Programme' (22 November 1965)
- GA Res 1815 (XVII), 'Considerations on the Principles of International Law Concerning Friendly Relations and Cooperation Among States' (18 December 1962)
- GA Res 421 (V) (E), 'Draft International Covenant on Human Rights and measures of implementation: future work of the commission on human rights' (4 December 1950).
- GA Res 395 (V), 'Treatment of People of Indian Origin in the Union of South Africa' (2 December 1950)
- GA Res 478 (V), 'Reservations to Multilateral Conventions' (16 November 1950)
- GA Res 377 (V), 'Uniting for Peace' (3 November 1950)
- GA Res 265 (III), 'Treatment of People of Indian Origin in the Union of South Africa' (14 May 1949)
- GA Res 217A (III), 'Universal Declaration on Human Rights' (10 December 1948)
- GA Res 174 (II), 'Establishment of an International Law Commission' (21 November 1947)
- GA Res 44 (I), 'Treatment of Indians in the Union of South Africa' (8 December 1946)

**HUMAN SECURITY IN INTERNATIONAL LAW:  
THE ROLE OF THE UNITED NATIONS**

## INTRODUCTION

In September 2005 world leaders, gathered in New York for the United Nations (UN) World Summit, recognised the entitlement of all to ‘freedom from fear and from want’ and, to this end, undertook to discuss and define ‘the notion of human security’.<sup>1</sup> At the same time in Nigeria, the African Union convened the sixth round of peace talks on the crisis situation in Darfur, Sudan.<sup>2</sup> The 2005 annual report of Human Rights Watch described the ‘massive ethnic cleansing’ in Darfur as a ‘fundamental threat to human rights’ before noting the ‘world’s callous disregard for the death of an estimated 70, 000 people and the displacement of 1.6 million more’.<sup>3</sup> Amnesty International similarly reported in 2006 continued human insecurity stemming from war crimes, crimes against humanity and ‘grave abuses of human rights’ including arbitrary detention, rape and torture, adding that 1.8 million people ‘remained forcibly displaced internally’ with a further 220, 000 seeking refuge in neighbouring Chad.<sup>4</sup> Oxfam also reported around this time that vital humanitarian aid was not reaching an estimated four in ten people due to increased violence in the region,<sup>5</sup> lending a practical resonance to the well-recognised complexity of the causal nexus between security and development.<sup>6</sup> As Mary Robinson, former UN High Commissioner for Human Rights, has observed there are multiple sources of human insecurity originating within the expansive fields of security and development such as conflict or famine.<sup>7</sup> Indeed, ‘human insecurity dominates today’s headlines’<sup>8</sup> with escalating civilian deaths in Iraq set against

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<sup>1</sup> GA Res 60/1, ‘2005 World Summit Outcome Document’ (16 September 2005) UN Doc A/RES/60/1, para. 143.

<sup>2</sup> African Union, ‘Sixth Round of the Inter-Sudanese Peace Talks on Darfur opened today in Abuja, Nigeria’ (Press Release 15 September 2005) <[http://www.africa-union.org/News\\_Events/Press\\_Releases/Sept-05%20sixth%20round%20Darfur-15-09-05.pdf](http://www.africa-union.org/News_Events/Press_Releases/Sept-05%20sixth%20round%20Darfur-15-09-05.pdf)> accessed 16 August 2006. See generally the webpage of the African Union on the situation in the Darfur region of Sudan, <<http://www.africa-union.org/DARFUR/homedar.htm>> accessed 16 August 2006.

<sup>3</sup> Human Rights Watch, *World Report 2005*. <<http://hrw.org/wr2k5/wr2005.pdf>> accessed 16 August 2006. See in particular the chapter entitled ‘Darfur: Whose responsibility to protect?’

<sup>4</sup> Amnesty International, *Report 2006* <<http://web.amnesty.org/report2006/index-eng>> accessed 16 August 2006. See also the country report on Sudan, <<http://web.amnesty.org/report2006/sdn-summary-eng>> accessed 16 August 2006.

<sup>5</sup> Oxfam, ‘Crisis in Darfur’ <[http://www.oxfam.org.uk/oxfam\\_in\\_action/emergencies/darfur\\_chad.html](http://www.oxfam.org.uk/oxfam_in_action/emergencies/darfur_chad.html)> accessed 9 March 2007.

<sup>6</sup> See for example, Caroline Thomas, ‘Global Governance, Development and Human Security: Exploring the links’ (2001) 22 *Third World Quarterly* 159.

<sup>7</sup> Mary Robinson, ‘What Rights can Add to Good Development Practice’ in Philip Alston and Mary Robinson (ed), *Human Rights and Development: Towards Mutual Reinforcement* (OUP Oxford 2003) 25

<sup>8</sup> Sadako Ogata and Johan Cels, ‘Human Security – Protecting and Empowering the People’ (2003) 9 *Global Governance* 273, 273.

mounting calls for the withdrawal of coalition troops,<sup>9</sup> an increasing number of reports documenting the failure of international aid to make a difference in Afghanistan five years after the fall of the Taleban with serious implications for security,<sup>10</sup> heightened concern voiced as to the humanitarian situation in Myanmar and other incidents of human insecurity, serve to underscore the importance of the commitment to human security at the 2005 World Summit - in essence the commitment of the UN and UN member states to the idea that people matter.

Furthermore, such incidents of human insecurity bring into sharp relief a number of key issues currently besieging international law. For example, with three rebel factions and the Sudanese government as the main actors in the Darfur crisis, along with the questionable effectiveness of the UN response,<sup>11</sup> the place of non-state actors in the international legal order and the related question of state responsibility are illuminated as being of pressing concern. Indeed the crisis situation in Darfur and similar incidences of intra-state conflict deliver the clear message that security is no longer the sole purview of the state<sup>12</sup> and moreover, heightens the necessity of reinvigorating the UN as the core international organisation with responsibility for international peace and security.<sup>13</sup> The reinvigoration of the UN is rendered more acute in light of the role that the UN has etched out in respect of post-conflict administration seen in, for example, the UN Assistance Mission in Afghanistan.<sup>14</sup> Thus, while incidents of human insecurity such as the crisis situation in Darfur readily attest to the imperative of alleviating human insecurity whether stemming from fear and/or want, it is equally clear that a number of obstacles and challenges exist – normative, institutional and operational - to addressing

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<sup>9</sup> See generally, BBC, 'The Struggle for Iraq'

<[http://news.bbc.co.uk/1/hi/in\\_depth/middle\\_east/2002/conflict\\_with\\_iraq/default.stm](http://news.bbc.co.uk/1/hi/in_depth/middle_east/2002/conflict_with_iraq/default.stm)> accessed 3 September 2007.

<sup>10</sup> David Lyon, 'Aid Failings "hit Afghan progress"' (26 June 2004)

<[http://news.bbc.co.uk/1/hi/world/south\\_asia/6764345.stm](http://news.bbc.co.uk/1/hi/world/south_asia/6764345.stm)> accessed 28 August 2007.

<sup>11</sup> Until June 2007 Sudan had refused to accept the 'invitation' under SC resolutions for additional peacekeeping troops to bolster the beleaguered AU force, whose numbers according to an analysis by the International Crisis Group were woefully inadequate. See International Crisis Group, <<http://www.crisisgroup.org/home/index.cfm?!=1&id=1230>> accessed 26 August 2007.

<sup>12</sup> Claude Bruderlein states: 'Not only has the role of the state been compromised by its involvement in internal conflict situations, but its relevance in generating protection for civilians at the international level is also being case in doubt'. Claude Bruderlein, 'People's Security as a New Measure of Global Stability' (2001) *International Review of the Red Cross* 335, 354. Nevertheless, the Commission on Human Security found that while, '[t]he state remains the fundamental purveyor of security . . . it often fails to fulfil its security obligations . . . That is why attention must now shift from the security of the state to the security of the people – to human security'. Commission on Human Security, *Human Security Now* (United Nations Publications New York 2003) 2.

<sup>13</sup> UN SG, *We the Peoples: The Role of the United Nations in the 21<sup>st</sup> Century* (UN Department of Public Information United Nations 2000) 7.

<sup>14</sup> UN Assistance Mission in Afghanistan, <<http://www.unama-afg.org/>> accessed 3 September 2007.

such human insecurity, particularly by the UN and through the medium of international law.

## I. BACKGROUND TO THE STUDY

It is unsurprising that various members of the international community such as the UN, the governments of Canada, Japan and Norway, and other regional and national institutions and organisations of various hues, have championed the idea of human security as a policy agenda by which to address the existing deficiencies in an international legal order founded on the primacy of the state. It is equally unsurprising that human security as a policy agenda emerged in the 1990's as this decade bears witness to what one commentator has vividly described as a 'tsunami of ethnic and nationalist conflict'.<sup>15</sup> Indeed the Human Security Report Project records intra-state conflict, of which ethnic conflict is a sub-set, as the predominant form of conflict within the international system today,<sup>16</sup> which has been acknowledged by the UN.<sup>17</sup> Thus, notwithstanding that the tidal wave of intra-state conflict has receded in recent years,<sup>18</sup> it remains a constant and steadfast feature of the international landscape. The tools at the disposal of the UN, which were fashioned in 1945 and premised on assumptions as to the primacy of the state which have been rendered questionable in an increasingly globalised and interdependent world, ensure that the UN is poorly equipped to address such new realities. As such, the emergence of human security onto the international stage is underpinned by fundamental questions as to the role of international law and the role of the UN in the international landscape. This research is a study of the place of human security in international law and the role of the UN in the quest for human security.

The emergence of human security as a viable policy agenda for the UN was simulated by the confluence of two factors. First, the normative heritage of human security is rooted in key evolutions in the understandings of 'development' and 'security' at the international level. Indeed the underlying concern of human security - that people matter - bears direct ancestry in the humanising forces brought to bear on development

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<sup>15</sup> Ted Robert Gurr, *People Versus States: Minorities at Risk in the New Century* (United States Institute of Peace Washington 2000) xiii.

<sup>16</sup> Human Security Report Project, *Human Security Report 2006* (OUP Oxford 2006). See also Peter Wallensteen, *Understanding Conflict Resolution: War, Peace, and the Global System* (Sage London 2002).

<sup>17</sup> UN SG, *We the Peoples* (n 13) 17.

<sup>18</sup> Human Security Report Project (n 16). See also Gurr, (n 15).

policies and security studies. This normative heritage informs the consideration of the place of the idea of human security in international law and in particular underscores the question of whether human security is a new idea or merely a politically expedient re-articulation of older ideas. More specifically it raises the question of whether human security is already expressed in international law which, in turn, produces the question of '[i]f human security is nothing new to international law, where has it been hiding?'<sup>19</sup> Indeed, international human rights law is a clear example of the 'humanisation of international law'<sup>20</sup> which, as a particular manifestation of the engagement of international law with the underlying concern of human security that people matter, intimates the role of international law with respect to human security. Thus when examining the idea of human security the research addresses two related questions of whether human security is embedded within international law and if so, what prospects and challenges face human security in such an environment, and second, how and to what extent has the UN contributed to the normative development of the idea of human security.

This latter question highlights the importance of the current effort to reform the UN as the second factor conspiring to propel human security onto the UN agenda. The practical impetus for UN reform lies, in part, in a human security deficit which was recognised in a series of key UN reform documents which identified 'pressing challenges',<sup>21</sup> such as half the population of the world living in poverty<sup>22</sup> and the incidence of internal wars that since the 1990's have 'claimed more than 5 million lives'<sup>23</sup> and concluded that freedom from want and freedom from fear as 'two founding aims of the United Nations' remain elusive.<sup>24</sup> To this end, the documents also spoke of the need to reinvigorating the UN to better reflect 'the changed nature of threats' and the 'new vulnerabilities to old threats'<sup>25</sup> along with the effective integration of the 'three great purposes' of the UN<sup>26</sup> - human rights, development and security.<sup>27</sup> For, in the last

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<sup>19</sup> Gerd Oberleitner, 'Human Security: A Challenge to International Law?' (2005) 11 *Global Governance* 185, 186.

<sup>20</sup> Thomas Buergenthal, 'The Normative and Institutional Evolution of International Human Rights' (1997) 19 *Human Rights Quarterly* 703, 703.

<sup>21</sup> UN SG, *We the Peoples* (n 13) 6.

<sup>22</sup> *Ibid* 19.

<sup>23</sup> *Ibid* 43.

<sup>24</sup> *Ibid* 17.

<sup>25</sup> *Ibid* 11.

<sup>26</sup> UN SG, 'The Secretary-General Statement to the General Assembly' (Speech delivered to the UN General Assembly, New York, 21 March 2005) <<http://www.un.org/largerfreedom/sg-statement.html>> accessed 26 February 2006.

analysis, the UN ‘exists for, and must serve, the needs and hopes of people everywhere’.<sup>28</sup>

More importantly for present purposes the reform documents presented human security as, to paraphrase one commentator, signifying values shared by UN member states as articulated in the UN Charter – that of freedom from fear and freedom from want.<sup>29</sup> Consequently, the UN championed human security as an idea around which to coordinate UN activity in the fields of human rights, development and security. As such the study of human security in international law operates as a prism through which to examine the connections between human rights, development and security as ‘the three great purposes’ of the UN.<sup>30</sup> More particularly, UN reform provides the wider context in which to consider the role of the UN in the quest for human security and to draw some conclusions as to the place of human security in international law. Thus, when examining the practice of the UN in respect of human security, the research addresses the following two questions: how and to what extent does the UN translate the idea of human security into practice and second, whether the UN is an appropriate forum for pursuing a human security agenda?

## II. THE HUMAN SECURITY CHALLENGE TO INTERNATIONAL LAW

As a study of human security in international law, the research places particular emphasis on exploring the consequences and implications of a UN human security agenda for international law. Indeed human security poses a challenge to international law in two senses. Firstly, human security as rooted in the premise that people matter and as based on the pursuit of shared common values - freedom from fear and freedom from want - challenges fundamental characteristics of international law, such as the centrality of the state which is expressed in international law in, amongst others, the notion of the sovereign equality of states.<sup>31</sup> Indeed the decreasing saliency of sovereignty, even the death of sovereignty, has been proclaimed while theories such as ‘popular sovereignty’ and ‘sovereignty as responsibility’ are heralded as portents of a

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<sup>27</sup> UN SG, *We the Peoples* (n 13) 14.

<sup>28</sup> *Ibid* 6.

<sup>29</sup> Andrew Mack, ‘Signifier of Shared Values’ (2004) 35 *Security Dialogue* 366; UN SG, *We the Peoples*. (n 13) 5 – 6.

<sup>30</sup> SG, ‘The Secretary-General Statement to the General Assembly’ (n 26).

<sup>31</sup> UN Charter, Article 2 (1).

new world order based on such re-refashioned notions of sovereignty.<sup>32</sup> It is unsurprising that the emergence of human security onto the UN agenda coincided with and accommodated such changes in the notion of sovereignty. Thus the changing nature of sovereignty is a recurring theme which permeates the study of human security in international law and serves to illustrate the challenge of human security to international law. Indeed, the UN acknowledges that putting ‘people at the centre of everything we do’ represents a critical shift in thinking<sup>33</sup> and as such challenges basal precepts of international law, such as the principle of non-interference in the domestic affairs of states.<sup>34</sup> Nonetheless, human security as the pursuit of common shared values – freedom from fear and want - reinforces the shift in thinking as regards sovereignty to include what Kofi Annan has termed ‘individual sovereignty’ meaning ‘the fundamental freedom of each individual . . . [as] . . . enshrined in the Charter of the UN’ and reinforced by international human rights law.<sup>35</sup> That human security signifies freedom from fear and want as the shared common values of the UN also underscores the pivotal role of the UN in the achievement of human security. It is against this background that the research critically evaluates the role of the UN in the pursuit of human security.

Secondly, human security challenges international law to better reflect the realities of the international landscape and thus bears an intimate relationship with the current effort to reform the UN. In this sense the research follows the contention of Gerd Oberleitner that ‘a human security approach to international law *can* reinforce and strengthen attempts to bring international law into line with the requirements of today’s world’.<sup>36</sup> More specifically, the study develops the position that human security offers the opportunity to harness the ‘power of the better argument’ and to better reflect the transition, ignited by the establishment of the UN, to the rule of law in international relations in preference to rule by power.<sup>37</sup> Indeed, it is clear from the UN Charter that the UN ‘was intended to introduce new principles into international relations’ with the

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<sup>32</sup> W. Michael Reisman, ‘Sovereignty and Human Rights in Contemporary International Law’ (1999) 84 *American Journal of International Law* 866 (popular sovereignty); International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect*, (International Development Research Centre Ottawa 2001) (sovereignty as responsibility);

<sup>33</sup> UN SG, *We the Peoples* (n 13) 7.

<sup>34</sup> UN Charter, Article 2 (7).

<sup>35</sup> Kofi Annan, ‘Two concepts of sovereignty’ (1999) 352 *The Economist* (1999) 49 – 50.

<sup>36</sup> Oberleitner, ‘Challenge to International Law’ (n 19) 186. (emphasis added).

<sup>37</sup> Ian Johnston, ‘Security Council Deliberations: The Power of the Better Argument’ (2003) 14 *European Journal of International Law* 437, 480; Mariano J. Aznar-Gomez, ‘A Decade of Human Rights Protection by the UN Security Council: A Sketch of Deregulation?’ (2002) 13 *European Journal of International Law* 221, 224.

'avowed purpose of transforming relations among states'.<sup>38</sup> In this way human security bears the potential to meaningfully contribute to the development of international law.<sup>39</sup> Human security is already challenging international law in two areas in the broader context of UN reform, that of the reform of principal institutions such as the UN Security Council (SC) and the development of new norms of international law.<sup>40</sup> In the latter respect, for example, the idea of human security in combination with the changing notion of sovereignty, specifically the re-casting of sovereignty as responsibility, has provided the foundation for the articulation of the notion of responsibility to protect which, as a proposed new norm, was recognised by the UN at the 2005 World Summit.<sup>41</sup> As such the research incorporates an analysis of the reform of principal UN institutions and assesses the creation of new norms, such as the responsibility to protect, in order to further illuminate the role of the UN in the pursuit of human security and to draw some conclusions as to the place of the idea of human security in international law.

### III. HARNESSING HUMAN SECURITY

Yet, human security is an elusive and contested idea which bears no settled and clearly identifiable definition. Indeed, academic commentary on human security has flourished in the last decade which, in conjunction with policy initiatives at the international, regional and national level, has produced a verifiable profusion of definitions of human security which simultaneously testifies to and further exacerbates the contested and elusive nature of the idea of human security. Thus a primary objective of the study of human security in international law is to offer a coherent and principled definition of human security. This is a particularly timely and pertinent exercise given the recent commitment of the UN to discuss and define the 'notion of human security'.<sup>42</sup> Moreover, as human security was championed by the UN and academics alike, it attracted a flurry of criticism as a policy agenda and, in particular, academics remain divided on the central question of whether, in the words of one commentator, human security marks a 'paradigm shift' and is thus to be taken seriously or is merely to be

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<sup>38</sup> UN SG, *We the Peoples* (n 13) 6.

<sup>39</sup> See Oberleitner, 'Challenge to International Law' (n 19).

<sup>40</sup> A human security perspective has already been applied in respect of refugees by the UN High Commissioner for Refugees. See Anne Hammerstad, 'Whose Security? UNHCR, refugee protection and state security after the cold war' (2000) 31 *Security Dialogue* 391.

<sup>41</sup> This is not to say that the responsibility to protect is a legal norm. See Carsten Stahn, 'Responsibility to Protect: Political Rhetoric or Emerging Legal Norm' (2007) 101 *American Journal of International Law* 99.

<sup>42</sup> GA Res 60/1 (n 1) para. 143.

dismissed as ‘hot air’.<sup>43</sup> Underlying such criticisms is the absence of a clearly identifiable definition of human security which has, for instance, arguably impeded the pursuit of human security by the UN. Furthermore, while commentary on human security burgeoned in other disciplines, human security has failed to ignite the minds of international legal scholars. The resounding silence of international law on human security – either the idea or practice – is particularly curious in light of the potential impact of human security on fundamental precepts of international law such as the notion of sovereignty and indeed, on the other side of the coin, the contribution of human security to the development of international law.<sup>44</sup> Thus by undertaking such a definitional exercise in respect of human security the research advances the exploration of the place of the *idea* of human security in international law and provides the basis for the critical assessment of UN *practice* in respect of human security, that is, the examination of the role and contribution of the UN in the quest for human security.

A particularly recurrent assertion in the academic literature, which is matched in the policy sphere, is that human rights define human security.<sup>45</sup> This proposition is particularly attractive given that human rights and human security are clearly conceptual bedfellows as they share the core underpinning that people matter. Nevertheless, the implications and consequences of defining human security in terms of human rights are under-explored.<sup>46</sup> By examining the assertion that human rights define human security within the broader context provided by the place of human security in international law, it is clear that international law poses a number of challenges to human security, specifically in relation to the impact of sovereignty on human rights protection. As such

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<sup>43</sup> Roland Paris, ‘Human Security: Paradigm Shift or Hot Air?’ (2001) 26 *International Security* 87, 88.

<sup>44</sup> The deficit of commentary on human security in international law is beginning to be addressed, see for example Bertrand Ramcharan, *Human Security and Human Rights* (Martinus Nijhoff Publishers The Hague/New York 2002); Gerd Oberleitner, ‘A Challenge to International Law?’ (n 19) and ‘Porcupines in Love: The Intricate Convergence of Human Rights and Human Security’ (2005) 6 *European Human Rights Law Review* 588; S. Neil MacFarlane and Yuen Foong Khong, *Human Security and the UN: A Critical History* (Indiana University Press Bloomington and Indianapolis 2006); Sandra Maclean, David Black, and Timothy Shaw, *A Decade of Human Security: Global Governance and New Multilateralisms* (Ashgate Aldershot 2006); Barbara von Tigerstrom, *Human Security and International Law* (Hart Publishing forthcoming).

<sup>45</sup> See for example, Sabina Alkire, ‘A Conceptual Framework for Human Security’ (Working Paper 2, Centre for Research on Inequality, Human Security and Ethnicity) <<http://www.crise.ox.ac.uk/pubs/workingpaper2.pdf>> accessed 6 May 2005; Bertrand G. Ramcharan, *Human Rights and Human Security* (The Hague Kluwer Law International 2002) 9. Dwight Newman also sees a correlation between human rights and human security, see Dwight Newman, ‘A Human Security Council? Applying a ‘human security’ agenda to Security Council reform’ (1999/2000) 31 *Ottawa Law Review* 213.

<sup>46</sup> For instance, Bertrand Ramcharan simply declares: ‘human rights define human security’. Ramcharan (n 45) 9. For an attempt to redress this deficiency see Oberleitner, ‘Porcupines in Love’ (n 44).

the research evaluates the prospects and challenges of bequeathing a defining role to human rights, and particularly, international human rights law, in respect of human security which, in turn serves as a microcosm of the wider issues of situating human security within a state centric international legal order and highlights the obstacles facing the UN in the pursuit of human security.

#### IV. THE ARGUMENT

The series of questions addressed by this study of human security in international law – the contribution of the UN to the development of the idea of human security and to the achievement of human security, the connections between human rights, development and security, and the 'intricate convergence' of human rights and human security<sup>47</sup> - are underpinned by the central proposition that human security has much to offer international law and the UN, in particular in respect of the 'three great purposes' of human rights, development and security. Indeed, at the heart of the study lies the overarching argument that human security is a framework for analysis and action, specifically in relation to UN activity in the disparate fields of human rights, development and security, and which draws upon international law as a foundation. The research uncovers the value added of a human security framework for the UN and international law more generally by way of pursuing the dual aims of the research, namely, to offer a coherent and principled definition of human security and to assess the capacity of the UN to contribute to the achievement human security. The definition of human security, in addition to situating the idea of human security within international law, provides the basis for the framework by which to analyse UN activity in pursuit of human security which focuses on the fields of human rights, development and security. Furthermore, as the assessment focuses on the capacity of the UN, particular emphasis is placed on the institutions of the UN SC, the UNDP and the newly instituted Human Rights Council (HR Council) as the primary UN bodies in the fields of security, development and human rights. The focus on the capacity of these UN organs to achieve human security acknowledges the dynamic nature of the shift in priorities within the UN of putting 'people at the centre of everything that we do'.<sup>48</sup>

It is apparent that the research rests on the foundation that people matter and, more specifically, that alleviating human insecurity whether stemming from conflict and/or

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<sup>47</sup> Oberleitner, 'Porcupines in Love' (n 44).

<sup>48</sup> UN SG, *We the Peoples* (n 13) 7.

famine, is a worthwhile enterprise which the UN, as the core international institution in the fields of security, development and human rights, should actively pursue. Indeed the commitment to human security and the entitlement of all to a life in freedom from fear and freedom from want at the 2005 World Summit is echoed in the UN Charter which exhibits a clear concern with the welfare of human beings as embodied, for example, in the human rights provisions. As such the research advances the secondary and related argument that the UN has a pivotal, but under-developed, role in the achievement of human security. It is argued that the role of the UN has been stymied by the dominance of principles such as the principle of non-interference, territorial integrity and political independence which embody the state-centric character of the international legal order and are also found in the UN Charter alongside provisions for human rights. Further, during the cold war any conflict with human rights provisions were resolved in favour of such principles and thereby reinforced the state as the primary actor in the international landscape. Nonetheless, a shift towards balancing or reconciling these competing priorities of the UN is discernible in recent times. Changes in the international landscape such as increased international regulation in spheres traditionally seen as falling within the competence of states,<sup>49</sup> along with new vulnerabilities to old threats and new challenges such as the proliferation of non-state actors at the international level,<sup>50</sup> have facilitated such a shift in priorities. This research examines the extent to which the UN has embraced such changes and has embedded the thinking that people matter in practice.

## V. THE STRUCTURE AND OUTLINE OF THE STUDY

The study of human security in international law consists of two main parts which reflect the dual aim of the research. Underlying **Part One**, which comprises of four chapters, is the aim of defining human security in a coherent and principled manner. To this end, Chapter One details and critically evaluates the existing plethora of human security definitions which is situated against an account of the evolution of the idea of human security at the international level. The Chapter seeks to address the dilemma of definition by drawing upon the idea of essentially contested concepts to order the cacophony of definitions and to provide a point of departure for the ensuing definitional exercise. The historical roots of human security at the international level, particularly

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<sup>49</sup> See for example Christian Walter, 'Constitutionalising (Inter)national Governance: Possibilities for and Limits to the Development of an International Constitutional Law' (2001) 44 *German Yearbook of International Law* 170.

<sup>50</sup> See generally, UN SG, *We the Peoples* (n 13) 5 - 7.

by way of reference to the UN, are documented in Chapter Two, which also uncovers the broad strokes of human security as the entitlement of all to freedom from fear and freedom from want. While freedom from fear and want is not a new idea, having been articulated by US President Roosevelt in his 1941 State of the Union Address, an historical review of the establishment of the UN discloses that freedom from fear and freedom from want are founding aims of the UN and as such find expression in the UN Charter primarily, although not exclusively, in Articles 1 (3) and 55.

Chapter Three examines these Charter provisions and ultimately concludes that human security is a purpose of the UN, the achievement of which is a goal value of the 'UN community as a whole'.<sup>51</sup> Nonetheless, the UN possesses an inconsistent record in fulfilling its Charter mandate to achieve human security, which is documented in Chapter Three and serves to highlight the importance of the current efforts to reform the UN. These documents exhibit a preoccupation with the idea of human security and a clear UN human security 'package' is discernible as founded on the inter-relationship between human rights, development and security.<sup>52</sup> Yet the challenge of definition remains. Chapter Four examines the persistently recurrent assertion that human rights define human security. In particular the prospects and challenges for achieving human security through UN human rights law is explored which produces the proposition that UN human rights law provides the legal and normative basis for the achievement of human security.

**Part Two**, which is composed of two chapters, assesses the capacity of the UN to achieve human security which pays particular attention to UN activity in the fields of human rights, development and security. The critical assessment of UN capacity is undertaken by way of reference to the definition of human security derived from the proposition that UN human rights law is the legal and normative basis for the achievement of human security. Chapter Five focuses on the capacity of the primary UN human rights body, the newly instituted HR Council, to achieve human security. In doing so the Chapter draws upon the practice of, and the criticisms besieging, its predecessor, the embattled Commission on Human Rights. In a comparable manner, Chapter Six assesses the capacity of the UN SC and the UNDP, as the primary UN

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<sup>51</sup> Nigel D. White, *The United Nations: Toward International Justice* (Lynne Reiner Boulder 2002) 14.

<sup>52</sup> See Taylor Owen, 'A Response to Edward Newman: Conspicuously Absent? Why the Secretary-General used Human Security in all but name' (2005) 1 *St Antony's International Review* 37.

bodies in the fields of security and development. Both chapters place particular emphasis on the prospects and challenges – normative, institutional and operational - facing these institutions in achieving human security and, as such, draw heavily upon the current efforts to reform the UN.

The overarching argument that human security has much offer to international law and the UN weaves through the study and is drawn together in the **conclusion** which puts forward the UN human security framework. In doing so, the conclusion revisits the assertion that human rights define human security and evaluates the value added of a human security framework for the UN and international law more generally which includes a review of the implications and consequences of human security for international law. The conclusion ends with an assessment of the promise of the UN human security framework and in particular identifies the UN as a centre for harmonising and coordinating activities in pursuit of human security at the international, regional and national level. For, in the last analysis, there is a clear imperative to alleviate human insecurity as the crisis situation in Darfur and the ongoing conflicts in Iraq and Afghanistan all too readily illustrate, which is matched by a concomitant need to clearly delineate the role of international law and the UN in such an endeavour. The UN human security framework focuses on the place of human security in international law and the role of the UN in the quest for human security which, at the very least, reflects the importance attached to the idea human security as holistic and integrated approach to analysis by other disciplines and to the significance of human security as a policy agenda evident in the foreign policies of states such as Canada, Japan, Norway, and Switzerland.

## PART ONE

# HUMAN SECURITY, INTERNATIONAL LAW AND THE UNITED NATIONS

At certain pivotal moments the ‘international system has addressed and expressed purposes and values’<sup>1</sup> of which the signing of the UN Charter in 1945 may be considered an example. Indeed the UN Charter proclaimed the maintenance of international peace and security, the development of friendly relations based on equal rights and the self-determination of all peoples, and the achievement of international cooperation in the economic and social fields along with human rights, as ‘common ends’ or purposes of the UN<sup>2</sup> which under the Charter, acts as a centre for harmonising the activities of UN member states in the ‘attainment of these common ends’.<sup>3</sup> Further, the UN Charter articulated a number of principles that guide and underpin the UN and UN member states in pursuit of the purposes, including the sovereign equality of all states, the prohibition on the use or threat of force, and the principle of non-interference in the domestic affairs of member states.<sup>4</sup> Indeed these Charter provisions have the ‘avowed purpose of transforming relations among states, and the methods by which the world’s affairs are managed’<sup>5</sup> and thus the UN Charter stands as a ‘constitutional moment’ having expressed the values of the international system.<sup>6</sup> In this sense, it is argued that the UN Charter represents a critical shift in the values pursued by the international system particularly as, through provisions such as those pertaining to human rights, the idea that people matter is injected into international law. As such, the primary objective of this Part is to situate the idea of human security within international law.

In essence the Part seeks to ‘habilitate’ human security within international law discourse and to lay the foundation for an assessment of UN practice in respect of

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<sup>1</sup> Louis Henkin, *International Law: Politics and Values* (Kluwer Law International Boston/The Hague/London 1995) 99.

<sup>2</sup> UN Charter, Article 1 (1) – (3).

<sup>3</sup> UN Charter, Article 1 (4).

<sup>4</sup> UN Charter, Article 2 (1), (4) and (7).

<sup>5</sup> UN SG, *We the Peoples: The role of the UN in the 21<sup>st</sup> Century* (UN Dept of Public Information New York 2000) 6.

<sup>6</sup> Henkin (n 1) 99.

human security.<sup>7</sup> As such, the analysis that follows primarily occurs at the level of ideas. Indeed the overarching aim of the Part, which consists of four chapters, is to ‘clarify the meaning’<sup>8</sup> of human security for international law and the UN and to this end, **Chapter One** provides an overview of the available definitions and descriptions of human security in order to begin to chart the terrain occupied by the idea. While this assessment underscores the dearth of commentary on the idea of human security in international law, the potential of human security as a framework for analysis and action is evacuated from the plethora of definitions by way of embracing the essential contestability of the idea. Indeed, such an approach uncovers the broad strokes of human security as being about the entitlement of all to freedom from fear and want which is explored in historical perspective in **Chapter Two**. **Chapter Three** follows with a determination, and ultimately an evaluation, of the role of the UN in respect of human security and as such begins to sketch the meaning of human security for international law in general and the UN in particular. More specifically, the Chapter concludes with the identification of the UN human security ‘package’ which renders the contours of the place of human security in international law more distinct. **Chapter Four** explores the pivotal position accorded to human rights under the UN human security package, with particular emphasis on the implications for the development of the idea of human security and the achievement of human security.

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<sup>7</sup> The notion of ‘habilitating’ human security is borrowed from Barry Buzan who speaks of ‘habilitating the concept of security’ as the notion is under-developed and under-explored. Barry Buzan, *People, States and Fear: An agenda for international security studies in the post-cold war era* (Lynne Rienner Publishers Colorado 1991) 3.

<sup>8</sup> David Baldwin asserts that ‘conceptualising’ is about ‘clarifying the meaning’ of an idea and not testing hypothesis or constructing theories. David Baldwin, ‘The Concept of Security’ (1997) 23 *Review of International Studies* 5, 6.

## CHAPTER ONE

### WHAT IS HUMAN SECURITY? CONTEXT AND CONCEPT

#### I. INTRODUCTION

There are a plethora of definitions and descriptions of human security emanating from a multitude of different sources such as the United Nations (UN), governments and other international, regional and national organisations and institutions of various hues.<sup>1</sup> Academics, hailing from disparate fields of research and disciplines, have also joined in the cacophony of voices clamouring around the idea of human security.<sup>2</sup> This profusion of definitions and descriptions is testimony to the contested and elusive nature of the idea of human security and yet the Ottawa Treaty 1998 which instituted a ban on anti-personnel landmines and the Rome Statute 1998 which established the International Criminal Court are both counted among the many accomplishments of human security.<sup>3</sup> Thus, it is easy to appreciate Roland Paris's succinct observation that:

[t]o say that human security has served as an effective rallying cry is different from claiming that the concept offers a useful framework for analysis<sup>4</sup>

Underlying this statement is a concern as to using a politically powerful idea which is weakly conceptualised. Indeed, Sadako Ogato, co-chair of the Commission on Human Security (CHS), stated that '[h]uman security is a term that can mean all and nothing . . .

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<sup>1</sup> For example the governments of Canada, Japan and Switzerland have all adopted human security as an organising concept for their respective foreign policies. The Canadian and Japanese governments have been instrumental in the establishment of the Human Security Network and the Commission on Human Security respectively. The interest in human security is also apparent in Africa with the African Human Security Initiative and similarly in the Middle East with the Regional Human Security Centre.

<sup>2</sup> These fields of research fall along a spectrum from development studies to security studies and can be traced back to the origins of the idea of human security in both disciplines. An excellent illustration of the diverse fields of research and disciplines which human security attracts is seen in the Special Section of the journal *Security Dialogue* which was devoted to human security. See Special Section 'What is Human Security' (2004) 35 *Security Dialogue* 345. For example see the contribution by Donna Winslow and Thomas Hylland Eriksen as anthropologists. Donna Winslow and Thomas Hylland Eriksen, 'A Broad Concept that encourages interdisciplinary thinking' (2004) 35 *Security Dialogue* 361. See also 'Human Security' (2005) 1 *St Antony's International Review* 5 – 118.

<sup>3</sup> Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (adopted 18 September 1997, entered into force 1 March 1999) 36 ILM 1507; Rome Statute of the International Criminal Court (adopted 12 July 1998, entered into force 1 July 2002) 2187 UNTS 90 (Rome Statute).

<sup>4</sup> Roland Paris, 'Human Security: Paradigm Shift or Hot Air?' (2001) 26 *International Security* 87, 87 – 88. Paris has repeated this concern most recently in the Special Section of the journal of *Security Dialogue* devoted to human security. See Roland Paris, 'Still an inscrutable concept' (2004) 35 *Security Dialogue* 370.

rendering it conceptually vague and of little practical use'.<sup>5</sup> Thus the study of human security in international law begins with the question: what is human security? This is a timely and pertinent endeavour given the recent commitment of the UN to discuss and to define 'the notion of human security in the General Assembly' undertaken at the 2005 UN World Summit.<sup>6</sup> More specifically, the Chapter seeks to harness the potential of human security for analysis and action and to this end, addresses the concerns as to the analytical clarity and practical utility of such an elusive and contested concept and in doing so sets out on the quest to devise a human security framework.

The Chapter consists of three substantive parts the first of which charts the evolution of the idea of human security in academia and in policy at the international level, which clearly illustrates the potential of human security as a framework for analysis and action (Part II). Against this backdrop it is unsurprising that there are a verifiable multitude of definitions and descriptions of human security, a review of which is undertaken in Part III. Although the overview is conducted primarily in order to draw out commonalities and to thereby paint a picture of the idea of human security, it also confirms the enduring potential of human security as a framework for analysis and action. Nevertheless, a critical appraisal of these definitions and descriptions expose a number of definitional difficulties plaguing human security which, in order to harness the potential of human security as a framework for analysis and action, must be overcome. Thus, having identified a number of definitional difficulties faced by human security, the Chapter proposes a way by which to meet the challenge of definition and thereby begin to harness the potential of human security as a framework for analysis and action (Part IV).

## II. THE EVOLUTION OF THE IDEA OF HUMAN SECURITY

Human security has a distinguished heritage claiming ancestry in key evolutions in the understandings of 'security' and 'development'.<sup>7</sup> Indeed, human security emerged at the confluence of a discernible shift in focus in the field of security studies and a comparable change in emphasis in development studies. The change in the

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<sup>5</sup> Sadako Ogato, 'Overview for the Commission on Human Security' <<http://www.humansecurity-chs.org/past/first/overview.html>> accessed 28 February 2003.

<sup>6</sup> UN GA Res 60/1, '2005 World Summit Outcome' (16 September 2005) UN Doc A/RES/60/1, para. 143. Hereinafter referred to as the Outcome Document.

<sup>7</sup> See Kanti Bajpai, 'Human Security: Concept and Measurement' (Kroc Institute Occasional Paper #19:OP:1, August 2000) <[http://www.nd.edu/~krocinst/ocpapers/op\\_19\\_1.pdf](http://www.nd.edu/~krocinst/ocpapers/op_19_1.pdf)> accessed 16 May 2005; S. Neil MacFarlane and Yuen Foong Khong, *Human Security and the UN: A Critical History* (Indiana University Press Bloomington 2006)139 – 202.

understanding of ‘security’ and ‘development’ advocated in the relevant academic literature was matched, and at times preceded, by a comparable evolution in the policy sphere.<sup>8</sup> By examining the ‘broadening and deepening’ of the legitimate remit of the given discipline and field of activity, this Part charts the evolutionary track of human security with particular emphasis on the fundamental characteristics of the ‘broadening and deepening’ in the understandings of security and development that proved conducive to the evolution of the idea of human security.

The term ‘broadening and deepening’ was first employed to describe the changes in the focus of security studies although, as will be apparent, it usefully describes the changes in development studies.<sup>9</sup> According to Roland Paris, ‘broadening’ in the security context means considering non-military threats and he refers to environmental scarcity and degradation, the spread of disease, and terrorism amongst others as examples of the expansion of the remit of security in this regard. Paris continues to depict ‘deepening’ as consideration of the security of individuals and groups.<sup>10</sup> This broadening and deepening of the subject-matter and actors falling within the legitimate remit of the notion of security may be attributed in part to a series of reports by blue-ribbon commissions in the 1980’s and 1990’s, namely, the Independent Commission on International Development Issues (the Brandt Commission), the Independent Commission on Disarmament and Security (the Palme Commission), the Stockholm Initiative on Global Security and Governance and the Commission on Global Governance.<sup>11</sup>

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<sup>8</sup> Simon Chesterman has remarked in the context of the evolution of peacebuilding missions of the UN, that practice led policy development and often academic commentary had to catch up on practical developments. See Simon Chesterman, *You the People: The United Nations, Transitional Administration and State-Building* (OUP Oxford 2004) 7. A similar observation may be made in respect of the evolution and indeed emergence and consolidation of human security onto the international agenda as states such as Canada and Japan led the field in terms of policy development, while academia struggled to maintain apace such developments. Indeed Keith Krause has remarked ‘[t]he most striking thing about the concept of human security is that it was born in the ‘policy world’, and did not spring forth from academics or analysts’. Keith Krause, ‘Is Human security More than Just a Good Idea?’ in Michael Brzoska and Peter J. Croll (eds), *Promoting Security: But How and For Whom?* (Bonn International Centre for Conversion Bonn 2004) 43.

<sup>9</sup> For use of the phrase in the context of the development of security studies see Paris, ‘Paradigm shift’ (n 4) and Steve Smith, ‘The Increasing Insecurity of Security Studies: Conceptualising security in the last twenty years’ (1999) 20 *Contemporary Security Policy* 72.

<sup>10</sup> Paris, ‘Paradigm Shift’ (n 4) 97.

<sup>11</sup> The Brandt Commission issued two reports, the first in 1981 and the second in 1983. Independent Commission on International Development Issues, *North-South: A programme for survival* (Pan Books London and Sydney 1981) and Independent Commission on International Development Issues, *Common Crisis: North-South: Co-operation for world survival* (MIT Press Massachusetts 1983). In the interim the Palme Commission had published its report, *Common Security*, in 1982. Independent Commission on Disarmament and Security, *Common Security: A Programme for Disarmament* (Pan London 1982). In

The Brandt Commission issued two reports, *North-South: A programme for survival* in 1981 and *Common Crisis: North-South: Co-operation for world recovery*, in 1983.<sup>12</sup> In *North-South*, the Brandt Commission presented a persuasive argument for a new concept of security based on the idea of mutual interest. The Commission explained mutual interest as ‘mankind wants to survive, and one might even add has the moral obligation to survive’.<sup>13</sup> This in turn raised questions of peace and war along side issues of ‘world hunger, mass misery and alarming disparities between the living conditions of rich and poor’.<sup>14</sup> This led to the observation that there is a ‘growing awareness’ that chaos and insecurity stemming from ‘mass hunger, economic disaster, environmental catastrophes, and terrorism’ may pose an equal danger to peace on a par with military conflict.<sup>15</sup> The Commission thus stated:

true security cannot be achieved by a mounting build-up of weapons – defence in the narrow sense – but only by providing basic conditions for peaceful relations between nations, and solving not only the military but also the non-military problems which threaten them<sup>16</sup>

By advocating an expansion of security threats beyond the military, the reports of the Brandt Commission epitomise what has become known as the notion of *comprehensive security*. The 1982 report of the Palme Commission, which was noted with approval in the second report of the Brandt Commission, presented the notion of *common security*.<sup>17</sup> Common security, like comprehensive security, stressed that ‘international peace must rest on a commitment to joint survival rather than a threat of mutual destruction’<sup>18</sup> which also depends on addressing the discrepancies in the ‘basic conditions of life in the different parts of the world’.<sup>19</sup> The Palme Commission argued that it was only on

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1991 the report of the Stockholm Initiative recommended the establishment of the Commission on Global Governance, which duly delivered its report in 1995. The Stockholm Initiative on Global Security and Governance, *Common Responsibility in the 1990's* (Prime Minister's Office Stockholm 1991); Commission on Global Governance, *Our Global Neighbourhood* (OUP Oxford 1995).

<sup>12</sup> The legacy of the Brandt Commission survived the brief life-span of the Commission. See <<http://www.brandt21forum.info/>> accessed 1 August 2007.

<sup>13</sup> Brandt Commission, *North-South* (n 11) 13.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid 124.

<sup>17</sup> Palme Commission (n 11) 6 - 11. In explaining ‘common security’ the Palme Commission proceeded from the assertion that a secure state is one which is free from external military threat and ‘preserves the health and safety of its citizens’. Ibid 4.

<sup>18</sup> Ibid 139.

<sup>19</sup> Ibid 7. Joachim Müller notes that the report of the Palme Commission received ‘world-wide attention’ and that the UN SG addresses similar issues and concerns in *An Agenda for Peace*. Joachim Müller (ed), *Reforming the United Nations: The Quiet Revolution* (Kluwer Law International London/The Hague 2001) 21.

the basis of 'cooperative efforts and policies' that 'all the world's citizens' would be 'able to live without fear of war and devastation, and with the hope of a secure and prosperous future for their children and later generations'.<sup>20</sup> These reports, concerned with traditional military threats to security and the impact of an increasing gap in the economic development of the global north in comparison to the global south,<sup>21</sup> broadened the legitimate reach of security.

The 1991 report of the Stockholm Initiative stressed the importance of a wider concept of security which includes 'threats that stem from failures in development, environmental degradation, excessive population growth and movement, and lack of progress towards democracy'.<sup>22</sup> The assessment of developmental and environmental threats to security and the role of democracy and human rights carried out by the Stockholm Initiative provided the foundation and the impetus for the report of the Commission on Global Governance. The Commission on Global Governance reported in 1995, advocating a concept of *global security* that is broader than the 'traditional focus on the security of states' and encompasses 'the security of people and the planet'.<sup>23</sup> This latter aspect broadens the range of threats falling within the global security agenda beyond military threats to include 'pressing post cold-war humanitarian concerns' such as famine and ethnic conflict.<sup>24</sup> This expansion is important as 'states cannot be secure for long unless their *citizens* are secure'<sup>25</sup> and in this way, by shifting the focus of security to people, the Commission on Global Governance deepens the reach of the notion of security. Indeed the Commission postulates that the 'security of people' must be placed on an equal footing to security of states on the global security agenda.<sup>26</sup>

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<sup>20</sup> Ibid 8. In a similar vein the Palme Commission explained one of the four principles of common security - all nations have a legitimate right to security - in the following terms: 'A secure existence, free from physical and psychological threats to life and limb, is one of the most elementary desires of humanity. It is the reason why human beings choose to organise nation states, sacrificing certain individual freedoms for the common good - security. It is a right shared by all - regardless of where they live, regardless of their ideological or political belief'. Ibid.

<sup>21</sup> For example, the second report of the Brandt Commission was prompted by '[d]eteriorating economic conditions [that] already threaten the political stability of developing countries'. Brandt Commission, *Common Crisis* (n 11) 1.

<sup>22</sup> The Stockholm Initiative (n 11) 17-18.

<sup>23</sup> Commission on Global Governance (n 11) 78.

<sup>24</sup> Ibid 81.

<sup>25</sup> Ibid. (Emphasis added).

<sup>26</sup> Ibid 82.

Academic literature has also contributed to the 'broadening and deepening' of security studies.<sup>27</sup> For example, in observing a relative explosion of interest in the notion of security in the 1980s, Barry Buzan remarked 'the common theme underlying these voices was that a notion of security bound to the level of individual states and military issues is inherently inadequate'.<sup>28</sup> His attention then turns to charting the developments during the 1980's of which the idea of common security advanced by the Palme Commission was a particularly prominent feature.<sup>29</sup> However, Buzan's self-appointed task is to 'habilitate the concept of security'<sup>30</sup> and to this end he puts forward a concept of security centred on the state and weaves a complex web of inter-relationships between individual security, national security and international security and identifies five sectors of security threat.

Buzan maintains that the 'individual represents the irreducible basic unit to which the concept of security can be applied'<sup>31</sup> but nevertheless argues that individual security cannot provide the 'common denominator' for national security and international security.<sup>32</sup> This is in part because to do so would ignore the political reality of an inherent tension between the individual and the state and thus the state is central to Buzan's exercise of habilitating the concept of security. An examination of the nature of the state, demanded by its status as the referent object of security, reveals that strong states are necessary for individual and national security and are a necessary, though not sufficient condition for international security, thereby buttressing Buzan's conclusion in favour of the centrality of the state.<sup>33</sup> The examination also reveals five sectors of

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<sup>27</sup> Smith identifies seven developments contributing to the broadening and deepening of the field of security studies. These are: the Palme Commission and the notion of common security; the third world security school; the work of Barry Buzan and the 'Copenhagen School' constructivist security studies; critical security studies; feminist security studies; and, poststructural security studies. See Smith, 'Increasing Insecurity' (n 9). Smith later revises this enumeration and offers the following taxonomy of main developments that contributed to the broadening and deepening of security studies: the 'Copenhagen School'; constructivist security studies; critical security studies; feminist security studies; post-structuralist security studies; and, *human security*. See Steve Smith, 'The Contested Concept of Security' (Working Paper Series No. 23, The Concept of Security before and after September 11, Institute of Defence and Strategic Studies, May 2002) <<http://ntu.edu.sg/idss/publications/WorkingPapers/WP23.PDF>> accessed 29 June 2006. (Emphasis added).

<sup>28</sup> Barry Buzan, *People, States and Fear: An agenda for international security studies in the post-cold war era* (Lynne Rienner Publishers Colorado 1991) 6. Buzan noted the substantial contributions of Ken Booth, Hedley Bull and others to conceptualising security.

<sup>29</sup> Ibid 13.

<sup>30</sup> Ibid 3.

<sup>31</sup> Ibid 35.

<sup>32</sup> Ibid 51.

<sup>33</sup> Ibid 106. See in particular, chapter 2 'National Security and the Nature of the State'.

security issues which form the 'legitimate national security agenda'.<sup>34</sup> These sectors are military, political, economic, societal and ecological and each encompasses a wide range of threats which occasionally overlap.<sup>35</sup> In this way Buzan makes a significant contribution to the academic literature in the field of security studies not in the least by propelling the discernible trend in the literature of 'broadening' and 'deepening' the security agenda.<sup>36</sup>

Of course the shift towards broadening and deepening the field of security studies has been resisted in some quarters and indeed, the arguments have been subject to intense criticism. For instance *Common Security* the 1982 report of the Palme Commission was criticised as being a product of the time embedded within cold war rivalries and considerations of nuclear warfare.<sup>37</sup> In contrast, Buzan's seminal book *Peoples, States and Fear* was criticised for its avowed emphasis on the centrality of the state and perhaps implicitly for not advancing the cause of 'deepening' the ambit of security studies sufficiently. Notwithstanding such issues and the strength of the argument against widening the content of security, Steve Smith concludes that the field of security studies is healthier because it has undergone 'broadening and deepening', thereby permitting penetrating questions such as 'who security is for, how is it achieved, and what it means for whom' to be asked.<sup>38</sup>

The UN Secretary-General (SG) answered these questions in the Millennium Report in which the vision for the UN in the new millennium was articulated, in particular the SG proclaimed that the UN 'exists for, and must serve, the needs and hopes of peoples everywhere'.<sup>39</sup> It is unsurprising that the SG sees the cornerstone of the UN security agenda, freedom from fear, as a 'human-centred approach to security'.<sup>40</sup> The change in the understanding of security is necessitated by changes in weaponry and warfare and

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<sup>34</sup> Ibid 16.

<sup>35</sup> Ibid 116 - 134.

<sup>36</sup> Other academics arguing for broadening and deepening of security studies, primarily on the basis of a changed security landscape in the aftermath of the Cold War, include Richard Ullman, 'Redefining Security' (1983) 8 *International Security* 129 and Jessica Tuchman Matthews, 'Redefining Security' (1989) 68 *Foreign Affairs* 162.

<sup>37</sup> Smith, 'Increasing Insecurity' (n 9) 80 - 81.

<sup>38</sup> Ibid 95. David Baldwin asked very similar questions, namely 'security for whom?', 'security for what values?', 'how much security?', 'from what threats?', 'by what means?', 'at what cost?' and finally, 'in what time period?'. See David Baldwin, 'The Concept of Security' (1997) 23 *Review of International Studies* 5.

<sup>39</sup> UN SG, *We the Peoples: The Role of the United Nations in the 21<sup>st</sup> Century* (UN Dept of Public Information New York 2000) 6.

<sup>40</sup> Ibid 43. See Chapter Three.

includes 'the protection of communities and individuals from internal violence'.<sup>41</sup> At the heart of the human-centred approach to security lies preventive and deterrent strategies, which in turn demand a deeper understanding of the causes of conflict that includes recognition of the relationship between development and security. Hence, the SG remarks that the strategies detailed in the Millennium Report in respect of development are relevant to the prevention and deterrence of conflict. Moreover, the Report observes that a more integrated approach is required by those involved in conflict prevention and more generally development, such as the UN, the Bretton Woods institutions, governments and civil society.<sup>42</sup> However, an integrated response must be accompanied by the promotion of human rights, the protection of minority rights and the institution of appropriate representative political arrangements, particularly where ethnic divisions have given rise to conflict. Nevertheless, the SG recognises that prevention and deterrence are not always a successful combination and thus adds protection of the vulnerable, primarily by way of strengthening international human rights and humanitarian law, to the proposed strategies.<sup>43</sup> In short, the new understanding of security proposed in the Millennium Report is a product of, and reflects, the broadening and deepening of the notion of security.<sup>44</sup>

Yet, David Baldwin sees this broadening and deepening as being 'more concerned with redefining the policy agendas of nation states than with the concept of security itself'.<sup>45</sup> Indeed this absence of conceptual analysis and emphasis on policy concerns is clearly apparent in the reformulation of the UN security agenda noted above and is similarly evident in the reports of the Brandt Commission, Palme Commission and Commission on Global Governance, with the references to ethnic conflict and other new realities of 'post cold-war humanitarian concerns'.<sup>46</sup> As such, Baldwin seeks to untangle the conceptual analysis of security, that is 'clarifying the meaning' of the concept of

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<sup>41</sup> Ibid.

<sup>42</sup> Ibid 45. The SG also stresses the role of civil society generally and the social responsibility of global companies and banks in conflict prevention.

<sup>43</sup> Ibid. In this latter respect, the SG also identifies a number of issues such as intervention, sanctions, and arms reduction as requiring attention.

<sup>44</sup> Joachim Müller charts the influence of the blue-ribbon commissions on UN reform efforts. Müller (n 19) 20 – 21. For example Müller notes that the 'recommendations of the Palme Commission received world-wide attention' and continues to observe that the 'security initiative by Secretary-General Boutros Boutros-Ghali, described in *An Agenda for Peace* . . . focused on a number of similar issues and reform proposals'. Ibid 21.

<sup>45</sup> Baldwin (n 38) 5.

<sup>46</sup> Commission on Global Governance (n 11) 81.

security,<sup>47</sup> from empirical and policy concerns and, in this respect, even observes that Buzan's effort of 'rehabilitating' security is tarnished with 'empirical observations'.<sup>48</sup> Moreover, according to Baldwin, the relevant academic literature on the concept of security has long recognised the multidimensional nature of security along with 'conceptualising security at levels other than the nation-state'.<sup>49</sup> Thus, to clarify what is meant by 'security', Baldwin argues it is necessary to ask two questions, 'security for whom?' and 'security for which values?'.<sup>50</sup> These questions provide the necessary 'specifications for defining security as a policy objective',<sup>51</sup> the first of which has a wide range of possible answers, including 'the individual (some, most, or all individuals), the state (some, most, or all states), the international system (some, most, or all international systems)', which is decided by the research in question.<sup>52</sup> The values of the individual(s), state(s) and others provide the answer to the second question, 'security for which values', although Baldwin does stress that this defining specification does not include 'vital interests' or 'core values' as do so suggests some empirical or policy consideration as to what is vital or core.<sup>53</sup>

A comparable, albeit earlier, change in the understanding of 'development' is clearly apparent in academic commentary and policy documents emanating from organisations such as the UN through initiatives like the United Nations Development Programme (UNDP). Yet, Henry J. Steiner and Philip Alston remark that even if there was a time when consensus as to the 'components and character of development' had flourished that period has long receded into the annals of history.<sup>54</sup> Indeed the understanding of development has, in the words of Keon de Feyter, 'shifted over time'.<sup>55</sup> De Feyter continues to chart the changes in the meaning of development beginning in 1945 with the inception of the UN where development was equated with economic development and when the dominant theory 'on international economic and social co-operation . . .

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<sup>47</sup> Ibid 6.

<sup>48</sup> Ibid 7.

<sup>49</sup> Ibid 23. Cf. Buzan (n 28) 3.

<sup>50</sup> Ibid 13 – 14.

<sup>51</sup> Ibid 12. Baldwin offers a further five 'specifications for defining policies for pursuing' the policy objective of security. These are 'how much security?', 'from what threats?', 'by what means?', 'at what cost?' and finally, 'in what time period?'. Ibid 14 - 17.

<sup>52</sup> Ibid 13.

<sup>53</sup> Ibid 14.

<sup>54</sup> Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics and Morals* (2<sup>nd</sup> edn OUP Oxford 2000) 1315. They conclude that the term development 'is as contested as so many other key concepts'. Ibid 1315.

<sup>55</sup> Koen de Feyter, *World Development Law: Sharing responsibility for development* (Intersentia Antwerpen 2001) 2.

was functionalism'.<sup>56</sup> Theo van Boven supplements de Feyter's cartographic exercise by observing that this approach to development had been abandoned by the UN as early as 1970 when a report documenting the first UN Development Decade warned of the implications of an undue emphasis on economic growth, particularly for the realisation of human rights.<sup>57</sup> Indeed, according to de Feyter the biggest change in the understanding of development, particularly for the UN, came with the broadening of the concept of development 'beyond its purely economic dimension'.<sup>58</sup> De Feyter places this 'major breakthrough' as occurring in the 1990's which, unsurprisingly, coincides with the work of the UNDP in respect of the notion of *human* development.<sup>59</sup>

The UNDP championed the notion of human development, which arose in direct response to the deficiencies involved in equating development with economic growth as measured through GNP, savings, investments and other 'national aggregates'.<sup>60</sup> The UNDP debuted human development on the international stage in 1990 via the first UNDP Human Development Report (HDR), which addressed in large part how economic growth fails to translate into human development. Human development was defined therein as 'a process of enlarging people's choices'.<sup>61</sup> According to the Report the 'most critical' choices pertain to leading a long and healthy life, to being educated and to enjoying a decent standard of living.<sup>62</sup> The Report proposed to measure these three essential elements in terms of life expectancy, literacy and income, which according to the 1995 HDR must be considered in light of gender equality and the principle of non-discrimination more generally.<sup>63</sup> The 1995 HDR also provided further elaboration as to the concept of human development by way of identifying the four major elements of human development as productivity, equity, sustainability and empowerment.<sup>64</sup>

Nonetheless, evidence of the 'humanising of development' in the academic literature can be traced back to the 1970's and 1980's. Mahbub ul Haq made a principal

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<sup>56</sup> Ibid 71.

<sup>57</sup> Theo van Boven, 'Human Rights and Development: The UN Experience' in David P. Forsythe (ed), *Human Rights and Development: International Views* (Macmillan Basingstoke 1989) 126.

<sup>58</sup> de Feyter, (n 55) 32.

<sup>59</sup> Ibid 32.

<sup>60</sup> MacFarlane and Foong Khong (n 7) 161.

<sup>61</sup> UNDP, *Human Development Report 1990* (OUP Oxford 1990) 9.

<sup>62</sup> The Report did add a further three choices of relevance to the concept of human development, that of political freedom, guaranteed human rights and self-respect. Ibid 10.

<sup>63</sup> UNDP, *Human Development Report 1995* (OUP Oxford 1995) 12.

<sup>64</sup> Ibid 12. See de Feyter, (n 55) 4.

contribution in this regard, particularly in respect of the development of the notion of human development and the idea of a human development index in his capacity as Special Advisor to the UNDP. Amartya Sen, also an esteemed economist, played a similar contributory role in expanding the traditional notion of 'development' by propounding 'the capability approach' to development. He expounded the notion of development *as* freedom that is 'development as a process of expanding the real freedoms that people enjoy'.<sup>65</sup> This was relied upon by ul Haq in formulating the notion of human development for the UNDP. Jack Donnelly, an early proponent of the broadening of the understanding of 'development' beyond the confines of economics, added an important perspective – that of human rights – which furthered the 'humanisation' of development. Donnelly challenged the received wisdom that the suspension of human rights, both economic, social and cultural rights along with civil and political rights, were necessary in order to obtain higher levels of economic development.<sup>66</sup>

Given the instrumental role of Sen and ul Haq in the creation of the human development index it is unsurprising that the understanding of development as human development and in particular the understanding professed by the UNDP, is mirrored in the academic commentary. For instance, Subrata Roy Chowdhury and Paul J.I.M de Waart, also at the beginning of the 1990's, offered the following definition of development:

a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of all individuals and peoples on the basis of their active, free and meaningful participation and of social justice (fair distribution of benefits)<sup>67</sup>

Thus it is easy to appreciate de Feyter's statement in 2001 that although terminology differs 'it is clear that development aims at enlarging the opportunities people have in their lives' adding that environmental, social, and political aspects of development are as important as 'the goals of increasing productivity and income'.<sup>68</sup> Indeed the human

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<sup>65</sup> Amartya Sen, *Development as Freedom* (OUP Oxford 1999) 1.

<sup>66</sup> It was this argument and a similar one advanced in the 1970's that prompted Jack Donnelly to assess the relationship between human rights and development. Jack Donnelly, 'Human Rights and Development: Complementary or Competing Concerns?' (1984) 36 *World Politics* 255. See also, Jack Donnelly, 'Human Rights, Democracy and Development' (1999) 21 *Human Rights Quarterly* 608.

<sup>67</sup> Subrata Roy Chowdhury and Paul J.I.M de Waart, 'Significance of the Right to Development: an introductory view' in Subrata Roy Chowdhury, Erik M.G. Denters and Paul J.I.M de Waart (eds) *The Right to Development in International Law* (Martinus Nijhoff Dordrecht 1992) 21.

<sup>68</sup> de Feyter (n 55) 32. De Feyter also acknowledges that this multidimensional approach to development is ambitious not in the least due to the institutional implications. Moreover, it may be pertinent to recall David P. Forsythe's concluding remarks that for purposes of analysis, particularly relating to the

focus and the multidimensional character of this understanding of development are clearly apparent in the UN development agenda as articulated by the SG in the Millennium Report.<sup>69</sup> Here the SG called on member states to advance freedom from want, in particular to reduce the number of people living in poverty by half by 2015 as poverty is not merely ‘an affront to our common humanity’ it also exacerbates other problems such as ethnic and religious conflict.<sup>70</sup> In order to achieve this, the SG proposed a multifaceted approach including sustainable growth, tackling diseases such as HIV/AIDS, employment and education.

Human security emerged from efforts to broaden and deepen the understanding of ‘security’ and ‘development’ in both academia and practice,<sup>71</sup> and more particularly, at the nexus between security and development. In other words the idea of human security emerged at the point at which fundamental characteristics in the comparable transformation in the understandings of security and development, coincided and overlapped. The focus on people and the expansion of sources of insecurity beyond the traditional military rubric to include threats to the security of people such as famine and environmental degradation, as based on a ‘growing awareness’ of the need to address new realities and to meet old challenges, counted as fundamental characteristics of both security and development producing the idea of human security. As such human security offers a unique perspective from which to analyse the relationship between security and development and it unsurprising that academics are attracted by the promise of a holistic approach to analysis that human security offers.<sup>72</sup> Moreover, governments, such as Canada and Japan, have adopted human security approaches to foreign policy to better reflect the multifaceted sources of insecurity, such as HIV/AIDS and child soldiers. Thus, the heritage of human security in key evolutions in the understandings of security and development indicates the potential of human security as

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relationship between human rights and development, that there are benefits in equating development with economic development. See David P. Forsythe, ‘Human Rights and Development: A Concluding View’ in Forsythe (ed), (n 57) 351-352. Cf. UNDP, *Human Development Report 2000* (OUP Oxford 2000) 19.

<sup>69</sup> See Chapter Three.

<sup>70</sup> UN SG, *We the Peoples* (n 39) 19 - 20.

<sup>71</sup> S. Neil MacFarlane and Yuen Foong Khong state: ‘One principal aspect of the effort to broaden the concept of security concerned the relationship between development and security’. MacFarlane and Foong Khong (n 7) 143.

<sup>72</sup> Ellen Lammers noted the advantage of ‘linking human security to refugee/returnee issues’ in terms of realigning analysis which is skewed on ‘the material aspects of the supposed needs of refugees’. Ellen Lammers, *Refugees, Gender and Human Security: A theoretical introduction and annotated bibliography* (International Books Utrecht 1999) 55. Connie Peck similarly noted with approval the notion of human security as offering a ‘more holistic understanding of the problem of conflict’. Connie Peck, *Sustainable Peace: The role of the UN and Regional Organisations in Preventing Conflict* (Rowman and Littlefield Publishers Lanham/Boulder/New York/Oxford 1998) 204.

a framework for analysis and action, for example, to address new realities and meet old challenges. Nonetheless, as the following demonstrates, this multidimensional heritage ensures that there are a profusion of definitions and descriptions of human security.

### III. DEFINITIONS OF HUMAN SECURITY

This Part canvasses the definitions and descriptions of human security emanating from the UN, governments and regional institutions along with academics of various hues with a view to painting a picture of the idea of human security. The commonalities permeating these definitions of human security are drawn out by way of a textual and comparative analysis which also speaks to the potential of human security as a framework for analysis and action. Nonetheless, the profusion of human security definitions hampers the quest for a human security framework and, to this end, the second Section of this Part critically evaluates the definitions and descriptions of human security canvassed in the first Section.

#### *A. An Overview of the Definitions of Human Security*

The UN first alluded to the term human security in the 1992 document, 'An Agenda for Peace'. Buried amongst expressions of renewed opportunity to build peace, stability and security in the aftermath of the cold war, the then SG of the UN, Boutros Boutros-Ghali proclaimed that each organ of the UN has a 'special and indispensable role to play in an integrated approach to human security'.<sup>73</sup> A similar reference to the term human security is found in the sister document to 'An Agenda for Peace'. In 'An Agenda for Development' peace is seen as the foundation for a revitalised concept of development and recognition is given to the interrelationship between development and conflict.<sup>74</sup> As such, the SG stated 'national budgets which focus directly on development better serve the cause of peace and human security'.<sup>75</sup>

The succeeding SG, Kofi Annan, similarly saw human security as an idea around which to harmonise and coordinate the efforts of the UN and its members in respect of development and security.<sup>76</sup> Indeed, during his appointment as SG Kofi Annan consistently expressed concern as to the threat posed to human security by, amongst

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<sup>73</sup> UN SG, 'An Agenda for Peace: Preventive diplomacy, peacemaking and peacekeeping' (17 June 1992) UN DOC A/47/277-S/2411, para. 16.

<sup>74</sup> UN SG, 'An Agenda for Development' (6 May 1994) UN DOC A/48/938, paras. 16 – 20.

<sup>75</sup> *Ibid* para. 19.

<sup>76</sup> This is most apparent in the Millennium Report in which freedom from fear is equated with security and freedom from want is similarly equated with development. UN SG, *We the Peoples* (n 39).

others, weapons of mass destruction, human rights abuses, AIDS, international terrorism, and environmental disasters.<sup>77</sup> Moreover, the SG described human security as comprising of ‘economic development, social justice, environmental protection, democratisation, disarmament, and respect for human rights and the rule of law’,<sup>78</sup> as entailing ‘human rights, good governance, access to education and health care’ and as ‘ensuring that each individual has opportunities and choices to fulfil his or her potential’.<sup>79</sup> Furthermore, according to the SG, freedom from fear, freedom from want and the freedom of future generations to inherit a healthy natural environment form the three constituent and interrelated building blocks of human security.<sup>80</sup>

The UNDP whole-heartedly embraced the idea of human security in its 1994 annual publication of the HDR offering a definition which is the most cited and arguably the most authoritative definition of human security.<sup>81</sup> The Report devoted an entire chapter to detailing the ‘New Dimensions of Human Security’ in which human security is described as being of universal concern and as being people-centred. Further, the components of human security are interdependent and human security is more easily ensured through early prevention strategies.<sup>82</sup> To the UNDP these, universal, people-centred, interdependent, and early prevention, constitute the four essential characteristics of human security which must inform any consideration of the idea.<sup>83</sup> According to the UNDP human security is founded on the twin components of freedom from fear and freedom from want which are found in the UN Charter, and is comprised

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<sup>77</sup> UN GA, *Report of the Secretary-General on the Work of the Organisation* (United Nations New York 2000) 4.

<sup>78</sup> UN SG, ‘Towards a Culture of Peace’ <<http://www.unesco.org/opi2/lettres/TextAnglais/AnnanE.html>> accessed 11 October 2005.

<sup>79</sup> UN SG, ‘Secretary-General salutes International Workshop on Human Security in Mongolia’ (Two Day Session in Ulaanbaatar, 8-10 May 2002) (8 May 2002) Press Release SG/SM/7382.

<sup>80</sup> Ibid. The African Union has adopted a remarkably similar understanding of human security in the Draft African Non-Aggression and Common Defence Pact. The Pact defines human security as: ‘the security of the individual with respect to the satisfaction of the basic needs of life; it also encompasses the creation of the social, political, economic, military, environmental and cultural conditions necessary for the survival, livelihood, and dignity of the individual, including the protection of fundamental freedoms, the respect for human rights, good governance, access to education, healthcare, and ensuring that each individual has opportunities and choices to fulfil his/her own potential’. See African Union, ‘Draft African Non-Aggression and Common Defence Pact’ <[http://www.africa-union.org/News\\_Events/Calender\\_of\\_%20Events/Pacte%20de%20non-aggression/Aggression%20Pact%20amendement%20by%20the%20Libyan.pdf](http://www.africa-union.org/News_Events/Calender_of_%20Events/Pacte%20de%20non-aggression/Aggression%20Pact%20amendement%20by%20the%20Libyan.pdf)> accessed 13 July 2005. In respect of human security in Africa see generally, the African Human Security Initiative <<http://www.africanreview.org>> Jakkie Cilliers, ‘Human Security in Africa: A conceptual framework for review’ <<http://www.africanreview.org/docs/humsecjun04.pdf>> accessed 13 July 2005.

<sup>81</sup> UNDP, *Human Development Report 1994* (OUP Oxford 1994). Haq devised the Human Development Index for the UNDP and was a leading proponent of the idea of human security. For a review of Haq’s contribution to the idea of human security, see Bajpai, (n 7) 9-12.

<sup>82</sup> UNDP, *HDR 1994* (n 81) 22-23

<sup>83</sup> Ibid.

of two main aspects.<sup>84</sup> The first aspect of human security is safety from chronic threats such as hunger, disease and repression, while the second aspect is ‘protection from sudden and hurtful disruptions in the patterns of daily life’.<sup>85</sup> On this understanding, the content of human security is informed by freedom from fear and freedom from want, while the scope is delimited to chronic threats and sudden and hurtful disruptions. The UNDP readily acknowledged the broad nature of such a definition and attempted to ascribe a more concrete meaning by enunciating seven non-exhaustive categories of threats to human security, namely: economic security, food security, health security, environmental security, personal security, community security and political security.<sup>86</sup>

The CHS was established in response to the SG’s call to advance ‘freedom from fear, freedom from want and the freedom of future generations to sustain their lives on this planet’.<sup>87</sup> Given this genesis it is unsurprising that the definition of human security proffered by the Commission in its final report, *Human Security Now*, is informed by these components or, to borrow the terminology of the SG, these building blocks of human security.<sup>88</sup> The Commission saw human security as protecting the ‘vital core of all human lives in ways that enhance human freedoms and human fulfilment’<sup>89</sup> and understood the ‘vital core’ to be protected in terms of human freedoms.<sup>90</sup> The CHS further saw human security as entailing the protection of ‘people from critical (severe) and pervasive (widespread) threats and situations’.<sup>91</sup> Thus, according to the CHS the content of human security is determined by fundamental freedoms while the phrase ‘critical and pervasive threats and situations’ simultaneously narrows and broadens the scope of the idea. The phrase reinforces the broad content in that both threats and situations are included within the scope of human security, while the characterisation of these threats and situations as critical and pervasive tempers this by introducing a boundary or a threshold.

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<sup>84</sup> Ibid 24.

<sup>85</sup> Ibid 23.

<sup>86</sup> Ibid 24 -25.

<sup>87</sup> UN SG, ‘Secretary-General Statement to the General Assembly on the presentation of the Millennium Report’ (Speech delivered to the UN General Assembly, New York, 3 April 2000) <<http://www.un.org/millennium/sg/report/state.htm>> accessed 22 July 2004, para 13. More generally see, UN SG, *We the Peoples* (n 39).

<sup>88</sup> CHS, *Human Security Now* (United Nations Publications New York 2003) 10. The Commission on Human Security undertook research in two broad areas ‘human insecurity resulting from conflict and violence’, which corresponds to freedom from fear and secondly in relation to the ‘links between human security and development’.

<sup>89</sup> Ibid 4.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid

Like the UN, governments, prompted by new challenges such as ethnic conflict, climate change and global epidemics such as HIV/AIDS, have also recognised the value of human security as an idea around which to organise various activities. In this respect it is pertinent to recall that the UNDP organised the 1995 Copenhagen UN Conference on Social Development around human security. Further, as noted above, the Ottawa Convention pertaining to the prohibition of anti-personnel landmines and the Rome Statute which established the International Criminal Court, are both counted among the many accomplishments of human security. As such it is unsurprising that the governments of Canada and Japan have adopted the idea of human security to inform their foreign policy.<sup>92</sup> Hence, human security to Canada is a ‘people-centred approach to foreign policy’<sup>93</sup> and to Japan a key perspective on foreign policy.<sup>94</sup> However, the meaning ascribed to human security by the Canadian government is different from the definition offered by Japan which has a bearing on the operation of human security by the two governments in their foreign affairs activities.

Human security for the government of Canada means ‘freedom from pervasive threats to people’s rights, safety or lives’<sup>95</sup> and is derived from one of the major components of human security identified by the UNDP in the 1994 HDR, that of, freedom from fear.<sup>96</sup> As a result the scope of human security for the Canadian government is determined by pervasive threats which are violent in nature and which must be directed towards the rights, safety or lives of people. Similarly, Canada identifies five areas as being of concern in human security, namely, protection of civilians, peace support operations, conflict prevention, governance and accountability, and finally, public safety. Therefore, terrorism, landmines, and the proliferation of small arms for example, constitute pervasive threats to people’s rights, safety or lives. In contrast, the government of Japan is of the view that human security means the ‘preservation and protection of the life and

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<sup>92</sup> The Political Affairs Division IV of Switzerland has a human security unit. See <[http://www.eda/admin.ch/content/eda/e/home/foreign/humsec.html](http://www.eda.admin.ch/content/eda/e/home/foreign/humsec.html)> accessed 12 October 2005.

<sup>93</sup> See Canada’s Human Security Website, <<http://www.humansecurity.gc.ca>> accessed 15 June 2004 and Department of Foreign Affairs and International Trade (DFAIT), *Freedom from Fear: Canada’s foreign policy for human security* (Department of Foreign Affairs and International Trade Ottawa 2002).

<sup>94</sup> Yukio Takasu, ‘Toward Effective Cross-Sectorial Partnership to Ensure Human Security in a Globalised World’ (Third Intellectual Dialogue on Building Asia’s Tomorrow Bangkok 19 June 2000) <[http://www.mofa.go.jp/policy/human\\_secu/speech0006.html](http://www.mofa.go.jp/policy/human_secu/speech0006.html)> accessed 15 June 2004.

<sup>95</sup> Canada’s Human Security Website, <<http://www.humansecurity.gc.ca>> accessed 15 June 2004.

<sup>96</sup> The then Foreign Minister of Canada, Lloyd Axworthy recognised the role of freedom from want in respect of the idea of human security in putting forward Canada’s foreign policy as founded on human security, see DFAIT, *Freedom from Fear* (n 93). On the reasons why the government of Canada has adopted freedom from fear as the foundation for its understanding of human security see below.

dignity of individual human beings'<sup>97</sup> which can only be achieved when the 'individual is confident of a life free of fear and free of want'.<sup>98</sup> Consequently, the Japanese government's position in relation to the idea of human security is somewhat broader than that adopted by its Canadian counterpart, relying as it does on both major components of human security identified by the UNDP, namely, freedom from fear and freedom from want. As a result, the foreign policy activities undertaken by the government of Japan in order to advance human security, embrace areas such as HIV/AIDS and environmental protection. Moreover, the understanding of human security held by Japan relates to 'preservation and protection' whereas the meaning ascribed to human security by Canada is contingent upon the phrase 'pervasive threats'. Therefore, the human security activities undertaken by Japan in its foreign affairs have a wider application than those pursued by Canada. Nevertheless, the definition of human security offered by Japan does appear narrower due to the emphasis placed on the individual. The Canadian government's definition appears to cognise the possibility of groups or, at the very least the individual within a group, as being the focus of human security activities in the five foreign policy areas of concern.

The interest shown by the governments of Canada and Japan in the idea of human security has permeated beyond the confines of foreign policy initiatives. For instance, the Japanese government played a substantial role in the establishment of the CHS in 2001.<sup>99</sup> Similarly, the Canadian government was instrumental in the establishment of the Human Security Network (HSN) and the Regional Human Security Centre (RHSC) in the Middle East.<sup>100</sup> The HSN was established by Canada and Norway in 1999<sup>101</sup> and now boasts thirteen like minded states as members. Each member endorses the stated vision of the Network, that of:

[a] humane world where people can live in security and dignity, free from poverty and despair . . . In such a world, every individual would be guaranteed *freedom from fear and freedom from want*, with an equal opportunity to fully develop their potential.<sup>102</sup>

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<sup>97</sup> Takasu (n 94).

<sup>98</sup> Ibid.

<sup>99</sup> On the establishment of the Commission on Human Security see <<http://www.humansecurity-chs.org>>.

<sup>100</sup> On the involvement of the Canadian government in these initiatives see DFAIT, *Freedom from Fear* (n 93). For the Human Security Network see <<http://www.humansecuritynetwork.org>> and the Regional Human Security Centre see <<http://www.ir.jo/human>>.

<sup>101</sup> On the establishment of the Human Security Network, see <<http://www.humansecuritynetwork.org>>

<sup>102</sup> Human Security Network, 'The Vision of the Human Security Network'

<<http://www.humansecuritynetwork.org/menu-e.php>> accessed 15 June 2004. (Emphasis added).

Given the involvement of the government of Canada in the establishment of the HSN it is unsurprising that human security to the Network means ‘freedom from pervasive threats to people’s rights, their safety or even their lives’.<sup>103</sup> Although textually remarkably similar to the definition offered by Canada, the HSN goes beyond the confines of violent threats to encompass, like Japan, issues such as development and the environment within the ambit of its definition of human security. This broader scope is unsurprising given the endorsement of freedom from fear and freedom from want by the members of the HSN. Consequently, the HSN undertakes activities in relation to small arms alongside considering issues such as AIDS and conducts activities which focus on groups such as children and women. The Jordan Institute for Diplomacy houses the Regional Human Security Centre which seeks to ‘promote awareness of human security in the countries of the Middle East’.<sup>104</sup> To the Centre human security is premised on ‘the individual citizen’s right to ‘freedom from fear and freedom from want’<sup>105</sup> and thus is concerned with ‘issues related to every citizen’s right to safety from both violent and non-violent threats’.<sup>106</sup> The RHSC adopts the UNDP categorisation of human security threats,<sup>107</sup> which ensures that the understanding of human security held by the RHSC is quite broad. Nevertheless, in pursuing its objective of promoting awareness of human security, the Centre somewhat eschews the UNDP categorisation. For instance, one of the activities undertaken in pursuit of the Centre’s objective is the provision of information related to human security issues<sup>108</sup> which is duly delivered according to the five areas of concern identified by Canada for its foreign policy initiatives in respect of human security.<sup>109</sup>

References to and descriptions of human security have not been the sole domain of the UN, governments and their protégée.<sup>110</sup> Academics, perhaps attracted by the promise of

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<sup>103</sup> Ibid.

<sup>104</sup> The Regional Human Security Center, ‘About Us’ <[http://www.id.gov.jo/human/introduction/frame\\_intro-object.html](http://www.id.gov.jo/human/introduction/frame_intro-object.html)> accessed 5 May 2005.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

<sup>107</sup> These categories are: economic, food, health, environmental, personal, community/cultural, and political. It further identifies some of the issues to be considered as falling within these categories which roughly correspond to the issues identified by the UNDP as being of concern in the 1994 HDR. See UNDP, *HDR 1994* (n 81) 22.

<sup>108</sup> Other activities of the RHSC include the Human Security Forum <[http://www.id.gov.jo/human/introduction/frame\\_intro-object.html](http://www.id.gov.jo/human/introduction/frame_intro-object.html)> accessed 5 May 2005.

<sup>109</sup> See Canada’s Human Security website <<http://www.humansecurity.gc.ca>>

<sup>110</sup> There have been numerous references to human security by various organs and institutions of the UN. For example, the Deputy SG has described human security as ‘all those things that men and women anywhere in the world cherish most’ and lists food, shelter, health, education, protection from violence and a ‘State which does not oppress its citizens but rules with their consent’ as belonging to the category

an integrated and holistic approach to analysis offered by the idea of human security,<sup>111</sup> have variously described human security as ‘the safety and well-being of individuals’,<sup>112</sup> as meaning ‘freedom from fear’,<sup>113</sup> or as pertaining to the attainment of ‘the social, environmental and economic conditions conducive to a life in freedom and dignity for the individual’.<sup>114</sup> A particularly recurrent assertion in the academic literature is that human security is defined by human rights.<sup>115</sup> Nonetheless, perhaps prompted by such descriptive forays and by the success of organisations and governments in utilising the idea of human security as an organising concept for action,<sup>116</sup> academics have persistently attempted to define human security with more precision.

Sabina Alkire offered a definition of human security against the backdrop of a considered and comprehensive examination of the idea of human security, with the objective of showing how the idea ‘can form the basis for operational responses by many different institutions’.<sup>117</sup> As such Alkire puts forward what she refers to as a Working Definition of human security that of, ‘to safeguard the vital core of all human lives from critical pervasive threats, in a way that is consistent with long-term human fulfilment’.<sup>118</sup> Alkire identifies ‘safeguard’, ‘vital core’, ‘all human lives’, ‘critical pervasive threats’ and ‘human fulfilment’ as the five key terms of her Working Definition. The phrase ‘vital core of all human lives’ is perhaps the pivotal term in the

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of most cherished things. See Deputy SG, ‘Deputy Secretary-General Addresses Panel on Human Security marking Twentieth Anniversary of Vienna International Centre’ (12 October 1999) Press Release DSG/SM/70 <<http://www.un.org/News/Press/docs/1999/19991012.dsgsm70.doc.html>> accessed 15 June 2004.

<sup>111</sup> For example, Connie Peck noted with approval the notion of human security as offering a ‘more holistic understanding of the problem of conflict’. Peck (n 72) 204.

<sup>112</sup> Yuen Foong Khong, ‘Human Security: A Shotgun Approach to Alleviating Human Misery?’ (2001) 7 *Global Governance* 231.

<sup>113</sup> Rob McRae, ‘Human Security in a Globalised World’ in Rob McRae and Don Hubert (ed), *Human Security and the New Diplomacy: Protecting People, Promoting Peace*. (McGill-Queen’s University Press Montreal 2001) 4.

<sup>114</sup> Anne Hammerstad, ‘Whose Security? UNHCR, Refugee Protection and State Security After the Cold War’ (2000) 31 *Security Dialogue* 391, 395.

<sup>115</sup> Bertrand G. Ramcharan states: ‘human rights define human security’. See Bertrand G. Ramcharan. *Human Rights and Human Security* (Kluwer Law International The Hague 2002) 9. See also Gerd Oberleitner, ‘Porcupines in Love: Human Rights and Human Security’ (2005) 6 *European Human Rights Law Review* 588. This proposition is explored in-depth in Chapter 4.

<sup>116</sup> For instance, the Ottawa Treaty which instituted a ban on anti-personal landmines has been claimed as an accomplishment of human security.

<sup>117</sup> Sabina Alkire, ‘A Conceptual Framework for Human Security’ (CRISE Working Paper 2, Centre for Research on Inequality, Human Security and Ethnicity 2002)

<<http://www.crise.ox.ac.uk/pubs/workingpaper2.pdf>> accessed 11 November 2005, 2.

<sup>118</sup> Ibid.

Working Definition as it relates to the content of human security,<sup>119</sup> which may include ‘certain fundamental human rights, basic capabilities, or absolute needs’,<sup>120</sup> although Alkire prefers fundamental human rights which ‘pertain to survival, to livelihood, and to basic dignity’.<sup>121</sup> The operation of Alkire’s Working Definition is determined by the term ‘critical pervasive threats’. The threats to human security are characterised as critical in that they must endanger the vital core, while the requirement of pervasive is explained by the dual condition that the threat must be large scale and/or may recur. The former condition refers to the population concerned, whereas the latter is intended to cover repeating situations within the given population and any ‘anomalous event’ for which strategic preparation is possible, such as a nuclear threat.<sup>122</sup>

The pursuit of human security as understood by Alkire is suggested by the second part of her Working Definition, ‘in a way that is consistent with long-term human fulfilment’. In discussing the meaning of ‘human fulfilment’ Alkire recognises that the combined effect of the preceding terms is insufficient for human security.<sup>123</sup> Therefore, the term ‘human fulfilment’ is intended to convey ‘the ongoing process of seeking and realising values by people in groups and communities’ in a manner consistent ‘with their long-term good’.<sup>124</sup> Consequently, the manner in which human security is instituted takes on added significance under the proposed Working Definition, and thus processes such as governance, participation, transparency, capacity-building and institution-building are deemed to be of importance.<sup>125</sup> The term ‘safeguard’ adds much needed clarification as to the pursuit of human security as understood in the Working Definition. While primarily intended to convey the protective nature of human security, it also entails that the realisation of human security is guided by a proactive approach based on achieving empowerment.<sup>126</sup> According to Alkire ‘safeguard’ also stipulates that institutions or actors, whether directly involved in providing human security or not,

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<sup>119</sup> The term ‘vital core of all human lives’ is also pivotal as Alkire refers to this term in her analysis of the other defining terms, illustrating the interdependent relationship between the terms and emphasising the people-centred premise of human security.

<sup>120</sup> Alkire makes this statement after identifying the vital core as ‘a limited vital core of human activities and abilities’. Alkire (n 117) 3.

<sup>121</sup> Ibid

<sup>122</sup> Ibid 4. This term is in part explained by way of reference to the term ‘vital core’. The threats are critical in the sense that ‘they threaten to cut into the core activities and functions of human lives’. The use of ‘or’ in describing the meaning of pervasive is explained by way of including potential threats of such a magnitude that they could not recur, but may be prevented.

<sup>123</sup> Ibid

<sup>124</sup> Ibid

<sup>125</sup> Ibid

<sup>126</sup> Alkire chose ‘safeguard’ over ‘protect’ in order to convey more proactive element of human security. Ibid 2.

must also respect human security. Respect in this context means that all actors ‘must ascertain that their actions do not foreseeably albeit unintentionally, threaten human security’ and so respect for human security ‘has a close relationship to respect for individual human beings’.<sup>127</sup>

Kanti Bajpai approaches the formulation of a definition of human security in a similar manner to Alkire in that he traces the genealogical roots of human security, noting the development and security heritage.<sup>128</sup> However, in contrast to Alkire, Bajpai primarily draws on security thinking, particularly the work of Baldwin noted above to arrive at an analytical framework within which to compare the definitions of human security offered by the UNDP and the Canadian government.<sup>129</sup> From this comparison he formulates a definition of human security, which reads:

Human security relates to the protection of the individual’s personal safety and freedom from direct and indirect threats of violence. The promotion of human development and good governance, and, when necessary, the collective use of sanctions and force are central to managing human security. States, international organisations, non-governmental organisations and other groups in civil society in combination are vital to the prospects of human security<sup>130</sup>

The content of this understanding of human security, while clearly identified, is particularly broad, as it comprises of individual safety and freedom. This is somewhat tempered by the stipulation that the threats to human security must be violent. However, as with the definition proffered by the CHS, the scope of Bajpai’s definition is broadened by the inclusion of direct and indirect violent threats. Bajpai is somewhat more forthcoming in respect of the operation of the idea of human security which is perhaps motivated by his concern in establishing a human security index.<sup>131</sup> Nevertheless, the operationalisation of human security entails human development, good governance and on occasion collective use of sanctions and force.<sup>132</sup> In this respect and in a similar vein to Alkire, Bajpai emphasises the role of various actors.

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<sup>127</sup> Ibid 3.

<sup>128</sup> Bajpai (n 7) 4- 9.

<sup>129</sup> Bajpai chose the definitions offered by the Canadian government and the UNDP on the basis that they comprise of ‘the two most important sets of writings on the subject’. Ibid 4. The analytical framework within which these definitions offered by the UNDP and Canada are compared, consists of four questions, namely, security for whom, security for which values, security from what threats, and finally security by what means? These questions are derived from Baldwin (n 38) 12-18.

<sup>130</sup> Bajpai (n 7) 48.

<sup>131</sup> Ibid.

<sup>132</sup> Ibid.

To Laura Reed and Majid Tehranian human security is premised 'on the need to assess security concerned on the basis of the well-being of people rather than physical security of states'.<sup>133</sup> Consequently, their understanding of human security is informed by the notion of well-being. This particularly elusive content is tailored by the articulation of ten human security concerns. These comprise of: physical security, psychological security, gender security, social security, economic security, political security, cultural and communication security, national security, international security, and environmental security. Psychological security, gender security and social security are subsumed under the heading of physical security, which is also a human security issue in its own right. Economic security similarly stands alone but also includes the remaining five human security issues, all of which illustrates the 'overlapping or interwoven realms' of human security concerns.<sup>134</sup> As is evident Reed and Tehranian adopt a similar approach to the UNDP in propounding a definition of human security and furthermore explicitly affirm the interdependent and people-centred characteristics identified by the UNDP as essential to human security and to any consideration thereof.

Other academics have favoured this 'shopping list' approach, often with the threats to human security doubling as indicators of human security or as a means for measuring human security.<sup>135</sup> For example, Taylor Owen defines human security as 'the protection of the vital core of all human lives from critical and pervasive environmental, economic, food, health, personal and political threats'.<sup>136</sup> As is apparent Owen has amalgamated the definitions of human security proffered by the CHS and the UNDP to form a 'hybrid definition',<sup>137</sup> which was prompted by a desire to maintain the broad scope of the definition offered by the CHS and to achieve analytical and practical clarity. He asserts that the first part ensures recognition that 'there is no difference between a death from a flood or from a gun',<sup>138</sup> while the second part, drawing on the UNDP list of human security threats are not threats *per se* but rather conceptual groupings, thereby

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<sup>133</sup> Laura Reed and Majid Tehranian, 'Evolving Security Regimes' in Majid Tehranian (ed), *Worlds Apart: Human Security and Global Governance*. (I.B. Tauris Publishers London/New York 1999) 24.

<sup>134</sup> Ibid 36.

<sup>135</sup> See for example, Jorge Nef, *Human Security and Mutual Vulnerability: The Global Political Economy of Development and Underdevelopment* (2<sup>nd</sup> edn International Development Research Centre Ottawa 1999). Here, Nef proposes five components of human security, ecosystem, economy, society, polity and culture, which are interdependent.

<sup>136</sup> Taylor Owen, 'Human Security Mapping: A New Method for Measuring Vulnerability' (Paper presented at 4<sup>th</sup> Human Development and Capability Association Conference, Enhancing Human Security, 2004) 11.

<sup>137</sup> Ibid.

<sup>138</sup> Ibid 10.

permitting analysis of causal relationships.<sup>139</sup> In this way, Owen articulates a definition of human security from which he is able to measure human security.

Similarly, although predominantly from a development perspective, the stated objective of Gary King and Christopher Murray is to propose a ‘simple, rigorous, and measurable definition of human security’.<sup>140</sup> As such they define human security as ‘the number of years of future life spent outside a state of ‘generalised poverty’.<sup>141</sup> Like, Reed and Tehranian, King and Murray take as their starting point for their definition of human security the notion of human well-being as the term ‘generalised poverty’ is defined with respect to this notion. They draw on the work of the UNDP in general and the Human Development Index in particular to identify five key domains of well-being, namely, income, health, education, political freedom and democracy. In this sense, King and Murray depart from the schema followed by Reed and Tehranian as these five domains are seen as ‘essential or extremely important’.<sup>142</sup> This introduces a limiting element to the scope of human security as understood by King and Murray and, as such, performs a comparable function to the UNDP’s ‘chronic threats’ and ‘sudden and hurtful disruptions’.

There is a discernible tendency in the academic literature of using the idea of human security in relation to a particular, predetermined area of concern. For example, Ellen Lammers writing in 1996 on refugees, gender and human security, recognised that wide definitions, such as that offered by the UNDP, ‘foster obscurity or confusion’.<sup>143</sup> Nevertheless, the advantage of using or ‘linking human security to refugee/returnee issues’<sup>144</sup> outweighs this disadvantage as it ‘may help to counteract the tendency in both academic studies and relief operations of placing a one-sided emphasis on the material aspects of the supposed needs of refugees’.<sup>145</sup> Similarly, Mary-Jane Fox in seeking to establish, albeit, a ‘preliminary link between the insecurity of girl-soldiers and human

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<sup>139</sup> Ibid 11.

<sup>140</sup> Gary King and Christopher Murray, ‘Rethinking Human Security.’ (2001) 116 *Political Science Quarterly* 585.

<sup>141</sup> Ibid 587.

<sup>142</sup> Ibid.

<sup>143</sup> Lammers (n 72) 55.

<sup>144</sup> Ibid.

<sup>145</sup> Ibid 56. This study, aiming to analyse refugee issues within the context of human security was followed a mere three years later by Anne Hammerstad’s article examining the use of human security by the UNHCR, see Hammerstad (n 114) 391-403.

security thinking'<sup>146</sup> acknowledges 'the paucity of consensus' as to the meaning, scope and application of the idea of human security.<sup>147</sup> Notwithstanding, the idea of human security is used as an analytical tool for examining the plight of girl soldiers. Other commentators are equally not dissuaded from merely referencing human security before discussing a particular area of concern. Thus, Norah Niland refers to the term human security in an article primarily concerned with the role of the aid community in Afghanistan during the Taliban government.<sup>148</sup> Although she recognises that 'there is no agreed definition of the concept' she goes on to profess that the article is not concerned with analysing the idea of human security or its prospects,<sup>149</sup> but rather the article aims to uncover insights with respect to the human rights dimensions of the crisis in Taliban-era Afghanistan, which will enhance human security efforts in similar situations.<sup>150</sup> In a comparable manner, Khadija Haq states that human security is about 'human dignity' and is 'a concern for people and their welfare',<sup>151</sup> before proceeding to proclaim gender equality as a precondition for human security. This is followed by a discussion on gender equality which does not reference the term human security. Consequently, while such references indicate the potential of the idea of human security as an integrated and holistic approach to analysis, they do little to further the quest for a human security framework.

This overview of definitions of human security emanating from the UN, governments, regional institutions and academics may be concluded with two primary observations. Firstly, it is apparent that the UN, governments, institutions and academics see human security as an organising idea for analysis and action. Indeed the UN emerges from the review of definitions with a clear role as a harmonising and coordinating centre for human security activities. Secondly, the review also illuminates that there is more convergence than divergence in respect of the idea of human security than the profusion of definitions and descriptions would suggest.<sup>152</sup> In this respect it is possible to identify

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<sup>146</sup> Mary-Jane Fox, 'Girl Soldiers: Human Security and Gendered Insecurity' (2004) 35 *Security Dialogue* 465, 467.

<sup>147</sup> *Ibid* 475.

<sup>148</sup> Norah Niland, 'Human Security: Safeguarding Lives and Livelihoods, Insights from Taliban-era Afghanistan' (The Institute of Human Security, Scholar Practitioner Paper No. 3 2003) <<http://fletcher.tufts.edu/humansecurity/pdf/Niland.pdf>> accessed 5 May 2005.

<sup>149</sup> *Ibid* 2.

<sup>150</sup> *Ibid* 3.

<sup>151</sup> Khadija Haq, 'Human Security for Women' in Tehranian (ed) (n 133) 95.

<sup>152</sup> Don Hubert has stated that in the past few years the differences in approaches and therefore the meaning of human security 'have narrowed'. Don Hubert, 'An Idea the Works in Practice' (2004) 35 *Security Dialogue* 351, 351.

three key commonalities permeating the definitions of human security and thereby, to produce a picture of human security. First, each definition emphasises the human-centred characteristic of human security that was apparent from its heritage in evolutions in ‘security’ and ‘development’ as charted in Part II. The clearest and most explicit expression of this was by Alkire when she stated, ‘human security takes its shape from the human being’.<sup>153</sup> The review also exposed the multidimensional characteristic of human security, spanning a diverse spectrum of subject matter from development to security, and covering a disparate range of functions and purposes, such as foreign policy. In this regard it is unsurprising that the review testifies to the enduring value of the idea of human security either to coordinate efforts for action or as a tool for analysis. Further there is a sufficient amount of consensus to suggest tentatively human rights, and perhaps more particularly international human rights law, as providing a foundation for a human security framework for analysis and action.<sup>154</sup> Finally, and perhaps most concretely, the review exposes freedom from fear and freedom from want as underpinning and informing the idea of human security. In short, freedom from fear and freedom from want are, in the words of the SG the ‘building blocks’ of human security or, to borrow from the UNDP ‘the two major components’ of human security.<sup>155</sup> Thus, in broad strokes, human security is the entitlement of all to freedom from fear and from want.

### ***B. A Critical Appraisal of the Definitions of Human Security***

Human security has been declared an ‘inscrutable concept’,<sup>156</sup> as identified by its ‘absence than its presence’,<sup>157</sup> as ‘meaning all or nothing’,<sup>158</sup> and as ‘an idea that works in practice’.<sup>159</sup> Indeed, notwithstanding the forgoing exercise, the idea of human security remains indistinct and, more importantly for present purposes, disagreement abounds as to the most appropriate definition. Underlying this disagreement is the issue of the role of freedom from fear and freedom from want in defining human security, for as Don Hubert observed a major outstanding question as regards the conceptualisation

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<sup>153</sup> Alkire (n 117) 1.

<sup>154</sup> This suggestion is primarily based on definitions and descriptions emanating from the UN, but finds considerable amount of support in the academic literature. See Alkire (n 119); Ramcharan (n 115); Oberleitner (n 115). Dwight Newman also sees a correlation between human rights and human security, see Dwight Newman, ‘A Human Security Council? Applying a ‘human security’ agenda to Security Council reform’ (1999/2000) 31 *Ottawa Law Review* 213.

<sup>155</sup> UN SG, ‘International Workshop on Human Security in Mongolia’ (n 79) and UNDP, *HDR 1994* (n 81) 24.

<sup>156</sup> Paris, ‘Still an Inscrutable Concept’ (n 4).

<sup>157</sup> UNDP, *HDR 1994* (n 81) 23.

<sup>158</sup> Ogato (n 5).

<sup>159</sup> Hubert, ‘An Idea that Works in Practice’ (n 152) 352.

of human security is ‘the ongoing debate about ‘freedom from fear’ and ‘freedom from want’.<sup>160</sup> Indeed the definitions surveyed above may be divided into two categories or schools – those definitions falling to be considered as ‘broad’ and founded on freedom from fear *and* freedom from want and those which may be properly seen as a ‘narrow’ definition of human security as based on freedom from fear. For example, in the policy sphere the UNDP and the CHS proclaimed freedom from fear and want as constituting the two major components of the idea of human security and, as such belong to the ‘broad’ category while the definitions offered by, amongst others, the academics Alkire, Bajpai and Owen, fall to be considered as broad definitions. In contrast, Canada is an effective proponent of the narrow school within the policy arena at the international level and Andrew Mack of the Human Security Centre (HSC) is a particularly strong advocate of the narrow school within the academic community. The next step on the quest for a human security framework is to critically assess such definitions with a view to resolving the disagreement as to the most appropriate human security definition.

A mere two years after its inception the CHS dissolved,<sup>161</sup> and issued the Report ‘Human Security Now’. This eagerly awaited Report was the perfect opportunity to fulfil one of the three stated goals of the Commission, the development of the concept of human security ‘as an operational tool for policy formulation and implementation’.<sup>162</sup> The definition of human security offered by the CHS spectacularly fails to meet this objective, primarily because it succumbs to the innate propensity of human security to ‘mean all or nothing’.<sup>163</sup> The definition, ‘to protect the vital core of all human lives in ways that enhance human freedoms and human fulfilment’<sup>164</sup> is particularly vague. Indeed the Report merely hints at the content of the key term ‘vital core’ as comprising of a ‘set of fundamental rights and freedoms’.<sup>165</sup> Moreover, the CHS refrains from ‘proposing an itemised list of what makes up human security’<sup>166</sup> as what people consider ‘vital’ varies and as such human security must remain dynamic. While this

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<sup>160</sup> Ibid 351.

<sup>161</sup> In the process of dissolution the CHS recommended the establishment of an Advisory Board on Human Security (ABHS) to, amongst others, promote human security. See <<http://www.humansecurity-chs.org>>

<sup>162</sup> The goals of the CHS are: to promote public understanding, engagement and support of human security and its underlying imperatives; to develop the concept of human security as an operational tool for policy formulation and implementation; and to propose a concrete programme of action to address critical and pervasive threats to human security. <<http://www.humansecurity-chs.org/about/Establishment.html>> accessed 20 May 2005.

<sup>163</sup> Ogato (n 5).

<sup>164</sup> CHS (n 88) 4.

<sup>165</sup> Ibid.

<sup>166</sup> Ibid.

non-committal in respect of elucidating the content of 'vital core' produces imprecision and vagueness, the addition of another key component, critical (severe) and pervasive (widespread) threats, introduces the idea of a minimum threshold to be attained in order to be considered as a threat to human security, thereby providing much needed precision.

The formulation a definition was prompted by the desire to promote human security as an 'operational tool', that is to harness the potential of human security for analysis and action. This was clearly based on the recognition of the need for an integrated approach to the 'increased challenges the world faces' such as terrorism and epidemics in order to harness the 'enhanced opportunities' created by, amongst others, globalisation, civil society and in particular the Millennium Development Goals (MDG).<sup>167</sup> As such it is unsurprising that the definition of human security is buried amongst considerations of the relationships between human security and state security, human rights and human development. Peppered throughout these considerations are statements such as human security 'brings together the human elements of security, of rights, of development'<sup>168</sup> and human security integrates the 'main agendas of peace, security and development'.<sup>169</sup> This is unsurprising given the heritage of human security and the human security framework produced by the CHS offers some elaboration as to how these disparate agendas are to be integrated. For instance, the human security framework, as 'an operational tool for policy formulation and implementation', primarily comprises of protection and empowerment strategies.<sup>170</sup> Nonetheless, it is clear from the positioning of the definition of human security in the Report,<sup>171</sup> that the

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<sup>167</sup> Ibid 2. The Commission stated in the Foreword to 'Human Security Now' that the Report 'should be seen in light of the increased challenges the world faces and the enhanced opportunities'. Such challenges are identified not only as 'persistent problems and vulnerabilities' but also terrorist attacks, ethnic violence, epidemics and sudden economic downturns, in addition to the fear that 'existing institutions and policies are not able to cope'. On a more positive note, the opportunities created by globalisation, democratic principles and practices, the role of civil society and community organisations, and more particularly, the Millennium Development Goals, must be harnessed. Ibid iv.

<sup>168</sup> Ibid 4.

<sup>169</sup> Ibid.

<sup>170</sup> Protective strategies require 'concerted efforts to develop national and international norms, processes and institutions, which must address insecurities in ways that are systematic not makeshift, comprehensive not compartmentalised, preventive not reactive', while empowerment strategies entail the provision of education and information, building a public space that 'tolerates opposition, encourages local leadership and cultivates public discussion. It flourishes in a supportive larger environment (freedom of the press, freedom of information, freedom of conscience, and belief and freedom to organise with democratic elections and policies of inclusion). It requires sustained attention to processes of development and to emergency relief activities, as well as the outcomes'. Ibid 11.

<sup>171</sup> The definition is introduced in a single paragraph, whose elaboration is interspersed through the sections of Chapter 1 concerned with, for example, asserting the primacy of the state as the 'fundamental purveyor of security' and in which statements such as 'human security complements state security' are found. Ibid 2.

exercise of defining human security with precision was secondary to that of reaffirming the potential of human security for analysis and action. Thus the efficacy of the human security framework is in doubt, particularly within the policy sphere, as it is predicated upon such an imprecise and vague definition.

The Working Definition of human security offered by Alkire although textually similar to the definition proposed by the CHS,<sup>172</sup> does not exhibit the degree of imprecision as the latter. Alkire observed that this may be attributed, in part, to the wish of the CHS to create a human security ‘sound-bite’.<sup>173</sup> Nevertheless, Alkire is careful to explicate the key terms of the Working Definition and to elaborate upon the interdependent relationship between them, which serves to produce a more rigorous and precise definition than that forthcoming from the CHS. However, Alkire’s Working Definition is not without criticism. For example, the term ‘human fulfilment’ is inherently vague and is perhaps the most likely term in the Working Definition to be susceptible to value judgements. It is thus unsurprising that it is also the term that receives the least rigorous examination with Alkire merely suggesting that ‘human fulfilment’ emphasises the importance of processes and institutions in the achievement of human security.<sup>174</sup> Furthermore, Alkire, like the CHS, is reluctant to ascribe a definitive content to ‘vital core’ beyond that part of it comprises of ‘fundamental human rights’ pertaining to survival, livelihood and dignity.<sup>175</sup> Alkire sees this reluctance as an occupational hazard associated with defining human security and observes, ‘[t]he task of prioritising among rights and capabilities, each of which its argued by some to be fundamental, is a value judgement and a difficult one, which may be best undertaken by appropriate institutions’.<sup>176</sup> As such, the ‘operational responses’ prescribed by Alkire to address this hazard is to ‘maintain a self-consciously vague, wide working definition of human security, and to articulate procedures for operationalising this definition in concrete situations by constrained institutions, for particular populations’.<sup>177</sup>

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<sup>172</sup> Alkire’s definition was considered by the CHS at its first meeting in 2001. See First Meeting of the Commission on Human Security, June 2001 <<http://www.humansecurity-chs.org/activities/meetings/first/index.html>> accessed 13 July 2005.

<sup>173</sup> Statement by Sabina Alkire (Response to the authors question regarding lack of precision of the definition offered by the CHS at 4<sup>th</sup> Human Development and Capability Association Conference, ‘Enhancing Human Security’ 2004).

<sup>174</sup> Alkire (n 117) 3.

<sup>175</sup> Ibid 2.

<sup>176</sup> Ibid.

<sup>177</sup> Ibid.

Bajpai's definition of human security falls prey to the occupational hazard identified by Alkire, particularly in relation to the pivotal phrase 'personal safety and freedom'. Personal safety is seen as 'protection of the body from pain and destruction' and as a 'minimal level of physical well-being'.<sup>178</sup> While personal freedom comprises of basic freedom as it relates to marriage, employment and the like, and of civic freedom which entails 'the liberty to organise for cultural, social, economic, and political purposes'.<sup>179</sup> This is so broad as to include everything and anything within its ambit. Although Bajpai identifies personal safety and personal freedom as the paramount values of human security, the only useful guidance lending precision to this phrase, occurs upon discussion of another key term 'direct and indirect violence'. To Bajpai, violent deaths/disablement, dehumanisation, drugs are counted as direct threats to human security, and deprivation, disease and disasters are indirect threats to human security and together 'comprise the core threats to human security'.<sup>180</sup> In contrast weapons of mass destruction and underdevelopment, amongst others are seen as ambiguous in terms of the effect on the paramount values of personal safety and personal freedom. Hence, Bajpai establishes a determinate causal relationship between threats to human security and personal safety and freedom which aids in clarifying what is meant by personal safety and freedom. In doing so, Bajpai suggests that this relationship must be sufficiently strong in order to qualify as a human security threat and so, 'direct and indirect threats' performs a similar threshold function to the phrase 'critical pervasive threats' found in the definitions offered by the CHS and Alkire and thereby introduces a measure of precision to Bajpai's definition.

However, there is no justification forthcoming for the inclusion of these threats beyond that they are derived from the comparative analysis of the definitions of human security proposed by Canada and the UNDP. Although in this regard Bajpai readily acknowledges that further research is needed to specify the links between the threats and the values protected especially to demonstrate an empirical correlation.<sup>181</sup> These criticisms stem in large part to the fact that Bajpai's definition is based on a comparative analysis of two other definitions of human security. This is not merely because Bajpai's rationale for choosing Canada and the UNDP as comparators is that they offer 'the two most important sets of writings on the subject' but also because the analysis was

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<sup>178</sup> Bajpai (n 7) 38.

<sup>179</sup> Ibid.

<sup>180</sup> Ibid 41.

<sup>181</sup> Ibid 46.

comparative and not critical and thus the possibility of deficiencies in these definitions was not countenanced. The formulation of an analytical framework derived from Baldwin's work in security studies noted above (Part II) acts to reduce this potential shortcoming by focusing the analysis to four fundamental questions of security for whom, security of what values, security from what threats and security what by means.

The UNDP's definition of human security is perhaps the most cited and thus arguably the most authoritative definition of human security. The 1994 HDR observes that that 'human security is more easily identified through absence than its presence', adding that 'most people *instinctively* understand what security means'<sup>182</sup>. Yet the UNDP sees the merit in offering a more explicit definition of human security as meaning 'safety from chronic threats' and 'protection from sudden and hurtful disruptions in the patterns of daily life'<sup>183</sup>. In doing so it would appear that the UNDP adopts the 'operational response' advised by Alkire when defining human security, and offers a self-consciously vague definition, which is so imprecise that the anything and everything could be identified as chronic threats or sudden and hurtful disruptions. Yet the UNDP, in an effort to ascribe a more concrete meaning to human security, enunciates seven categories of threats to human security. While, acknowledging that there are numerous threats to human security, the UNDP asserts that most fall under these seven categories.<sup>184</sup> Beyond this, and the statistics included in the sections discussion each category, no justification for the inclusion of these particular categories or for the particular classification itself, is forthcoming. Even if explicit justification and guidance were given as to the inclusion, classification and content of these categories, there is little guidance as to how to determine whether a particular threat falls within a given category of threat to human security. The reference to statistics and the twin aspects of 'safety from chronic threats' and 'protection from sudden and hurtful disruptions' would appear to suggest that a threat must reach a minimum level or threshold before it may be considered a threat to human security falling within a particular category of human security threat. This is a critical fault of the definition of the UNDP as the ability to prioritise between and within threats to human security is an

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<sup>182</sup> UNDP, *HDR 1994* (n 81) 23.

<sup>183</sup> *Ibid.* (Emphasis added).

<sup>184</sup> *Ibid.*

essential component of any definition of the idea in that the inability to objectively measure human security strips the idea of worthwhile analytical and practical value.<sup>185</sup>

The intention of Reed and Tehranian in putting forward their definition of human security is to ‘provide a benchmark to distinguish the nature and scope of the pursuit of human security’.<sup>186</sup> Consequently, the resultant overview provides a ‘possible basis for agreement’ from which to proceed.<sup>187</sup> However, this ‘benchmark’ or ‘basis for agreement’ falls prey to some of the criticisms levelled at the definition of human security offered by the UNDP. Thus, although Reed and Tehranian qualify their exposition as being illustrative, no justification is given as to why these types or realms of human security are so classified, let alone why they were chosen for inclusion beyond rudimentary references to statistics and empirical and theoretical research. Perhaps, like the UNDP, Reed and Tehranian’s choice and consequent classification of human security concerns is indicative of an instinctive understanding of human security. Reed and Tehranian provide more information as to what constitutes, for example psychological security (freedom from fear, the right to privacy and tolerance of differences),<sup>188</sup> than what was forthcoming in relation to the categories of threats to human security identified in the 1994 HDR. However, the UNDP offers a rudimentary basis upon which to prioritise between and within human security threats in the two main aspects of ‘safety from chronic threats’ and ‘sudden and hurtful disruptions’. Such a threshold is absent from Reed and Tehranian’s definition of human security and as such, while they explain the content of the identified ten human security concerns, this does little to militate against the inability to prioritise between and within such concerns.

Perhaps to counter this justificatory malady, King and Murray add a qualifying caveat to their identification of key domains of human well-being in that they are characterised as essential or extremely important.<sup>189</sup> This introduces an element of precision and, by drawing on the work of the UNDP particularly in respect of the Human Development Goals sufficient evidence is produced to justify the inclusion of the five key domains identified. Nonetheless, while this qualifying caveat justifies the inclusion of income.

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<sup>185</sup> Paris, ‘Paradigm Shift?’ (n 4) 88 - 89.

<sup>186</sup> Reed and Tehranian (n 133) 36.

<sup>187</sup> Ibid.

<sup>188</sup> Ibid 39.

<sup>189</sup> King and Murray (n 140) 588.

health, education, political freedom and democracy, it does not provide a basis upon which to distinguish between threats falling within a given domain. Owen's definition of human security tends to answer this latter criticism, by adopting the threshold of critical and pervasive threats stipulated in the definition offered by the CHS and Alkire.<sup>190</sup> The stipulation of critical and pervasive threats enables the determination of what goes into a particular category of human security threat and the prioritisation within the given category. In contrast to the UNDP's minimum threshold, the stipulation that threats are critical and pervasive provides a much more precise foundation for such determinations and prioritisations.

In summary, definitions founded on freedom from fear and freedom from want tend to be excessively broad which affects the precision of the definition. It is this almost predisposition to vagueness of this approach that negates human security as a tool for analysis and action. Yet, while the definitions offered by the CHS and Bajpai do exhibit such a proclivity, Alkire's Working Definition illustrates that broad does not necessarily entail imprecision and therefore does not answer to the charge of meaning all or nothing, particularly by way of introducing the idea of a threshold which narrows the range of issues falling under the human security rubric. Furthermore, the efforts to refine such broad definitions and to harness the analytical and practical potential of human security by adopting a 'shopping list' of human security threats have also not been immune from criticism. The predominant criticism is that questions, such as, why are particular categories or concerns of threats chosen and why is a particular area of concern and/or activity selected are, by and large left unanswered or, at most answered on the basis of pragmatism, and thus answered unsatisfactorily for the purpose of painting a picture of human security. Furthermore, the issue of objectively measuring human security or the ability to prioritise between and within threats to human security plague these approaches. These, identified as a justificatory malady, tend to leave the efficacy of human security as an analytical and practical tool in doubt. Seen in this light, the existence and persistence of definitions of human security founded on freedom from fear, is unsurprising.

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<sup>190</sup> Taylor Owen excludes 'community security' from his proposed definition of human security on the basis that it is incompatible with the first part of his definition, critical and pervasive threats to the vital core. Owen (n 136) fn 4.

The Canadian government first set out its human security approach to foreign policy in the 1999 Foreign Affairs document, 'Human Security: Safety for People in a Changing World'.<sup>191</sup> In this document, the then Foreign Affairs Minister, Lloyd Axworthy,<sup>192</sup> explained the value of adopting such an approach to foreign policy as enabling responses to increased intra-state conflict, state failure and transnational threats such as environmental and health issues.<sup>193</sup> As such the adoption of a human security approach was clearly premised on the need to recognise and address broad conception of threats,<sup>194</sup> particularly as in the last analysis international peace and security logically entails 'that the security of people in one part of the world depends on the security of people everywhere'.<sup>195</sup> The UNDP definition of human security provided the reference point for the articulation of the Canadian human security approach to foreign policy, which was described by the Foreign Minister as an 'unwieldy policy instrument'<sup>196</sup> due to the sheer expanse of the definition. The Foreign Minister continued to observe that the emphasis on underdevelopment in the HDR had the effect of ignoring 'the continuing human insecurity resulting from violent conflict'.<sup>197</sup> The clear implication is that in order for human security to be an effective policy instrument in Canadian foreign policy it is necessary, on the basis of pragmatism, to narrow human security to a focus on violent conflict. The clearest endorsement of this narrowing of human security came when the Foreign Minister equated human security with freedom from fear and human development with freedom from want.<sup>198</sup>

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<sup>191</sup> Department of Foreign Affairs and International Trade (DFAIT), *Human Security: Safety for People in a Changing World* (Department of Foreign Affairs and International Trade Ottawa 1999). Subsequent Foreign Affairs documents tended to focus on the foreign policy initiatives for achieving human security within the five areas identified as being of concern to human security. For example, the document 'Freedom from Fear' merely states: 'Human security means freedom from pervasive threats to people's rights, safety, or lives. Canada's agenda focuses on increasing people's safety from the threat of violence. This approach complements both existing efforts focused on ensuring national security, as well as international efforts to protect human rights and promote human development'. The rest of the document is devoted to setting out the initiatives in respect of the five areas of concern. See DFAIT, *Freedom from Fear* (n 95).

<sup>192</sup> Lloyd Axworthy has continued to advocate the idea of human security in a personal capacity. For example, see Lloyd Axworthy, 'Human Security and Global Governance: Putting People First' (2001) 7 *Global Governance* 19.

<sup>193</sup> This reasoning is remarkably similar to the rationale behind the Final Report of the CHS, 'Human Security Now'. In the Foreword to 'Human Security Now', the CHS noted the increased challenges and increased opportunities posed by globalisation and remarked that this should be the context in which the Report should be viewed, see CHS (n 88) iv.

<sup>194</sup> DFAIT, *Human Security* (n 191) 5.

<sup>195</sup> *Ibid* 6.

<sup>196</sup> *Ibid* 3.

<sup>197</sup> *Ibid*.

<sup>198</sup> *Ibid*.

Mack, Director of the Human Security Centre (HSC) which produces the annual Human Security Report, has been a consistent and persistent advocate of such a narrow definition of human security as based on freedom from fear and justified by the demands of pragmatism.<sup>199</sup> While, Mack recognises that broad conceptions of human security such as those professed by the UNDP and the CHS *may* hold 'political/advocacy benefits',<sup>200</sup> he argues that 'the utility of the broad conceptions of human security is questionable'.<sup>201</sup> He advances two interrelated reasons for the questionable analytical and practical utility of broad conceptions of human security, which stem from the wealth of diverse harms which fall to be considered under such conceptions. First, Mack queries whether 're-labelling' issues, such as epidemics and gross environmental degradation, as of concern to human security, adds analytical value as a 'concept that explains everything in reality explains nothing'.<sup>202</sup> He continues to observe that under broad conceptions of human security interconnections between poverty and violence, for example cannot be assessed as the relationship between these variables is blurred. Notwithstanding, Mack is not suggesting that poverty and similar development issues are not important for human security, but rather to include them under the rubric of human security renders 'causal analysis virtually impossible'.<sup>203</sup>

S. Neil MacFarlane puts forward a possible answer to how to choose between two categories of human security definitions by suggesting that they 'be judged in terms of conceptual value added and policy consequences'.<sup>204</sup> Against this dual criterion he concludes that the narrow category of definition as founded on freedom from fear produces the best definitions or conceptions of human security.<sup>205</sup> This criterion

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<sup>199</sup> In a section entitled 'Human Security Explained', the HSC observes: 'For some proponents of human security, the key threat is violence; for others the threat agenda is much broader, embracing hunger, disease and natural disasters', thereby recognising the existence of the two definitional schools. The section continues to state, '[l]argely for pragmatic reasons, the Human Security Centre has adopted the narrower concept of human security that focuses on protecting individuals and communities from violence', the Human Security Centre, 'Human Security Explained' <<http://www.humansecuritycentre.org>> accessed 20 May 2005. And see for example Andrew Mack, 'The Concept of Human Security' in Brzoska and Croll (eds) (n 8); Andrew Mack, 'A Signifier of Shared Values' (2004) 35 *Security Dialogue* 366.

<sup>200</sup> Mack, 'The Concept of Human Security' (n 199) 49.

<sup>201</sup> Ibid.

<sup>202</sup> Ibid. Keith Krause advanced a similar argument. See Keith Krause, 'The Key to a Powerful Agenda, if properly Delimited' (2004) 35 *Security Dialogue* 367. See also Barry Buzan, 'A Reductionist, Idealistic Notion that Adds Little Analytical Value' (2004) 35 *Security Dialogue* 369.

<sup>203</sup> Mack, 'The Concept of Human Security' (n 199) 49.

<sup>204</sup> S. Neil MacFarlane, 'A Useful Concept that Risks Losing its Political Salience' (2004) 35 *Security Dialogue* 368, 369.

<sup>205</sup> MacFarlane concludes his article with '[i]n general, the widening of the concept makes the establishment of priorities in human security policy difficult. Diluting the concept diminishes its political

constitutes a variation of the pragmatic reasons advanced by Mack as to why choose between the narrow and broad categories of human security definition. Thus, in essence the argument against broad definitions in general is that freedom from fear and freedom from want, or more specifically freedom from want, adversely affects the analytical and practical utility of the idea of human security. On this somewhat negative reasoning, it is necessary to choose freedom from fear as the founding component of human security and therefore adopt the narrow category to defining human security. These unquestionably persuasive arguments for choosing freedom from fear are not without criticism. Indeed the conclusion that a definition founded on freedom from fear and want automatically robs the idea of human security of analytical and practical utility is not necessarily warranted. The Working Definition of human security offered by Alkire provides ample illustration of this point, especially the introduction of a threshold by way of the defining term, critical and pervasive threats which narrows the range of issues falling to be considered as of concern to human security. The seven categories of human security threat designated by the UNDP perform a similar delimiting function. Owen's 'hybrid definition' attains analytical and practical clarity by combining the threshold of the CHS definition proposed by the CHS and similarly Alkire, along with the categories of the UNDP definition, while maintaining the broad foundation inherent in both definitions namely that human security is concerned with both development and security issues.

Even if it is shown that broad definitions of human security adversely affect the analytical and practical utility of human security, it does not necessarily follow that the adoption of a narrow definition as premised on freedom from fear produces the desired analytical and practical clarity. Indeed the definition offered by Canada provides the basis for foreign policy activities undertaken in five disparate areas of protection of civilians, peace support operations, conflict prevention, governance and accountability, and finally, public safety. Further, as evident above, the introduction of a threshold into the definition of human security and/or adopting a 'shopping list' approach to definition perform a similar function in refining the scope and application of human security without denying the heritage of the idea of human security in the evolution in the understandings of development and security in both policy and academia. Thus the debate as to the role of freedom from fear and freedom from want in defining human

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salience. The more comprehensive the sweep of human security, the less likely are the objectives of its proponents to be achieved'. Ibid.

security remains intact and thus the disagreement as to the most appropriate definition of human security remains unresolved. Indeed a definitional dilemma may be diagnosed in relation to human security, that of a choice between the 'broad' definitional school and the 'narrow' definitional school, or more particularly, as a choice between freedom from fear and want and freedom from fear. However MacFarlane acknowledges that '[t]here is no intrinsic reason to favour narrow over broad conceptions of human security',<sup>206</sup> and Mack similarly recognises that 'it is quite possible to share the values that underpin the 'broad' conception of human security while still rejecting its analytic utility'.<sup>207</sup> These statements suggest that the freedom from fear and freedom from want dichotomy underscoring the definitions of human security is a false dichotomy. Indeed, Don Hubert has observed that:

[a]ll approaches to human security focus on the security and development nexus, and all see improvements in socio-economic conditions as crucial for the prevention of conflict; the differences are not of substance, but of packaging<sup>208</sup>

With these comments in mind, the following Part turns to resolving the freedom from fear and want dichotomy with the specific aim of advancing the quest for a human security framework by way of evacuating the idea of human security from the plethora of definitions.

#### **IV. HARNESSING THE POTENTIAL OF HUMAN SECURITY: MEETING THE CHALLENGE OF DEFINITION**

It would appear that human security falls to be considered as an essentially contested concept, that is human security is a concept 'the proper use of which inevitably involves disputes' about its proper or appropriate use on the part of its users.<sup>209</sup> This Part assesses the vantage point provided by the notion of essentially contested concepts to impose order on the cacophony of human security definitions.<sup>210</sup> More specifically the Part explores whether the notion of essentially contested concepts overcomes the definitional difficulties noted above, in particular the freedom from fear and freedom from want dichotomy, which are hampering the quest for a human security framework

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<sup>206</sup> Ibid.

<sup>207</sup> Mack, 'The Concept of Human Security' (n 199) 49.

<sup>208</sup> Hubert, 'An Idea the Works in Practice' (n 152) 351.

<sup>209</sup> W. B. Gallie, 'Essentially Contested Concepts' (1955-56) 56 *Proceedings of the Aristotelian Society* 167, 167.

<sup>210</sup> For a recent example of the application of the notion of essentially contested concepts in international law see Dan Sarooshi, 'The Essentially Contested Nature of the Concept of Sovereignty: Implications for the Exercise by International Organisations of Delegated Powers of Government' (2004) 25 *Michigan Journal of International Law* 1107.

for analysis and action. Before embarking on such an exploration it is necessary to clarify what is meant by the term ‘essentially contested concept’.

W. B. Gallie introduced the notion of essentially contested concepts in a seminal article published in 1956 as a method for identifying and analysing an ‘important group of concepts’, which he refers to as essentially contested, in order to provide some explanation as to the ways in which such concepts function.<sup>211</sup> As such Gallie’s stated objective was:

to show, in the case of an important group of concepts, how acceptance of a single method of approach – of a single explanatory hypothesis calling for some fairly rigid schematisation – *can* give us enlightenment of a much needed kind.<sup>212</sup>

Gallie’s departure point for the foray into this important group of concepts was the observation that the use of any concept is likely to be contested but, nevertheless, there usually exists ‘an assumption of agreement, as to the *kind* of use that is appropriate to the concept in question, between its user and anyone who contests his particular use of it’.<sup>213</sup> However, when such an assumption of agreement is absent or lacking, Gallie states that there then exists a well-recognised ground for philosophical enquiry.<sup>214</sup>

By way of reference to art, democracy and the Christian tradition, Gallie observes that disagreement abounds as to the proper use of these concepts, which is manifested in ‘mutually contesting, mutually contested uses’<sup>215</sup> of the concept in question. As each user maintains that their particular use of a given concept is the proper one and sustains their position with ‘arguments, evidence and other forms of justification’,<sup>216</sup> it is impossible to resolve such disagreements and potentially uncover a ‘clearly definable use . . . which can be set up as the correct or standard use.’<sup>217</sup> This apparently unresolvable stalemate is unsurprising given the existence of an original authoritative

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<sup>211</sup> Ibid 169. See also Alasdair McIntyre, ‘The Essential Contestability of Some Social Concepts’ (1973) 84 *Ethics* 1.

<sup>212</sup> Gallie (n 209) 168. (Italics in original).

<sup>213</sup> Ibid 167. (Italics in original).

<sup>214</sup> Gallie observes that there are three historical forms of philosophy enquiry, namely, a philosopher may discover and persuade others of a meaning of a contested concept, that a philosopher may propose a meaning to which all disputants may decide to conform to, and finally, a philosopher may prove or explain the necessity of the contested character of the concept in question. It is the inadequacy of these three historical forms of enquiry that prompts Gallie to propose his notion of essentially contested concepts as a possible way forward. Ibid.

<sup>215</sup> Ibid 169.

<sup>216</sup> Ibid.

<sup>217</sup> Ibid 168.

exemplar. According to Gallie the concept in question, whether art, democracy, or the Christian tradition, is derived from an original authoritative exemplar which each user of the given concept seeks to emulate in their particular use of that concept. Thus, the absence of agreement as to the proper or appropriate use of a concept gives rise to different uses of the concept in question. These different uses are mutually contesting and mutually contested due to the existence of the original exemplar which underpins and informs the concept in question and, consequently, the uses of the given concept. In this way Gallie draws a distinction between a concept and the uses of that concept which, in other words, is a distinction between concepts and conceptions. On this basis it is possible to draw a clear distinction between the *concept* of human security as underpinned and informed by freedom from fear and freedom from want, and the *conceptions* of human security, that is the plethora of mutually contesting and contested definitions of human security seeking to emulate freedom from fear and freedom from want.

A similar conclusion is arrived at from the distinction drawn between concepts and conceptions by John Rawls.<sup>218</sup> Rawls, in propounding his theory of justice, observed that disagreement exists as to the principles of justice that should order society and, that such disagreement produces various, rival conceptions of justice. Nonetheless, the existence of various and rival conceptions of justice express an understanding of the need for and preparedness to affirm ‘a characteristic set of principles’.<sup>219</sup> These principles of justice assign basic rights and duties and determine the ‘proper distribution of the benefits and burdens of social cooperation’.<sup>220</sup> As such, Rawls asserted that it is natural to distinguish between the concept of justice and the various, rival conceptions of justice. Furthermore, it is also natural to think of the concept of justice ‘as being specified by the role which these different sets of principles, these different conceptions, have in common’.<sup>221</sup> Thus, under this understanding of the concept and conception distinction, the concept of justice is specified or determined by drawing out the commonalities of the various, rival conceptions of justice. In addition, Rawls continues to explain that agreement may be forthcoming as to the just or unjust nature of institutions, notwithstanding different conceptions of justice, when judged according to the notions of arbitrary distinction and proper balance. Such agreement may be

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<sup>218</sup> John Rawls, *A Theory of Justice* (2<sup>nd</sup> edn OUP Oxford 1999).

<sup>219</sup> *Ibid* 5.

<sup>220</sup> *Ibid*.

<sup>221</sup> *Ibid*.

forthcoming as the concept of justice includes these two notions of arbitrary distinction and proper balance. More importantly, these commonalities are open to interpretation according to the conception of justice, or principles of justice, adhered to. In this way, a common core underpins the concept of justice and thus the conceptions of justice are interpretations of that concept or more specifically of the common core, which is identified by Rawls for the purposes of his theory of justice, as the notions of arbitrary distinction and proper balance. Hence, the common core of human security is freedom from fear and want, which was identified above as a commonality permeating the definitions of human security which, in turn, are interpretations of that common core.

By drawing a distinction between the concept of human security and the conceptions of human security, the freedom from fear and want dichotomy hampering the quest for a human security framework, may be resolved in favour of freedom from fear and freedom from want. However, the quest for a human security framework remains intact as such a distinction does not eliminate the multitude of human security definitions or indicate the 'the correct and standard use' of human security.<sup>222</sup> Indeed, while other commentators from legal philosophy and political science distinguish between concepts and conceptions,<sup>223</sup> Gallie's notion of essentially contested concepts provides a vantage point from which to view and potentially order, the cacophony of definitions. For Gallie proposes a 'fairly rigid schematisation'<sup>224</sup> for identifying a concept as essentially contested which provides further illumination as to the operation of and underlying justification for essentially contested concepts.

In brief, Gallie sets out seven conditions of essential constestability, the first four of which are characteristics that an essentially contested concept must possess. The first condition is that the concept must be appraisive which is explained as meaning that the concept 'signifies or accredits some kind of valued achievement'.<sup>225</sup> The following three conditions describe the valued achievement as being of an 'internally complex

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<sup>222</sup> Gallie (n 209) 168.

<sup>223</sup> One of the most often referred to distinction between concepts and conceptions in legal philosophy is that offered by Ronald Dworkin. Ronald Dworkin, *Law's Empire* (Belknap Press Cambridge Mass. 1986). See also H. L. A. Hart, *The Concept of Law* (2<sup>nd</sup> edn Clarendon Press Oxford 1994). In addition to legal philosophy, philosophy and political science draw distinctions between concepts and conceptions. For an overview see Christine Swanton, 'On the 'Essential Contestedness' of Political Concepts' (1985) 95 *Ethics* 811.

<sup>224</sup> Gallie (n 209) 168.

<sup>225</sup> Gallie (n 209) 171.

character', 'initially variously describable' and finally, 'open'.<sup>226</sup> The internally complex character of the valued achievement is specified as necessitating all its worth being attributed to it as a whole. This description must include reference to the contributions of the various parts which may be initially ranked in different orders of priority, and hence, the valued achievement is initially variously describable. Furthermore, such descriptions are susceptible to unpredictable modification in light of changing circumstances and Gallie adopts the term 'open' for convenience to describe this feature of the valued achievement.<sup>227</sup> However, these conditions shed little light on 'what it is to be a concept of this kind',<sup>228</sup> and consequently Gallie adds the fifth condition of essential contestability, namely, that the concept must be used 'aggressively and defensively'.<sup>229</sup> This is explained in terms of recognition on the part of those using an essentially contested concept of the different uses employed by others, or 'to use an essentially contested concept means to use it against other uses and to recognise that one's own use of it has to be maintained against these other uses'.<sup>230</sup> Michael Freeden criticised this as not being 'logically entailed' as awareness, let alone recognition, of other uses by the different users of a concept, does not always occur.<sup>231</sup> Freeden concludes that this fifth condition is, in practice, unnecessary and even impinges upon analysis.<sup>232</sup>

These five conditions combine to make the 'formally defining conditions of essential contestedness',<sup>233</sup> to which Gallie adds the sixth and seventh conditions, that the concept in question is derived from an original exemplar 'whose authority is acknowledged by all the contestant users',<sup>234</sup> and, that the continued use of an essentially contested concept 'enables the original exemplar's achievement to be sustained and/or developed in optimum fashion'.<sup>235</sup> These final conditions offer justification for the continued use of an essentially contested concept, namely, through the sustained achievement of the

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<sup>226</sup> Ibid 171 – 172. (Italics in original).

<sup>227</sup> Gallie does not elaborate further on these characteristics of the valued achievement, beyond remarking in a footnote that conditions three and four may be replaced with initially ambiguous and persistently vague, respectively. Ibid 172.

<sup>228</sup> Ibid 172.

<sup>229</sup> Ibid.

<sup>230</sup> Ibid.

<sup>231</sup> Michael Freeden, *Ideologies and Political Theory: A Conceptual Approach*. (Clarendon Press Oxford 1996) 59.

<sup>232</sup> Ibid.

<sup>233</sup> Gallie (n 209) 180.

<sup>234</sup> Ibid.

<sup>235</sup> Ibid.

original exemplar and/or its development in an optimum manner.<sup>236</sup> In respect of the original exemplar Freedden simply states that ‘there is no need for an exemplar to have existed’.<sup>237</sup> He continues to assert that the idea of an original exemplar is actually inimical to the notion of essentially contested concepts on the basis that the idea of an original exemplar carries with it a presumption that there exists ‘an agreed or correct position from which derivations have occurred’.<sup>238</sup> This exacting analysis has a potentially severely debilitating effect on the notion of essentially contested concepts as, if the original exemplar does pertain to ‘an agreed or correct position’,<sup>239</sup> then Freedden’s conclusion that an original exemplar is not needed and is in fact superfluous to the notion of essentially contested concepts would be correct as there would not be an absence of an assumption of agreement as to the proper use of the concept at hand. However, in stipulating the existence of an original exemplar Gallie is referring to a common operational context shared by the different users in their different uses of a given concept analogous to ‘playing the same game’.<sup>240</sup>

These conditions provide a vantage point from which to view the cacophony of human security definitions. For instance, human security signifies a valued achievement that of freedom from fear and want which, in turn, is internally complex and variously describable and, as such, mutually contesting and mutually contested uses of human security are produced. As such, the definitions of human security offered by Alkire, the UNDP and Canada, as mutually contesting and mutually contested uses of human security, exist as they describe the contributions of the various parts or features of human security in different ways. Furthermore, the existence of definitions of human security falling to be considered ‘broad’ or ‘narrow’ is also explained as mutually contesting and mutually contested uses of human security. These and other definitions of human security may be modified in light of changing circumstances. For example, Owen in formulating his definition of human security amalgamates and extrapolates from Alkire’s Working Definition and the definition of the UNDP.<sup>241</sup> Similarly, Bajpai’s definition of human security is the product of a comparative analysis of the

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<sup>236</sup> They also serve the function of distinguishing between an essentially contested concept and a radically confused concept. *Ibid.*

<sup>237</sup> Freedden (n 231) 60.

<sup>238</sup> *Ibid.*

<sup>239</sup> *Ibid.*

<sup>240</sup> This is particularly apparent in Gallie’s response to the charge of the sceptic from which he arrives at the sixth and seventh conditions of essential contestability and in particular the stipulation of an original exemplar. Gallie (n 209) 177-180.

<sup>241</sup> Owen (n 136) 11.

UNDP's definition of human security and the definition proffered by the government of Canada.<sup>242</sup> A similar observation may be made in respect of the textually similar definitions of human security offered by Alkire on the one hand and the CHS on the other, and in the same manner the definitions of human security proffered by the Canadian government and the HSN. Finally, the definitions of human security, as mutually contesting and mutually contested uses, sustain and/or develop freedom from fear and freedom from want as the original exemplar in an optimum manner as circumstances dictate. Thus, all definitions of human security are valid definitions and, as such, there is no general principle by which to assess which definitions represents the 'correct or standard use' of human security. In the last analysis, the notion of essentially contested concepts transforms the cacophony of human security definitions into a symphony of definitions dedicated to the advancement of freedom from fear and freedom from want. However, such a vantage point, while also resolving the freedom from fear and want dichotomy, does not transform human security into a framework for analysis and action.

## V. CONCLUDING REMARKS

In order to further the quest for a human security framework it is necessary to return to first principles and draw upon the evolutionary trends in security studies and in particular to Baldwin's treatise on security. It will be recalled that Baldwin devised a series of questions to specify more closely the term security, departing from an understanding of the essence of security as captured in 'the basic intuitive notion underlying most uses of the term security'.<sup>243</sup> It is evident from the foregoing that the essence of human security or, in Gallie's terminology, the original exemplar, is freedom from fear and freedom from want. Moreover, it is equally clear from the review of human security definitions that human security is about the entitlement of all to freedom from fear and want, as 'the basic intuitive notion underlying most uses' of human security. Thus, the two fundamental questions identified by Baldwin as sufficient to specify the term 'security', namely 'security for whom' and 'security for what values', guide the quest for a human security framework undertaken in the following chapters.

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<sup>242</sup> Bajpai (n 7) 4.

<sup>243</sup> Baldwin (n 38) 13.

## CHAPTER TWO

### HUMAN SECURITY IN HISTORICAL PERSPECTIVE

#### I. INTRODUCTION

In a broad stroke, human security is about the entitlement of all human beings to freedom from fear and freedom from want. Freedom from fear and freedom from want has gained currency in recent times with United Nations (UN) documents such as the 2000 Report of the Secretary-General (SG) *We the Peoples: The role of the United Nations in the 21<sup>st</sup> Century*, the resultant General Assembly (GA) resolution, 'The Millennium Declaration', and subsequent 2005 Report of the SG, *In Larger Freedom: Towards development, security and human rights for all*, which all make explicit reference to freedom from fear and freedom from want.<sup>1</sup> Nevertheless, the notion of freedom from fear and freedom from want is not new, having been articulated by US President Franklin D. Roosevelt in his State of the Union Address, 'The Four Freedoms' in 1941.<sup>2</sup> As such, this Chapter examines human security in historical perspective by way of undertaking a historical review of the notion of freedom from fear and freedom from want as it evolved in the international landscape. To this end, the Chapter chronicles the emergence of human security onto the international stage in the 1940's (Part II), tracks the subsequent propulsion of human security onto the international agenda as a pivotal motivating factor in the establishment of the UN (Part III) and ultimately charts the translation of human security into the UN Charter (Part IV). In doing so the Chapter aims to specify freedom from fear and want as 'the basic intuitive notion underlying most uses'<sup>3</sup> of human security and, as such, to begin to define human security and thus further the quest for a human security framework.

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<sup>1</sup> UN SG, *We the Peoples: The role of the United Nations in the 21<sup>st</sup> Century* (UN Dept of Public Information New York 2000); UN GA Res 55/2, 'The Millennium Declaration' (8 September 2000) UN Doc A/RES/55/2; UN SG, *In Larger Freedom: Towards development, security, and human rights for all* (UN Dept of Public Information New York 2005). See Chapter Three.

<sup>2</sup> US President, 'The Four Freedoms' (State of the Union Address 6 January 1941) <<http://www.presidency.ucsb.edu/ws/index.php?pid=16092>> accessed July 2005.

<sup>3</sup> David Baldwin, 'The Concept of Security' (1997) 23 *Review of International Studies* 5, 13.

## II. THE HISTORICAL ROOTS OF HUMAN SECURITY

On the 6<sup>th</sup> of January 1941 the then US President, Franklin D. Roosevelt, delivered the annual Presidential State of the Union Address, in which the first expression of freedom from fear and freedom from want is found.<sup>4</sup> The Address came at an ‘unprecedented’ time in American history for ‘at no previous time has America been as seriously threatened from without as it is today’.<sup>5</sup> The threat posed by the Second World War was considered sufficiently serious for President Roosevelt to conclude that ‘the future and safety of our country and of our democracy are overwhelmingly involved in events far beyond our borders’.<sup>6</sup> In this respect, the Address was peppered with references to the freedoms lost by other democratic nations and to the dangers of a dictator’s peace, in addition to an emphasis on the need to be alert to the possibility of an attack on America by the Axis powers.<sup>7</sup> Hence, notwithstanding that the US was not then directly embroiled in the Second World War, President Roosevelt stressed the need for America to commit to ‘meeting this foreign peril’<sup>8</sup> and concluded the Address with the articulation of four essential freedoms, that of freedom of speech and expression, freedom of religion, freedom from want and, finally, freedom from fear.<sup>9</sup>

According to Daniel Patrick Moynihan while the Address ‘purported to describe the goals of the democratic countries then at war’, freedom from fear and want, which he describes as soft but compelling notions, ‘were new to the vocabulary of war aims’.<sup>10</sup> The Address

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<sup>4</sup> US President, ‘Four Freedoms’ (n 2) paras. 74 – 77. President Roosevelt returned to freedom from fear and want in subsequent State of the Union Addresses during his presidency. For example, President Roosevelt remarked, in the context of building a future peace with fellow Allies, that ‘[f]reedom from fear is eternally linked with freedom from want’. US President, (State of the Union Address, 11 January 1944) <<http://www.presidency.ucsb.edu/ws/index.php?pid=16518>> accessed 18 July 2005.

<sup>5</sup> US President, ‘Four Freedoms’ (n 2) para. 1.

<sup>6</sup> Ibid para. 13.

<sup>7</sup> Ibid para. 54 (democratic nations), paras. 16 and 17 (dictators peace), and paras. 21 – 29 (attack on America).

<sup>8</sup> Ibid para. 29. Japan attacked Pearl Harbour, Hawaii on the 7<sup>th</sup> of December 1941 and the US declared war on Japan the following day and on Germany on the 11<sup>th</sup> of December 1941.

<sup>9</sup> Ibid paras. 74 – 77.

<sup>10</sup> Daniel Patrick Moynihan, *On the Law of Nations* (Harvard University Press Cambridge Mass. 1990) 73. President Roosevelt reiterated the link between freedom from fear and freedom from want and the war effort in the Second World War in subsequent State of the Union Addresses. For example, in the 1942 State of the Union Address, which was the first Address following the entry of the US into the Second World War, President Roosevelt stated that the objectives of the US and their Allies were clear. These were ‘the objective of smashing the militarism imposed by war lords on their enslaved peoples’ and the ‘objective of liberating the subjugated Nations - the objective of establishing and securing freedom of speech, freedom of religion, freedom from want and freedom from fear everywhere in the world’. US President, (State of the Union

translated these soft but compelling notions into ‘world terms’ thereby providing much needed elaboration of freedom from fear and want. For instance, the Address described freedom from fear as entailing ‘a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbour – anywhere in the world’,<sup>11</sup> while freedom from want consisted of ‘economic understandings which will secure to every nation a healthy peacetime life for its inhabitants – everywhere in the world’.<sup>12</sup> The compelling character of the notion of freedom from fear and want is clearly apparent in these descriptions and indeed, President Roosevelt expressed a hope for a world founded on these freedoms and a world order based on ‘the cooperation of free countries, working together in a friendly, civilised society’ where, in the last analysis, ‘[f]reedom means the supremacy of human rights everywhere’.<sup>13</sup>

This first expression of freedom from fear and want drew a correlation between freedom from fear and the absence of war by way of armament reduction and between freedom from want and peace by way of economic cooperation. Underpinning these correlations was the understanding of the ‘supremacy of human rights’. Moreover, President Roosevelt’s articulation of freedom from fear and want saw these soft but compelling notions as integral not only to the Allied war effort but also to securing the ensuing peace. This wider resonance of freedom from fear and want guaranteed its propulsion, notwithstanding the domestic provenance, onto the international stage. Indeed, a mere eight months later, on the 14<sup>th</sup> of August 1941, the Atlantic Charter confirmed the position of freedom from fear and want as integral to the Allied war effort and to the peace that would follow ‘upon the final destruction of the Nazi tyranny’.<sup>14</sup>

The Atlantic Charter set down eight principles common to the national policies of the US and the UK upon which President Roosevelt and the Prime Minister of the UK, Winston

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Address 6 January 1942) <<http://www.presidency.ucsb.edu/ws/index.php?pid=16253>> accessed 18 July 2005. These sentiments were mirrored in the 1944 State of the Union Address. US President, (State of the Union Address 11 January, 1944) <http://www.presidency.ucsb.edu/ws/index.php?pid=16518> accessed 18 July 2005.

<sup>11</sup> US President, ‘The Four Freedoms’ (n 2) para. 77.

<sup>12</sup> Ibid para. 76.

<sup>13</sup> Ibid paras. 80 and 81.

<sup>14</sup> ‘Declaration of Principles, known as the Atlantic Charter, by the President of the United States and the Prime Minister of the United Kingdom’ (14 August 1941) <<http://www.yale.edu/lawweb/avalon/wwii/atlantic.htm>> accessed 2 August 2004, para. 6.

Churchill, based 'their hopes for a better future for the world'.<sup>15</sup> Self-determination, international economic and social cooperation, and the freedom of the high seas were all enumerated as common principles of the national policies of the US and the UK, along with a principle of territorial non-aggrandisement.<sup>16</sup> These counted as principles upon which a peaceful and secure world would be founded 'upon the final destruction of the Nazi tyranny'.<sup>17</sup> The sixth common principle expressed the hope of seeing established a peace that would 'afford to all nations the means of dwelling in safety within their own boundaries'.<sup>18</sup> This peace would also 'afford assurance that all the men in all lands may live out their lives in freedom from fear and want'.<sup>19</sup> The Atlantic Charter also spoke of the necessity for the abandonment of the use of force upon which to build a 'better future for the world'<sup>20</sup> and saw the disarmament of all aggressor nations as essential to the maintenance of future peace 'pending the establishment of a wider and permanent system of general security'.<sup>21</sup>

By proclaiming the vision for a better future for the world in the aftermath of the defeat of the Nazi tyranny, the Atlantic Charter and the principles enunciated therein were welded to the Allied war effort. As such, freedom from fear and want was an integral part of the war aims of the Allies and an essential component of the peace that would be established upon an Allied victory. In this way, the Atlantic Charter confirmed and consolidated the connections between freedom from fear and freedom from want and the Allied war effort and the ensuing peace drawn by President Roosevelt in his 1941 State of the Union Address.<sup>22</sup> In doing so, freedom from fear and want transcended the national boundaries of

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<sup>15</sup> Ibid Preamble.

<sup>16</sup> Ibid paras. 2, 3, 4, 5, 7 and 1 respectively.

<sup>17</sup> Ibid para. 6.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid Preamble.

<sup>21</sup> Ibid para. 8. The original draft of the Atlantic Charter prepared by Prime Minister Churchill included the phrase 'effective international organisation' which posed significant difficulties for the US and thus, resulted in the muted 'wider and permanent system of general security'. See Ruth Russell, *A History of the United Nations Charter: The Role of the United States 1940-1945* (Brookings Institution Washington 1958) 34-42; Robert C. Hilderbrand, *Dumbarton Oaks: The Origins of the United Nations and the Search for Postwar Security* (University of South Carolina Press Chapel Hill and London 1990) 13.

<sup>22</sup> Similar sentiments were expressed and connections drawn in the London Declaration of 12 June 1941, where fourteen Allied countries declared that 'the only true basis for enduring peace is the willing cooperation of the free peoples in world in which, relieved of the menace of aggression, all may enjoy economic and social security; and that it their intention to work together with other free peoples both in war and peace to

its national provenance and was firmly placed on the international stage, and the Declaration by United Nations of the 1<sup>st</sup> of January 1942 arguably catapulted the notion of freedom from fear and want onto the international agenda.<sup>23</sup> Indeed Antonio Cassese notes that it was on the initiative of President Roosevelt 'that acceptance by the world of certain great freedoms, at the level of international relations, was proposed' which were subsequently 'taken up other politicians and gradually ended up being translated into international norms and institutions'.<sup>24</sup>

The Declaration by United Nations proclaimed the commitment of the signatory and adherent states to bring to bear the full weight of their respective resources, military or economic, on the 'Tripartite Pact and its adherents' alongside the pledge to cooperate with each other and not to make 'a separate armistices or pact with the enemies'.<sup>25</sup> Consequently the Declaration by United Nations was primarily concerned with solidifying the alliance of the Allied powers for as H. G. Nicholas observed 'the main business . . . was with war, not peace'.<sup>26</sup> Indeed, the Declaration opens with the statement that complete victory is essential in order 'to defend, life, liberty, independence and religious freedoms, and to preserve human rights and justice' everywhere.<sup>27</sup> As such the signatory states and the subsequent adhering states were 'engaged in a common struggle against savage and brutal forces seeking to subjugate the world' and thus, the Declaration speaks of the united resolve of the Allied powers to win the Second World War. Indeed Leland M. Goodrich speaks of the Declaration by United Nations as 'the legal basis of a powerful military coalition'.<sup>28</sup>

Even so, the original 26 signatory states and the additional 19 states which subsequently adhered to the Declaration by United Nations subscribed to the vision of a future peace and a better world articulated in the Atlantic Charter as founded on the principles enunciated therein, including freedom from fear and freedom from want. In this way as Goodrich

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this end'. 'Fourteen Allies Vow to Fight until Victory is Won' (The London Declaration 12 June, 1941) <<http://www.ibiblio.org/pha/policy/1941/410612a.html>> accessed 25 July 2005.

<sup>23</sup> 'The Declaration by United Nations' (1 January 1942)

<<http://www.yale.edu/lawweb/avalon/decade/decade03.htm>> accessed 10 August 2004.

<sup>24</sup> Antonio Cassese, *Human Rights in a Changing World* (Polity Press Cambridge 1994) 21 – 22.

<sup>25</sup> 'The Declaration by United Nations' (n 23) paras. 1 and 2.

<sup>26</sup> H. G. Nicholas, *The United Nations as a Political Institution* (5<sup>th</sup> edn OUP Oxford 1975) 1 -2.

<sup>27</sup> 'The Declaration by United Nations' (n 23) Preamble.

<sup>28</sup> Leland M. Goodrich, *The United Nations* (Stevens London 1960) 244.

commented, freedom from fear and freedom from want became part of the 'war aims of the coalition of nations joined in war against the Axis powers'.<sup>29</sup> More particularly, the Declaration by United Nations also endorsed the link between freedom from fear and want and a peaceful and secure world seen in the Atlantic Charter. In this respect the Declaration marked an acceptance of freedom from fear and want as a foundation upon which to build peace and signalled the implicit approval of the establishment of 'a wider and permanent system of general security' suggested in the Atlantic Charter by which to achieve the future peace envisioned therein. In short, the Declaration by United Nations 'represented the essence of the way of life which the United Nations had been engaged in defending against the Axis aggression'.<sup>30</sup>

The Joint Four Nations Declaration and the Declaration of the Three Powers followed in 1943 and solidified the transition of freedom from fear and freedom from want onto the international agenda.<sup>31</sup> These Declarations reiterated and emphasised the translation of the Allied wartime alliance into a post-war quest for a permanent peace as seen in the Declaration by United Nations. Thus, the Joint Four Nations Declaration, or the Moscow Declaration as it is more commonly known as, saw the US, the UK, the Soviet Union and China declare that their 'united action, pledged for the prosecution of war against their respective enemies, will be continued for the organisation and maintenance of peace and security'.<sup>32</sup> Similarly the Declaration of the Three Powers, or the Tehran Declaration, in confirming the common policy of the US, the UK and the Soviet Union spoke of the determination of these countries to 'work together in war and in the peace that will follow', along with expressing their confidence that 'our concord will win an enduring peace'.<sup>33</sup>

It was however the Moscow Declaration that contained an explicit statement as to what form this post-war quest for peace and security would take. In the Moscow Declaration the US, the UK, the Soviet Union and China recognised 'the necessity of establishing at the

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<sup>29</sup> Ibid.

<sup>30</sup> Leland M. Goodrich and Edvard Hambro, *The Charter of the United Nations: Commentary and Documents* (1<sup>st</sup> edn World Peace Foundation Boston 1946) 90.

<sup>31</sup> 'The Joint Four Nations Declaration' (30 October 1943)

<http://www.yale.edu/lawweb/avalon/wwii/moscow.htm> accessed 16 August 2004; 'The Declaration of the Three Powers' (1 December 1943) <<http://www.yale.edu/lawweb/avalon/wwii/teheran.htm>> accessed 16 August 2004.

<sup>32</sup> 'The Joint Four Nations Declaration' (n 31) para. 1.

<sup>33</sup> 'The Declaration of the Three Powers' (n 31) paras. 2 and 5 respectively.

earliest practicable date a general international organisation . . . for the maintenance of international peace and security'.<sup>34</sup> This statement was a clear and unequivocal articulation of the motivation to establish an international organisation dedicated to peace and security as founded on the united action and cooperation of the Allied powers in the Second World War which sees the incarnation of the intent to establish an international organisation hinted in the Atlantic Charter. By elaborating upon the Atlantic Charter in this manner the Moscow Declaration firmly placed freedom from fear and freedom from want onto the international agenda in that freedom from fear and freedom from want had become intrinsically bound to the impetus to establish an international organisation for 'the maintenance of international peace and security'.<sup>35</sup> Perhaps more importantly, the Moscow Declaration as founded on the Declaration by United Nations and drawing inspiration from the Atlantic Charter, confirmed that freedom from fear and freedom from want are principles upon which to found a secure and peaceful world and as such are objectives to be pursued by the international organisation once established.<sup>36</sup>

By chronicling the emergence of freedom from fear and freedom from want onto the international agenda for the establishment of an international organisation dedicated to international peace and security, this Part specifies the essence of human security - that of freedom from fear and want. In particular, freedom from fear and freedom from want was firmly embedded as an integral part of the Allied war aims and consequently, was intrinsically bound to the impetus to establish an international organisation for the maintenance of international peace and security. In addition, the historical perspective brought to bear on freedom from fear and want uncovers the proposition that freedom from fear and want is an objective to be pursued by the international organisation once instituted. Furthermore, freedom from fear and freedom from want is understood as relating to security issues, such as disarmament, and economic development which are underpinned by human rights. In this way, the historical roots of human security, to paraphrase David Baldwin, specifies the 'basic intuitive notion underlying most uses' of the term human security and thus provides a departure point from which to begin to define human security. As such, an assessment of the genesis of the establishment of the general international

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<sup>34</sup> 'The Joint Four Nations Declaration' (n 31) para. 4.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

organisation stipulated in the Moscow Declaration is required. This places particular emphasis on the place, if any, of security issues, economic development and specifically human rights as underpinning freedom from fear and want, in the objectives of the international organisation.

### III. HUMAN SECURITY AND THE ESTABLISHMENT OF THE UNITED NATIONS

This Part examines the establishment of the UN, specifically the drafting of the UN Charter as the constitutive document of the ‘international organisation . . . for the maintenance of international peace and security’<sup>37</sup> with a view to determining whether human security, as broadly understood as the entitlement of all to freedom from fear and freedom from want, finds expression in the UN Charter.<sup>38</sup> The examination is undertaken by way of reference to the Atlantic Charter, the Tentative Proposals for a General International Organisation drafted by a special sub-committee of the US Department of State, and the documents providing the basis for the Dumbarton Oaks Conversations and the San Francisco Conference, as key documents in the drafting history of the Charter of the UN. These documents are analysed for the presence of the key components of ‘freedom from fear and want’, namely, security, economic development and human rights.

Before assessing these documents, it is useful to provide an overview of the timeline of the key events in the drafting of the UN Charter and the consequent establishment of the UN. According to Wilhelm G. Grewe and Daniel-Erasmus Khan there are four phases in the establishment of the UN which correspond ‘closely with the events of the war’.<sup>39</sup> As such the first phase is the entry of the US into the Second World War in December 1941 as it was, on Grewe and Khan's analysis, this event that triggered the in-depth discussion as to

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<sup>37</sup> The Joint Four Nations Declaration (n 31) para. 4.

<sup>38</sup> Commentaries on the drafting and subsequent interpretation of the provisions of the Charter, see generally, Bruno Simma et al (eds), *The Charter of the United Nations: A Commentary* (2<sup>nd</sup> edn OUP Oxford 2002); Leland M. Goodrich and Edvard Hambro, *Charter of the United Nations: Commentary and documents* (2<sup>nd</sup> edn Stevens London 1949); Goodrich, *The United Nations* (n 28); Leland M Goodrich, Edvard Hambro and Anne Simons, *The Charter of the United Nations: Commentary and Documents*, (3<sup>rd</sup> edn Columbia University Press New York and London 1969); Evan Luard, *A History of the United Nations* (St. Martin's Press New York 1982).

<sup>39</sup> Wilhelm G. Grewe and Daniel-Erasmus Khan, ‘Drafting History’ in Simma et al, (eds) (n 38) 2. Evan Luard adopts a similar approach in his exposition and analysis of the establishment of the UN. Luard (n 38).

the establishment of what would become the UN at the US State Department.<sup>40</sup> The second period, August 1944 to October 1944, relates to the Dumbarton Oaks Conversations on the creation of an international organization, while the third phase, between October 1944 and April 1945, was characterised by a flurry of intense diplomatic exchanges attempting to resolve the issues remaining from Dumbarton Oaks in the run-up to the fourth and final period, the Conference on International Organisation at San Francisco between the 24<sup>th</sup> of April and the 26<sup>th</sup> of June 1945.

The Atlantic Charter has been called a 'blueprint for the post-war future' with a 'flexible constitutional essence'<sup>41</sup> while other commentators see the Atlantic Charter as an important source of international law with current juridical value.<sup>42</sup> These arguments may be attractive given the simplicity of the Atlantic Charter<sup>43</sup> and indeed the vision of the better future for the world espoused therein, but they are certainly not compelling.<sup>44</sup> Rather, in terms of the drafting process of the UN Charter, the significance of the Atlantic Charter lies

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<sup>40</sup> Grewe and Khan (n 39) 1. Grewe and Khan do acknowledge that discussions as to the establishment of an international organisation had occurred prior to December 1941. However, they characterise these discussions as being of a private nature. In a different vein, Ruth Russell charts the development of US policy regarding the establishment of what would become the UN, offering insight as to the machinations of the US State Department. See Russell (n 21) 215-226.

<sup>41</sup> Edward A. Laing, 'Relevance of the Atlantic Charter for a New World Order' (1989) 29 *Indian Journal of International Law* 298, 298. Laing continues to assert that the Atlantic Charter not only has relevance for a number of today's problems, but forms the basis of the UN system. Laing states that the Atlantic Charter was 'designed to implement the world order value of humanitarian universalism by establishing a normative systemic framework of closely integral principles and institutions of a proto-constitutional nature in the spheres of civil and political human rights, social welfare and economic entitlements of individuals, national self-determination, minimal economic justice for nations, and economic liberalism'. Ibid 300.

<sup>42</sup> Philippe Drakidis, *The Atlantic and United Nations Charters: Common law prevailing for world peace and security* (Centre de recherche et d'information politique et sociale Besancon 1985). The declaration by United Nations provides the central reference for Drakidis' argument, the thrust of which is found in the following passage. 'From that time, the expressed will of the United Nations as early as January 1, 1942 was to refer to the Atlantic Charter as a source of law. It is also clear that Article 3 of the Charter of the United Nations of 1945, referring to the Declaration by United Nations of January 1, 1942 was intended to *maintain* this source *permanently* for all the 'original members of the United Nations' who are such, and even those who become members subsequently'. Ibid 9-10. (Italics in original).

<sup>43</sup> Clark M. Eichelberger described the Atlantic Charter as follows: 'The declaration . . . contains a remarkable phrase of 19 words, only one of which has more than one syllable. It could be recommended to English classes as a classic of Anglo-Saxon. The clause reads '. . . that all the men in all the lands may live out their lives in freedom from fear and want'. See Clark M. Eichelberger, *United Nations: The first fifteen years* (Harper and Brothers New York 1960) 55

<sup>44</sup> For instance Laing rests his argument in respect of the 'constitutional' status of the Atlantic Charter on the basis that it has become part of customary international law as the references to it by prominent world leaders ensured that the requirement for *opinio juris* in the formation of custom was met. Notwithstanding, Laing offers a secondary argument that the Atlantic Charter has become part of treaty law due to the Declaration by United Nations in January 1942. Laing (n 41) 322-325. This latter argument is similar to the argument advanced by Philippe Drakidis. Drakidis (n 42) 9-10.

primarily in the fact that it was seen within the US State Department at the time as providing the basis for US post-war planning. As Ruth Russell succinctly observed ‘the Atlantic Charter provided a focus for more concrete planning within the United States Government’.<sup>45</sup> Indeed Cordell Hull, the then Secretary of State for the Department of State responsible for post-war planning, recorded in his memoirs that the Atlantic Charter provided further basis on which to build ‘our structure for a post-war world’.<sup>46</sup> Russell in her commentary on the role of the US in the drafting of the UN Charter and ultimately the formation of the UN, divides the development of US policy in respect of post-war planning into four main stages which were characterised by ‘the milestone documents . . . of the Draft Constitution, the Staff Charter, the Outline Plan for the President [Roosevelt] and the Tentative Proposals’.<sup>47</sup> Of these documents it was the ‘Tentative Proposals’ which were of primary significance in terms of the drafting process of the UN Charter. This is not in the least due to the fact that they were transmitted to the UK, the Soviet Union and China for consideration prior to the Dumbarton Oaks Conversations and, indeed, provided the basis for those discussions.

According to the ‘Tentative Proposals’ of the US the international organisation intimated in the Atlantic Charter and stipulated in the Moscow Declaration<sup>48</sup> would have two primary purposes, the first of which was the maintenance of international security and peace.<sup>49</sup> The second primary purpose of the proposed organisation was ‘to foster through international cooperation the creation of conditions of stability and well-being necessary for peaceful and friendly relations among nations and essential to the maintenance of security and peace’.<sup>50</sup> The proposed international organisation would comprise of four principal organs, namely, a general assembly, an executive council, an international court of justice and finally, a

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<sup>45</sup> Russell (n 21) 40.

<sup>46</sup> Laing (n 41) 302, citing Cordell Hull, *The Memoirs of Cordell Hull* (1948) 1631. Perhaps an example of this, and indeed an example of the idea of the Atlantic Charter as a blueprint, would be ‘The Atlantic Charter and Africa from an American Standpoint’. This document by the Committee on Africa, the War and Peace Aims purported to apply the Atlantic Charter to Africa. Committee on Africa, the War, and Peace Aims. *The Atlantic Charter and Africa from an American Standpoint* (Committee on Africa, the War and Peace Aims New York 1942).

<sup>47</sup> Russell (n 21) 224.

<sup>48</sup> ‘The Atlantic Charter’ (n 14) para. 8; ‘The Joint Four Nations Declaration’ (n 31) para. 4.

<sup>49</sup> US State Department, ‘Tentative Proposals for a General International Organisation’ in Russell (n 21) 955-1006, Section I.B (1).

<sup>50</sup> *Ibid* .

general secretariat.<sup>51</sup> Having set out the nature of the proposed international organisation, its purposes and its composition, the remaining sections of the 'Tentative Proposals' put forward by the US were devoted to an exposition of the functions and powers of these principal organs and to the suggested methods for achieving the two primary purposes.

In order to achieve the first of these primary purposes, the maintenance of international security and peace, the 'Tentative Proposals' of the US suggested the employment of methods such as peaceful adjustment, use of local or regional procedures, referral to the international court of justice, and enforcement measures which included non-forcible measures and the use of force.<sup>52</sup> The executive council of the proposed international organisation would bear primary responsibility in this regard.<sup>53</sup> Similarly, it would appear to fall to another principal organ of the proposed international organisation, the general assembly, to achieve the second primary purpose of the organisation. Under Section II of the 'Tentative Proposals' the general assembly was to be bestowed with the power, amongst others, to initiate studies and make recommendations in relation to the promotion of international cooperation and the promotion of the observance of basic human rights.<sup>54</sup> Nevertheless, while the 'Tentative Proposals' stated that the general assembly bore responsibility for 'the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations', this responsibility was to vest in the proposed economic and social council under the authority of the general assembly.<sup>55</sup> As such, the 'Tentative Proposals' devoted an entire section to 'Arrangements for Economic and Social Cooperation' which provided for the establishment of the economic and social council in addition to delineating the powers, composition and organisation of the economic and social council.<sup>56</sup>

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<sup>51</sup> Ibid Section I. D (1)

<sup>52</sup> Ibid Section I. C (a), (c), (f), (j) and (k)

<sup>53</sup> The Tentative Proposals stipulated that the executive council would have primary responsibility 'for the peaceful settlement of international disputes, for the prevention of threats to the peace and breaches of the peace, and for such other activities as may be necessary for the maintenance of international security and peace'. Ibid Section III. B. (1). The Tentative Proposals continue to articulate the principal powers of the executive council in Sections V, VI, VII and X which related to the pacific settlement of disputes, determination of threats to the peace or beaches of the pace and action with respect thereto, regulation of armaments and armed forces, and finally, general administration and the secretariat respectively.

<sup>54</sup> Ibid Section II. B. (c). This Section also refers to the ability of the proposed general assembly to initiate studies and make recommendations in relation to the development and revision of international law.

<sup>55</sup> Ibid Section VIII. A (1)

<sup>56</sup> Ibid Section VIII

In terms of translating the vision for a better future for the world envisioned in the Atlantic Charter, of particular significance was the importance which the Tentative Proposals attached to international economic and social cooperation. This is evident in the position of international economic and social cooperation in the Tentative Proposals as a primary, albeit secondary, purpose of the proposed international organisation. As such, the 'Tentative Proposals' reinforce the connection drawn in the Atlantic Charter between the economic and social causes of conflict, or more broadly the recognition therein of the link between peace and economic and social well-being. As will be evident this recognition, explicitly articulated in the 'Tentative Proposals' in terms of the creation of 'conditions of stability and well-being' necessary 'for peaceful and friendly relations among nations', finds expression in subsequent documentation in the history of the drafting of the Charter and indeed the UN Charter.

While the 'Tentative Proposals' were presented to the UK, the Soviet Union and China in July 1944 for their consideration prior to the Dumbarton Oaks Conversations on the creation of an international organization, their responses, as Evan Luard observed, were in general terms and, as such, Luard concludes '[i]t was thus the US proposals which, to a large extent, formed the basis for discussion at the subsequent conference'.<sup>57</sup> The discussions at Dumbarton Oaks, Washington<sup>58</sup> as to the form of the international organisation stipulated in the Moscow Declaration,<sup>59</sup> occurred in two stages between the 21<sup>st</sup> of August and the 7<sup>th</sup> of October 1944. The first round comprised of the delegations from the US, the UK and the Soviet Union, while, during the week beginning the 29<sup>th</sup> of September representatives from the US, the UK and China met to discuss the establishment of what would become the UN.<sup>60</sup> Contemporary records show that general agreement was forthcoming in many important respects<sup>61</sup> and indeed, the parties concerned were able to agree on the purposes of the new international organization which were articulated in the

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<sup>57</sup> Luard (n 38) 25. Stanley Meisler has also remarked that the structure of the UN 'closely follows the plans prepared by American diplomats during World War II'. Stanley Meisler, *United Nations: First Fifty Years*. (The Atlantic Monthly Press New York 1995) 3.

<sup>58</sup> Stanley Meisler wrote of Washington in August as rivalling 'West Africa for muggy heat'. Ibid 5.

<sup>59</sup> 'The Joint Four Nations Declaration' (n 31) para. 4.

<sup>60</sup> Luard explains the separation of the Soviet Union and China at Dumbarton Oaks as being due to the 'poor state of Sino-Soviet relations'. Luard (n 38) 25. Also Hilderbrand (n 21) 61-63.

<sup>61</sup> On the degree of agreement, see Luard (n. 38) 27-32.

'Proposals for the Establishment of a General International Organisation' or the Dumbarton Oaks Proposals.<sup>62</sup> These, 'to maintain international peace and security', 'to develop friendly relations', 'to achieve international co-operation' with respect to economic, social and other humanitarian problems, and finally that the new organisation would 'afford a centre for harmonising the action of nations in the achievement of these common ends',<sup>63</sup> were largely uncontroversial at Dumbarton Oaks. The delegations also agreed on principles such as the sovereign equality of all peace-loving states, the peaceful settlement of disputes and the prohibition on the use of force as guiding the member states of the new organisation and the organisation itself in the pursuit of such purposes.<sup>64</sup> General agreement was also forthcoming at Dumbarton Oaks as regards the principal organs of the new international organisation and the consequent Proposals provided for a general assembly, a security council, an international court of justice, and a secretariat. Nonetheless, disagreement of a fundamental nature arose during the Dumbarton Oaks Conversations, primarily in the first stage of discussion between the representatives of the US, the UK and the Soviet Union. These disagreements, amongst others, related to the composition and voting procedure of the security council, to membership of the fledging organisation and, to international economic and social cooperation and the associated provision for human rights.

From the outset, when the possibility of a meeting of the nature of Dumbarton Oaks was first mooted, the Soviet Union wished to confine the agenda to matters relating solely to the maintenance of international peace and security, as was apparent from the Soviet response to the 'Tentative Proposals', the 'Memorandum on the International Security Organisation'.<sup>65</sup> As Robert C. Hildebrand observes such an insistence 'eliminated two major areas of British and American concern: the pacific settlement of disputes and the coordination of economic and political machinery within the new organisation'.<sup>66</sup> However, the US responded by restating the importance of both pacific settlement and

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<sup>62</sup> UN GA, 'Proposals for the Establishment of a General International Organisation' (1947) United Nations Year Book 4-9.

<sup>63</sup> Ibid 4.

<sup>64</sup> Ibid.

<sup>65</sup> See Russell (n 21) 393.

<sup>66</sup> Hilderbrand (n 21) 63.

international economic and social cooperation for a secure and peaceful world<sup>67</sup> and, as such, both remained on the agenda for Dumbarton Oaks.

Nevertheless, when the issue of international economic and social cooperation and in particular the creation of an economic and social council, was raised at Dumbarton Oaks, it produced a period of intense discussion. The Soviet Union saw the task of the international organisation as exclusively the maintenance of international peace and security, citing the failure of the League of Nations as stemming from an over-emphasis on international economic and social cooperation in support of this proposition.<sup>68</sup> The UK were diametrically opposed to this position arguing that economic and social problems are often the root causes of conflict and, consequently, international economic and social cooperation must be included for an international organisation dedicated to peace and security to succeed.<sup>69</sup> The US performed a role akin to an umpire in this apparent stand-off as to international economic and social cooperation, although its position was more aligned to the British. The US viewed the respective positions of the Soviet Union and the UK as a question of the place of international economic and social cooperation. Thus, a compromise was eventually reached whereby the original US proposal remained substantially intact, with the exception of a reduction of the members of the economic and social council from twenty-four to eighteen.<sup>70</sup>

The provision in the 'Tentative Proposals' of the US whereby the general assembly would be charged with making recommendations 'for the promotion of observance of basic human rights'<sup>71</sup> was not as fortunate at Dumbarton Oaks as both the Soviet Union and the UK had reservations. The Soviet objection to the provision was based on similar grounds to those advanced in relation to international economic and social cooperation, namely that the provision of human rights was incidental to the task of the international organisation, the maintenance of international peace and security.<sup>72</sup> The British voiced a more substantial reservation which was founded on concerns regarding national sovereignty, prompted by an

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<sup>67</sup> Ibid.

<sup>68</sup> Ibid 86-88.

<sup>69</sup> Ibid 87.

<sup>70</sup> On the debates and proposed compromises, see Hilderbrand (n 21) 86-90.

<sup>71</sup> US State Department, 'Tentative Proposals' (n 49) Section II. B. (c).

<sup>72</sup> Hilderbrand (n 21) 92.

apprehension that the provision of human rights would be utilised by the international organisation in relation to the British colonies.<sup>73</sup> Nevertheless, the US proposed a compromise whereby a reference to human rights would be included in the provisions in respect of international economic and social cooperation. This was accepted by the Soviet Union<sup>74</sup> and subsequently by the UK.<sup>75</sup> The resultant provision in the Dumbarton Oaks Proposals provided that the organisation should 'promote respect for human rights and fundamental freedoms', with responsibility for this falling to the general assembly and the economic and social council.<sup>76</sup>

As a result of the imaginative horse-trading on the part of the US the disagreements relating to international economic and social cooperation and human rights appeared to be resolved at Dumbarton Oaks.<sup>77</sup> However, issues such as the voting procedure of the security council and in particular the veto power of the permanent members and the question of membership of the international organisation remained unresolved. Moreover, issues such as the somewhat contentious trusteeship system and the relationship of the proposed international court of justice with the then existing Permanent Court of International Justice were not items on the agenda for discussion at Dumbarton Oaks and thereby remained outstanding. Nevertheless, as Luard observes 'at least the general outline of a possible future organisation had been agreed',<sup>78</sup> which was published on the 9<sup>th</sup> of October 1944, two days after the close of the Dumbarton Oaks Conversations.

The publication of the Dumbarton Oaks Proposals marked the beginning of a period in the drafting history of the UN Charter characterized by Grewe and Khan by a flurry of intense

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<sup>73</sup> Ibid 91-92.

<sup>74</sup> The US offered three options as to the position of the human rights provision, that of, in the provisions relating to the GA, among the purposes of the proposed organisation, and finally, in the provisions relating to international economic and social cooperation. That the Soviet Union choose the last option was unsurprising given their resistance to the inclusion of international economic and social matters. Ibid 92.

<sup>75</sup> Robert C. Hilderbrand observes that despite strong opposition the UK had to approve the human rights provision as 'it would be farcical to give the public impression that the delegates could not agree on the need to safeguard human rights'. Ibid 92.

<sup>76</sup> UN GA, 'Proposals for the Establishment' (n 62) 5.

<sup>77</sup> The Chinese proposed during the second round of discussions at Dumbarton Oaks that the proposed economic and social council 'should specifically provide for the promotion of educational and other forms of cultural cooperation'. This was agreed to by the Soviet Union prior to the publication of the Dumbarton Oaks Proposals. For the text of the Chinese proposals see Ibid 12.

<sup>78</sup> Luard (n 38) 32.

diplomatic exchanges.<sup>79</sup> Indeed, the meeting between President Roosevelt, Prime Minister Churchill and Generalissimo Stalin at Yalta between the 3<sup>rd</sup> of February and the 11<sup>th</sup> of February 1945, was a culmination of such diplomatic exchanges between the respective governments. At Yalta the issues pertaining to the voting procedures of the security council and to membership of the fledgling organisation left unresolved at Dumbarton Oaks, in addition to the outstanding question of the trusteeship system, were hammered out.<sup>80</sup> Furthermore, the governments agreed at Yalta that the next step in the conception, negotiation, signature and ratification of the UN Charter and ultimately the establishment of the UN, would be a conference on world organisation on the 25<sup>th</sup> of April 1945 to be held in the US.<sup>81</sup>

To this end, invitations to the Conference on International Organisation were sent on the 5<sup>th</sup> of March 1945. The invitations suggested that the Dumbarton Oaks Proposals should provide a basis for the proposed charter and as such for the discussions at the Conference in San Francisco.<sup>82</sup> Indeed the Inter-American Conference on Problems of War and Peace and the British Commonwealth Conference addressed the substance of the Dumbarton Oaks Proposals for a general international organisation prior to the San Francisco Conference, while the former also issued a resolution which contained seven points in respect of the proposals.<sup>83</sup> Furthermore, the results of such national deliberations were transmitted amongst the participating nations prior to the Conference on International Organisation at San Francisco.<sup>84</sup> Indeed, the agenda for the San Francisco Conference was declared to be 'the Dumbarton Oaks Proposals, as supplemented at the Crimea [Yalta] Conference, and by

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<sup>79</sup> Grewe and Khan (n 39) 2.

<sup>80</sup> 'The Yalta Conference' <<http://www.yale.edu/lawweb/avalon/wwii/yalta.htm>> accessed 15 August 2004.

<sup>81</sup> Ibid para. 1.

<sup>82</sup> Goodrich and Hambro (n 38) 11.

<sup>83</sup> The Inter-American Conference on Problems of War and Peace met from the 21 February to the 8 March 1945 and comprised of the twenty members of the Union of American Republics. Similarly, the British Commonwealth Conference involved members of the British Commonwealth who met in London at the start of April 1945. See UN GA, 'Proposals for the Establishment' (n 62) 10-11. Wilhelm G. Grewe and Daniel - Erasmus Khan note the response of a commentator in respect of the Dumbarton Oaks Proposals as that of deep disappointment. See Grewe and Khan (n 39) 8.

<sup>84</sup> Leland M. Goodrich and Edvard Hambro state that these were distributed at San Francisco as a loose-leaf collection under the title 'Comments and Proposed Amendments Concerning the Dumbarton Oaks Proposals, submitted by the Delegations to the United Nations Conference on International Organisation, May 7, 1945'. See Goodrich and Hambro (n 38) 12. They were subsequently bound and now form part of the documents pertaining to the Conference on International Organisation. UNCIO, *Documents of the United Nations Conference on International Organisation, San Francisco, 1945* (United Nations Information Organisations London and New York 1945)

the Chinese proposals agreed to by the Sponsoring Governments, and the comments thereon submitted by the participating countries'.<sup>85</sup>

Of the fifty countries invited to participate at the San Francisco Conference,<sup>86</sup> forty responded by submitting comments and proposed amendments to the Dumbarton Oaks Proposals as supplemented.<sup>87</sup> One of the notable recurring areas of interest pervading the submissions to amend the Dumbarton Oaks Proposals was in relation to the provisions in respect of international economic and social cooperation, primarily found in Chapter IX of the Dumbarton Oaks Proposals. As Russell observes the proposed amendments in this regard fell to be considered under two loose camps, the first of which pertained to expanding the 'purposes and functions of the Organisation in various fields of economic, social and humanitarian activity'.<sup>88</sup> The second loose contingent was concerned with the elaboration of the technical aspects of the workings of the proposed economic and social council. Nevertheless, an area of commonality and indeed agreement was forthcoming in that the proposal to designate the economic and social council as a principal organ of the international organisation was accepted unanimously at San Francisco.<sup>89</sup>

A number of the countries that advocated the expansion of the purposes and functions in respect of the economic, social and humanitarian activities of the proposed international organisation were particularly keen to remedy the apparent and perceived deficiencies of the Dumbarton Oaks Proposals as regards provision for human rights.<sup>90</sup> Indeed, a significant number of proposed amendments to the provisions relating to international

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<sup>85</sup> As quoted in Goodrich and Hambro (n 38) 12. The Chinese proposals referred to in the quotation pertain to the outcome of the second phase of the Dumbarton Oaks Conversations. The Chinese had three proposals in respect of the inclusion of the principles of justice and international law as guiding principles in the pacific settlement of disputes, the role of the General Assembly in relation to the development and revision of international law, and finally, that the 'Economic and Social Council should specifically provide for the promotion of educational and other forms of cultural cooperation'. UN GA, 'Proposals for the Establishment' (n 62) 12.

<sup>86</sup> For a list of these countries see Goodrich and Hambro (n 38) 11. Also note Goodrich and Hambro's comment regarding the subsequent invitation to Argentina, the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and Denmark, in addition to the inability of the sponsoring governments to decide whether to invite Poland.

<sup>87</sup> For the list of comments and proposed amendments see UNCIO, Vol. III (n 84) v.

<sup>88</sup> Russell (n 21) 777.

<sup>89</sup> Ibid.

<sup>90</sup> One of the most detailed submissions in this regard emanated from Panama. Amongst the suggestions submitted by the Panamanian government was the inclusion of a 'Declaration of Essential Human Rights' in Chapter 1 detailing the purposes of the organisation. See UNCIO, Vol. III (n 84) 265-271.

economic and social cooperation were in respect of human rights and which garnered the support, if not advocacy, of the four governments sponsoring the Conference on International Organisation at San Francisco. At San Francisco the US, the UK, the Soviet Union and China submitted amendments to the Dumbarton Oaks Proposals for consideration by the delegates.<sup>91</sup> The proposed amendments were wide-ranging in scope covering the purposes of the international organisation, the principal organs thereof, in addition to the arrangements for international peace and security and in respect of international economic and social cooperation. In this latter regard, the 'Big Four' proposed the insertion of human rights provisions in two key chapters, that of the purposes of the organisation and the functions of the general assembly, and proposed the strengthening of the existing human rights provision under Chapter IX of the Dumbarton Oaks Proposals, 'Arrangements for International Economic and Social Cooperation'.

In respect of the purposes of the international organisation, the US, the UK, the Soviet Union and China proposed that the achievement of international cooperation would be extended to include 'the promotion and encouragement of respect for human rights and fundamental freedoms for all without distinction as to race, language, religion or sex'.<sup>92</sup> The sponsoring governments proposed the insertion of a similar provision, human rights and basic freedoms coupled with a non-discrimination clause, in the Chapter on the general assembly. Under this proposed amendment the general assembly should initiate studies and make recommendations to assist in the realisation of 'human rights and basic freedoms for all, without distinction as to race, language, religion or sex'.<sup>93</sup> The provision for human rights under arrangements for international economic and social cooperation was to be strengthened by the insertion of fundamental freedoms and the non-discrimination clause in the section detailing the purpose of international economic and social cooperation.<sup>94</sup> Furthermore, the economic and social council provided for under Chapter IX of the

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<sup>91</sup> The US, the UK, the Soviet Union and China submitted proposed amendments on 5 May and 11 May 1945. For the text of both amendments see UN GA, 'Proposals for the Establishment' (n 62) 14-16 and 17 respectively. To see the combined effect of these two sets of proposed amendments on the Dumbarton Oaks Proposals for international economic and social cooperation see UNCIO, Vol. III (n 84) 694, 652, 642, 640.

<sup>92</sup> UNCIO, Vol III (n 84) 640.

<sup>93</sup> Ibid 652.

<sup>94</sup> The relevant part of the amendment reads: 'With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations . . . the Organisation should . . . promote respect for human rights and for fundamental freedoms for all without distinction as to race, language, religion or sex'. Ibid.

Dumbarton Oaks Proposals and to be established under the authority of the general assembly, was to have the power to 'make recommendations for promoting respect for human rights and fundamental freedoms'.<sup>95</sup> These proposed amendments were transposed in substance and meaning, if not literally, into the Charter of the UN.<sup>96</sup> In this way the visibility of human rights and indeed international economic and social cooperation in the UN Charter were enhanced, in addition to securing a substantially improved if not prominent position in the Charter of the provisions relating to international economic and social cooperation and human rights.

This assessment of the drafting history of the UN Charter and the consequent establishment of the UN, charted a sea-change in respect of the provision for human rights and international economic and social cooperation and, indeed in relation to the positioning of provisions thereof, throughout the pertinent documents. In doing so, the assessment ultimately charted the transition of freedom from fear and freedom from want from an ideal of the Atlantic Charter to its expression in the UN Charter. Of particular note was the position allocated to international economic and social cooperation within the 'Tentative Proposals' and its relationship with stability and well-being and indeed, international peace and security. Indeed, the primary objective of the proposed international organization, that of international peace and security, remained constant throughout negotiations, with the finer details of implementation being a source of debate and, indeed, controversy. In the final analysis, as Luard remarks 'the UN Charter, as it finally emerged, was an only slightly modified form of the original US plan' as found in the 'Tentative Proposals'.<sup>97</sup> Hence, the recognition of the importance of international economic and social cooperation for the creation of conditions of stability and well-being remained intact, was fortified by way of human rights provisions, which were also strengthened in the final stages of drafting. As such, it is possible to identify the provisions of the UN Charter which express the essence

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<sup>95</sup> Ibid 694.

<sup>96</sup> This is not to suggest that other countries or actors did not have a substantial role to play in the inclusion of human rights in the UN Charter. As noted, Panama made a detailed submission in this regard which, amongst others, suggested the inclusion of a 'Declaration of Essential Human Rights' in Chapter 1 detailing the purposes of the organisation. Ibid 265-271. Furthermore, Stephen C. Schlesinger refers to the role of NGO's in bringing the human rights issue to the attention of the US delegation. Their role was such that the then US Secretary of State, Edward Stettinius, quipped that they 'could justly claim credit for getting a consideration of human rights into the Charter'. See Stephen C. Schlesinger, *Act of Creation: The founding of the United Nations; A story of Superpowers, Secret Agents, Wartime Allies and Enemies, and Their Quest for a Peaceful World* (Westview Press Boulder 2003) 124.

<sup>97</sup> Luard (n 38) 43 – 44.

of human security and more specifically encapsulate the values to be protected and pursued by the nascent international organization, namely the Preamble, Article 1 and in particular Article 1(3), and by necessary elaboration of Article 1 (3), Article 55.

#### IV. THE QUEST FOR HUMAN SECURITY: THE UN CHARTER MANDATE

Human security finds expression in the Preamble, Article 1 and specifically Article 1 (3) and Article 55 of the UN Charter. This Part examines these Charter provisions in order to advance the specific argument that human security is a ‘goal value’ of the UN.<sup>98</sup> The Part builds the argument in two steps the first of which comprises of an assessment of the intention of the drafters of the Charter in respect of the relevant provisions, to which a layer of constitutionalism is applied, thereby prompting the second step of detailing the Charter mandate for human security.

##### A. *The UN Charter Human Security Provisions*

The Preamble of the UN Charter was inserted at a comparatively late stage in the drafting of the Charter. Although a number of delegations at San Francisco had proposed or supported the inclusion of a Preamble and made submissions to that effect, it was the proposal of the South African delegation that provided the basis for deliberations in this regard.<sup>99</sup> Indeed, the South African proposal provided a much needed working basis as the Dumbarton Oaks Proposals did not contain a comparable provision as was fitting for ‘tentative proposals . . . for a general international organisation’.<sup>100</sup> Moreover, time constraints on the drafting process ensured that the Preamble substantially reflected the South African proposal, with a few notable amendments,<sup>101</sup> and undermined its status as a literary and inspiring text that would ‘kindle the feeling and move the heart of the common man’.<sup>102</sup>

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<sup>98</sup> Nigel D. White, *The United Nations: Toward International Justice* (Lynne Reiner Boulder 2002) 14.

<sup>99</sup> South Africa first proposed and submitted a draft Preamble on 26 April 1945 and subsequently submitted a revised draft on 3 May 1945. See UNCIO, Vol. VI (n 84) 474-5.

<sup>100</sup> Goodrich and Hambro (n 38) 6. Goodrich and Hambro also observe that the Dumbarton Oaks Proposals ‘were not presented in Charter language, and there important matters which they did not cover’. Ibid.

<sup>101</sup> Ruth Russell charts the contribution of the US delegation to the drafting of the Preamble which, amongst others, resulted in the change of the opening of the Preamble from the ‘high contracting parties’ to ‘we the peoples’. See Russell (n 21) 913 – 915.

<sup>102</sup> Hans Kelsen, ‘The Preamble of the Charter: A Critical Analysis’, (1946) 8 *The Journal of Politics* 134 at 159.

However, it was the degree of overlap with the purposes and principles of the nascent organization that was of significant concern during the drafting process. The relevant drafting Committee, Committee I/1, at San Francisco conceded that it was difficult, if not impossible, to clearly distinguish between the Preamble, Purposes and Principles, primarily because of the substance under consideration.<sup>103</sup> Nevertheless the Committee described the Preamble as introducing the Charter and as stating the common intentions or ends of the organization and the international action by which to achieve these ends. The Purposes articulate the *raison d'être* of the UN and therefore express 'the cause and object of the Charter',<sup>104</sup> while the Principles are the standards of international conduct to which the organization and its members abide by in pursuit of the achievement of the common ends articulated.<sup>105</sup> While the drafting history of the Preamble explains the overlap with Article 1 and Article 2 of the UN Charter, it does not remedy the inconsistencies in terminology, for example in respect of the provision for human rights under the Preamble and Article 1 (3). The Preamble reaffirms faith in fundamental human rights and in the dignity and worth of the human being, while Article 1 (3) pledges international cooperation to promote and encourage respect for human rights and fundamental freedoms for all 'without distinction as to race, sex, language, or religion'. Such inconsistencies have a potentially significant bearing on the legal import of the Preamble of the UN Charter.

Hans Kelsen advances the argument that the Preamble neither creates binding obligations for members of the UN or for the UN itself, nor does it provide an interpretative tool for the substantive provisions of the Charter. This two-pronged argument is founded on the existence of inconsistencies between the Preamble and substantive provisions of the Charter, particularly those pertaining to human rights. In respect of the creation of binding obligations, Kelsen argues that the Preamble is political in character as the realisation of the ideals enunciated therein are not always 'guaranteed by sanctions stipulated by the Charter'.<sup>106</sup> This argument is not controversial and indeed, Rüdiger Wolfrum adheres to

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<sup>103</sup> UNCIO, 'Report of the Rapporteur of Committee I to Commission I' in UNCIO, Vol. VI (n 84) 16-17.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid 143

this position.<sup>107</sup> Nevertheless, while Kelsen concludes that the Preamble ‘has rather an ideological than a legal importance’,<sup>108</sup> Wolfrum concurs with the view of the Rapporteur of Committee I/1 who stressed the legal validity of the Preamble, even seeing such status as axiomatic.<sup>109</sup> In respect of the interpretative function of the Preamble, Kelsen succinctly stated:

It is, however, doubtful whether the Preamble can be used as means of interpretation, for its statements refer to objects which are regulated in a more detailed or in a different way, or are not mentioned at all, in other parts of the Charter<sup>110</sup>

For instance, the Preamble speaks of fundamental human rights, while Article 1 (3) refers to human rights and fundamental freedoms. Furthermore, the Preamble only mentions equality between men and women, while Article 1 (3) contains a non-discrimination clause. Finally, the phrase ‘dignity and worth of the human being’ found in the Preamble is not only absent from Article 1 (3), but cannot be found elsewhere in the substantive provisions of the Charter.<sup>111</sup> Notwithstanding the obvious persuasive attraction of Kelsen’s argument, the drafting history and subsequent practice of UN organs in relation to the Preamble suggests that the Preamble is imbued with legal import. Indeed, the Report of the Rapporteur of Committee I/1 stressed that the provisions of the Charter are indivisible and therefore equally valid and authoritative. Further, the Report stated that each of the Charter provisions, including the Preamble, is ‘construed to be understood and applied in function of the others’.<sup>112</sup> This is a very clear endorsement of the interpretative function of the Preamble and the substantive provisions of the Charter in relation to each other. While the Preamble is rarely invoked by the organs of the UN the instances when it has been have

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<sup>107</sup> Rüdiger Wolfrum states: ‘Although the Preamble is an integral part of the Charter, its main function is not to set forth basic obligations of the member states and the Organisation itself but to highlight some of the motives of the founders of the Organisation, to serve as an interpretative guideline for the provisions of the Charter’. See Rüdiger Wolfrum, ‘Preamble’ in Simma et al (eds) (n 38) 37.

<sup>108</sup> Kelsen (n 102) 143.

<sup>109</sup> Wolfrum, ‘Preamble’ (n 107) 35. The Rapporteur stated: ‘It is thus clear that there are no grounds for supposing that the Preamble has less legal validity than the two succeeding chapters. We found it appropriate to make the last remark; even though it would otherwise be taken for granted’. See UNCIO, Vol. VI (n. 84) 17.

<sup>110</sup> Kelsen (n 102) 143.

<sup>111</sup> Ibid 146-147.

<sup>112</sup> UNCIO, Vol. VI (n 84) 17.

been of particular importance, such as the Friendly Relations Declaration<sup>113</sup> and the Universal Declaration of Human Rights (UDHR).<sup>114</sup>

Article 1 of the UN Charter sets out the Purposes of the UN including the maintenance of international peace and security as the primary purpose of the UN, and the development of friendly relations which is the basis for ‘universal peace’, along with international cooperation in the economic, social, cultural and humanitarian fields and in respect of human rights, and stipulates that the UN shall be a ‘centre for harmonizing the actions of nations in the attainment of these common ends’.<sup>115</sup> Article 1 (3) is of particular note as both international economic and social cooperation and human rights are considered purposes of the fledging international organization. Furthermore, a relationship is established between international economic and social cooperation and human rights on the one hand and international peace and security on the other courtesy of the positioning of these purposes within Article 1. Importantly, the relationship is not one of means to an end, for as Wolfrum observes: ‘it would be incorrect to say that . . . [international economic and social cooperation and human rights] . . . only describe means to maintain international peace and security even if this notion is understood broadly’.<sup>116</sup> In addition, as is discussed below, this relationship is further elaborated upon in Article 55 of the UN Charter.

Article 1 (3) speaks of the achievement of international cooperation in solving economic, social, cultural and humanitarian problems of an international nature in addition to the achievement of international cooperation in ‘promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion’.<sup>117</sup> As noted above the Rapporteur to Committee I/1 when distinguishing between the Preamble, the Purposes and the Principles of the Charter of the proposed international organisation at San Francisco described the Purposes as constituting the *raison d’être* of the proposed international organisation. The Rapporteur continued to state that the Purposes comprise the ‘cause and object of the Charter to which member states collectively and

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<sup>113</sup> UN GA Res 2625 (XXV), ‘Friendly Relations Declaration’ (24 October 1970).

<sup>114</sup> UN GA Res 217A (III), ‘Universal Declaration on Human Rights’ (10 December 1948).

<sup>115</sup> UN Charter, Article 1 (4).

<sup>116</sup> Wolfrum, ‘Preamble’ (n 107) 40

<sup>117</sup> UN Charter, Article 1 (3).

severally subscribe'.<sup>118</sup> Moreover, the Rapporteur saw the Purposes, including the achievement of international cooperation in the economic, social, cultural and humanitarian fields and in relation to the promotion and encouragement of respect for human rights, as providing in practice a test for the effectiveness of the proposed international organization.<sup>119</sup> Thus, the Purposes of the UN as articulated in Article 1 of the Charter are standards by which to measure the pursuit of the UN of the articulated Purposes. In this respect, the deliberate choice by the drafters of Article 1 (3) to use the phrase 'to achieve international cooperation' in respect of economic, social, cultural and humanitarian affairs and human rights, is of particular note as it pertains to the legal significance of Article 1 (3).

Notwithstanding the doubtful relevancy of the argument advanced by Kelsen that the repetition between the Preamble, the Purposes and the Principles of the Charter ensures that the duplicate provisions are not legally binding, a persuasive argument has been made by Leland M. Goodrich and Edvard Hambro that Article 1 (3) does not create legally binding obligations. They argue that Article 1 (3) is a statement of purpose which is directed towards 'the achievement of 'international cooperation', not the enforcement of specific policies or legal rights'.<sup>120</sup> In support of this argument they look to the rejection of arguments submitted in the course of General Assembly (GA) debates during the early years of the UN in respect of the treatment of Indians in South Africa to the effect that Article 1 (3) creates legally binding obligations for South Africa in respect of specific human rights.<sup>121</sup> Further, Wolfrum observes that Article 1 in general is worded in such a manner as to be 'more appropriate for political objectives rather than for legally binding

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<sup>118</sup> UNCIO, Vol. VI (n 84) 17.

<sup>119</sup> Ibid.

<sup>120</sup> Goodrich and Hambro (n 38) 97.

<sup>121</sup> Ibid. Goodrich and Hambro also refer to the principles of sovereign equality and non-interference in the domestic affairs of member states, both of which are enunciated as principles of the UN in Article 2 of the UN Charter, in support of the argument. They assert that the significance attached to the phrase 'international cooperation' is logically entailed by the principle of sovereign equality. Further, in respect of the principle of non-interference in domestic affairs, they note that this provision was given a general application due to the strengthening of the provisions in respect of economic and social cooperation. Indeed Committee 3/II at San Francisco felt it desirable to state that the provisions for economic and social cooperation did not give the UN authority to intervene in domestic affairs. Ibid 97 and 321 respectively. The General Assembly passed a number of resolutions regarding the issue of the treatment of Indians in South Africa. See for instance, UN GA Res 44 (I), 'Treatment of Indians in the Union of South Africa' (8 December 1946); UN GA Res 265 (III), 'Treatment of People of Indian Origin in the Union of South Africa' (14 May 1949); UN GA Res 395 (V), 'Treatment of People of Indian Origin in the Union of South Africa' (2 December 1950).

obligations'.<sup>122</sup> However, he counters this observation by noting that the legislative or drafting history of Article 1 in general and in combination with the place of the Purposes within the UN Charter would suggest that the Purposes, including Article 1 (3), are legally binding. In this respect it is pertinent to recall the statement of the Rapporteur of Committee I/1 in emphasising the legal validity of the Preamble to the effect that as the Charter provisions are indivisible they are 'equally valid and authoritative'.<sup>123</sup>

Hence, the murky waters of controversy surrounding the legal status of Article 1 (3) may be traversed in the sense that it is possible to assert that Article 1 (3) does not create legally binding obligations for the UN or the member states thereof in respect of economic, social, cultural and humanitarian affairs and in relation to specific human rights. However, such a conclusion does not necessarily imply that Article 1 (3) is bereft of legal significance. Indeed, Wolfrum warns that many of the notions expressed in Article 1, including the notion of human rights as found in Article 1 (3), are considered principles of customary international law and therefore legally binding. The 2003 GA Resolution regarding respect for the purposes and principles of the Charter is noteworthy in this regard as the promotion of and encouraging respect for human rights and fundamental freedoms for all is considered a Charter principle upon which to base the international order in addition to, amongst others, the principle of equal rights.<sup>124</sup>

More importantly, various organs of the UN when acting in accordance with their powers and in pursuit of their functions and responsibilities under the Charter have referred to Article 1 in general as the Purposes of the UN, and to Article 1 (3) in particular, and in doing so have confirmed the legal significance of these Charter provisions. The wealth of GA resolutions alone in this regard are testimony to the legal significance of Article 1 generally and of Article 1 (3) specifically.<sup>125</sup> In the latter regard Wolfrum observed that the

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<sup>122</sup> Wolfrum, 'Preamble' (n 107) 40. This statement is reminiscent of the argument offered by Kelsen in respect of the Preamble of the UN Charter, namely, that in order to be legally binding it is necessary to look to the content of the provision.

<sup>123</sup> UNCIO, Vol. VI (n 84) 17.

<sup>124</sup> UN GA Res 58/188, 'Respect for the purposes and principles contained in the Charter of the United Nations to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms and in solving international problems of a humanitarian character' (22 December 2003) UN Doc A/RES/58/188, para. 4. Other resolutions of the General Assembly have expressed a similar idea and of particular note in this regard is the Millennium Declaration. UN GA Res 55/2 (n 1).

<sup>125</sup> For a review of the Resolutions see Wolfrum, 'Preamble' (n 107) 40.

GA has emphasised the necessity of international cooperation on numerous occasions, but that such referral to Article 1 (3) by the GA has tended towards the topic of the development of developing countries.<sup>126</sup> Notwithstanding this practice and the apparent practice of referral to Article 1 (3) upon the establishment of new institutions for economic development and cooperation also noted by Wolfrum,<sup>127</sup> a more recent trend of referring to previous resolutions appears to mark the current practice of the GA in this regard.

In the respect of general references to Article 1 by the GA usually occur in tandem with references to Article 2 and, as such, commonly adopt the phrase ‘the purposes and principles of the Charter’. For instance, the GA in the Millennium Declaration reaffirmed the commitment of the UN and the member states of the UN to ‘the purposes and principles of the Charter of the United Nations’.<sup>128</sup> In addition, the Millennium Declaration declared the determination of the UN and the member states to ‘establish a just and lasting peace all over the world in accordance with the purposes and principles of the Charter’<sup>129</sup> which have ‘proved timeless and universal’.<sup>130</sup> To this end, the Millennium Declaration saw a rededication to support efforts to uphold, amongst others, ‘respect for human rights and fundamental freedoms, respect for the equal rights of all without distinction as to race, sex, language, or religion and international cooperation in solving international problems of an economic, social, cultural or humanitarian character’.<sup>131</sup> The Millennium Declaration expresses the idea that the purposes and principles of the Charter provide the foundation for a just and lasting peace. Similarly the 2003 GA Resolution pertaining to respecting the purposes and principles of the Charter of the UN speaks of the purposes and principles as providing the basis for an international order.<sup>132</sup> This intimates the fact that Article 1 (3) is also a means by which to achieve the primary purpose of the UN that of the maintenance of international peace and security as articulated in Article 1 (1) of the Charter. In order to understand the origin of this function of Article 1 (3) it is necessary to have recourse to the drafting history of the Purposes of the UN.

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<sup>126</sup> Ibid 46.

<sup>127</sup> Ibid 46-47.

<sup>128</sup> UN GA Res 55.2 (n 1).

<sup>129</sup> Ibid para. 4.

<sup>130</sup> Ibid para. 3.

<sup>131</sup> Ibid para. 4.

<sup>132</sup> UN GA Res 58/188 (n 124) para. 4

It will be recalled that at Dumbarton Oaks, the Soviet Union vigorously contested the dual purpose of the international organisation as proposed by the US in the 'Tentative Proposals'.<sup>133</sup> Rather, the Soviet Union saw the sole purpose of the proposed international organisation as being the maintenance of international peace and security. As such, the Soviet Union articulated collective measures, peaceful settlement of disputes, and measures to develop friendly relations as purposes of the organisation and by which to maintain international peace and security.<sup>134</sup> Hence, according to the Soviet view, matters of an economic, social or humanitarian character were automatically excluded from the remit of the proposed organisation, either as a purpose thereof or as a means by which to achieve the sole purpose as articulated. However, the UK and the US were forthright in advancing the position that such matters should be included in the remit of the proposed international organisation, with the UK convincingly arguing for the recognition of the close interrelationship of economic, social and humanitarian issues and the outbreak of conflict.<sup>135</sup> The UK and US position prevailed at Dumbarton Oaks, although the resultant provision of the Dumbarton Oaks Proposals was a modification of the original 'Tentative Proposals'.<sup>136</sup> Nevertheless the inclusion in the Dumbarton Oaks Proposals of international cooperation in the economic, social and humanitarian fields as a purpose of the proposed international organisation was an explicit recognition on the part of the four major powers of the necessity to address the economic, social and humanitarian root causes of conflict in order to maintain international peace and security. In other words, as Goodrich and Hambro observe, the Proposals recognised 'the desirability of creating by positive action those 'conditions of stability and well-being' under which peace would be most likely to prevail'.<sup>137</sup>

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<sup>133</sup> See Hilderbrand (n 21) 86-91. The 'Tentative Proposals' by the US stipulated that the first primary purpose of the organisation should be the maintenance of international peace and security. The second primary purpose should be 'to foster through international cooperation the creation of conditions of stability and well-being necessary for peaceful and friendly relations among nations and essential to the maintenance of security and peace'.

<sup>134</sup> Hilderbrand (n 21) 85.

<sup>135</sup> Ibid 87.

<sup>136</sup> The relevant provision of the Dumbarton Oaks Proposals stipulated the achievement of 'international cooperation in the solution of international economic, social and other humanitarian problems' as a purpose of the United Nations.

<sup>137</sup> Goodrich and Hambro (n 38) 9.

The recognition of ‘the close interrelation of political and economic and social problems’<sup>138</sup> in conjunction with ‘the opportunities for achieving substantial results through international cooperation in dealing with economic and social problems’<sup>139</sup> spurred the delegates at San Francisco, in particular the smaller states,<sup>140</sup> to table amendments to the international economic and social provisions of the Dumbarton Oaks Proposals. As noted above, amongst the most significant and successful amendments in this regard concerned provision for human rights. Indeed, the insertion of human rights into the Purposes of the constitutive document of the fledging organisation by the delegates at San Francisco marked the acceptance of the interdependence of ‘political and economic and social problems’. As such Goodrich and Hambro describe Article 1 (3) as clear evidence of the framers of the Charter’s recognition of the need ‘of creating conditions, other than purely political ones, favourable to the existence of peace’.<sup>141</sup> This recognition of the connection between ‘political and economic and social problems’, was subsequently endorsed upon the signature, ratification and subsequent entry into force of the Charter of UN.

Thus, the interdependence of ‘political and economic and social problems’ finds expression in Article 1 of the Charter, where the first purpose of the UN is proclaimed as being the maintenance of international peace and security. To this end, the second part of the paragraph stipulates that the UN shall pursue collective measures and the peaceful settlement of disputes, while the following two paragraphs declare friendly relations among nations and international cooperation as means by which to achieve international peace and security. The final paragraph of Article 1 pronounces the UN as a centre for ‘harmonising the actions of nations in the attainment of these common ends’. However, as Wolfrum points out, it would be incorrect to say that each of these, collective measures, peaceful settlement of disputes, friendly relations and international cooperation, are to be merely understood as means by which to achieve the end of the maintenance of international peace and security. Indeed, Wolfrum continues to assert that Article 1 (2) and Article 1 (3) constitute purposes in their own right.<sup>142</sup> This proposition may be considered self-evident

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<sup>138</sup> Ibid 40.

<sup>139</sup> Ibid.

<sup>140</sup> On the role of the smaller states in this regard see Goodrich (n 28) 26-27. On the equally important role of non-governmental organisations and individuals in this respect see Schlesinger (n 96) 122-26.

<sup>141</sup> Goodrich and Hambro (n 38) 96.

<sup>142</sup> Wolfrum, ‘Preamble’ (n 107) 40.

given the wording of Article 1 and is certainly borne out by the above exposition of Article 1 (3).<sup>143</sup> Nevertheless, further supporting evidence is forthcoming in that specification of this means by which to achieve the maintenance of international peace and security is found in Article 55 of the UN Charter. In this way, as Goodrich remarks the Charter emphasises that ‘this purpose stands on its own feet so far as the United Nations is concerned’.<sup>144</sup>

Hence, Article 55 may be properly considered as constituting a statement of objectives or purposes for the UN in respect of the economic, social, cultural and humanitarian fields and in relation to human rights and fundamental freedoms. Moreover the link between the political, the economic and the social spheres expressed in Article 1 (3) is also evident in Article 55 as it speaks of the ‘creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination’.<sup>145</sup> Indeed, it is to this end that the UN pledges to promote ‘higher standards of living, full employment, and conditions of economic and social progress and development’ in Article 55 (a) along with promoting ‘solutions of international economic, social, health, and related problems’ in addition to promoting ‘international cultural and educational co-operation’ in Article 55 (b). Finally Article 55 (c) stipulates that the UN shall promote ‘universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion’. Thus, the general understanding that Article 55 elaborates upon Article 1 (3) and provides specification of the purposes articulated therein is clearly apparent.

However, while Article 55 may have been regarded at San Francisco, as Wolfrum observes, ‘as the provision which would implement Article 1’<sup>146</sup> the difference in language between these provisions and indeed between these and the Preamble of the Charter is striking. Indeed, by way of example, the only comparable provision to Article 55 (a) in terms the idea expressed therein is found in the Preamble to the Charter. Here the UN proclaims the determination to promote ‘social progress and better standards of life in larger freedom’ as

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<sup>143</sup> See for example UN GA Res 377 (V), ‘Uniting for Peace (3 November 1950); UN GA Res 1815 (XVII), ‘Considerations on the Principles of International Law Concerning Friendly Relations and Cooperation Among States’ (18 December 1962); UN GA Res 55/2 (n 1); UN GA Res 60/1, ‘2005 World Summit Outcome’ (16 September 2005) UN Doc A/RES/60/1. See also Wolfrum, ‘Preamble’ (n 107) 45 – 46.

<sup>144</sup> Goodrich (n 28) 29.

<sup>145</sup> Kelsen (n 102) 152.

<sup>146</sup> Wolfrum, ‘International Economic and Social Co-operation’ in Simma et al (eds) (n 38) 898.

an end of the UN and in pursuit of this end, the Preamble stipulates the employment of international machinery for the 'promotion of the economic and social advancement of all peoples'. It will be recalled that as part of his argument that the Preamble has 'ideological rather than legal importance' Kelsen relied on the repetition of the same ideas in different parts of the Charter as expressed in different terminology.<sup>147</sup> The relevancy and currency of this argument as to the legal significance of Article 55 is doubtful, as was illustrated in respect of Article 1 (3) and the Preamble itself, along with the fact that in the instant case as the difference in terminology has not been given effect to in the practice of the UN in respect of international economic and social cooperation and human rights.<sup>148</sup> Nevertheless, Kelsen's argument does indicate a larger and more pertinent issue with respect to the language employed in Article 55, namely the issue of whether Article 55 creates legal obligations for the UN in respect of human rights.

As previously noted the issue of whether certain Charter provisions, including Article 55 along with Article 1 (3) and the Preamble, create legally binding obligations incumbent upon the UN arose at a germinal stage of the development and evolution of UN practice when the GA considered the treatment of Indians in South Africa.<sup>149</sup> A principal argument advanced to counter the proposition that Article 55 (c) created legal obligations for the UN was that the language of Article 55 lacked the specificity required to create such obligations in respect of human rights and fundamental freedoms.<sup>150</sup> Indeed, the inclusion of a bill of rights in the Charter was mooted at San Francisco in order to define human rights and fundamental freedoms, and was rejected primarily on the basis of time constraints.<sup>151</sup> Further, the resolutions passed by the GA in respect of the treatment of Indians in South Africa failed to address the issue of whether Article 55 creates legally binding obligations

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<sup>147</sup> Kelsen (n 102) 146 – 147.

<sup>148</sup> On this point see Wolfrum, 'International Economic and Social Cooperation' (n 146) 900.

<sup>149</sup> See generally Goodrich and Hambro (n 38) 321.

<sup>150</sup> Kelsen put forward the argument that as the Charter does not provide for enforcement the human rights provisions can not be legally binding. Kelsen (n 102) 146 – 147.

<sup>151</sup> The relevant Committee noted that the UN 'could better proceed to consider the suggestion and to deal effectively with it through a special commission or by some other method'. UNCIO, Vol. VI (n 84) 397. While Goodrich and Hambro make a similar observation, they refer to the 'Four Freedoms', the Atlantic Charter and the Declaration by United Nations as offering some elucidation as to the content of the term 'human rights and fundamental freedoms'. Indeed they refer to statements made at San Francisco to the effect that the term correlates in substance to the 'four freedoms' enunciated by President Roosevelt in 1941. Goodrich and Hambro (n 30) 63.

for the UN.<sup>152</sup> Nevertheless, subsequent practice of the UN in this regard testifies to the acceptance by the UN that the generality of the language employed does not deprive Article 55 in general and indeed Article 55 (c) of legal force or substance.

The treatment of Indians in South Africa also exposed the intractable issue of domestic jurisdiction posed by Article 55 and indeed Article 1 (3).<sup>153</sup> At the Conference on International Organisation at San Francisco the provisions of the Dumbarton Oaks Proposals on economic and social international cooperation including human rights, and in particular Article 55, underwent considerable re-drafting. Of particular note as regards the issue of domestic jurisdiction, was the proposed strengthening of the terminology of Article 55 from 'facilitate' to 'promote'.<sup>154</sup> A number of delegations voiced concerns that the new promotional role envisaged for the UN under Article 55 could be construed as permitting the UN to intervene in the domestic affairs of member states.<sup>155</sup> This prompted Committee II/3 with responsibility for drafting Article 55, to issue a statement to the effect that none of the Charter provisions relating to international economic and social co-operation 'can be construed as giving authority to the Organisation to intervene in the domestic affairs of member states'.<sup>156</sup> This statement of principle is also found in Article 2 (7) of the Charter, the inclusion of which was in part prompted by the strengthening of economic and social cooperation provisions, which enunciates the principle of non-intervention in the domestic

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<sup>152</sup> The first resolution that the GA passed in this regard, after declaring that the treatment of Indians in South Africa had impaired friendly relations between India and South Africa, stated that the treatment of Indians should be in 'conformity with the international obligations under the agreements concluded between the two Governments and the relevant provisions of the Charter'. See UN GA Res 44 (1) (n 121), para 1 and 2. In contrast, four years later, the General Assembly was able to refer to the Universal Declaration of Human Rights and to the General Assembly resolution on racial persecution and discrimination when recommending a round table conference between the relevant governments. See UN GA Res 395 (V) (n 121) preambular para 3.

<sup>153</sup> It was argued above that Article 1 (3) with its emphasis on international cooperation did not create legally binding obligations in respect of specific human rights. Nevertheless Article 55 which stresses the need for UN action in the economic and social fields and in relation to human rights and fundamental freedoms which was emphasised at San Francisco is not particularly amenable to the application of similar logic.

<sup>154</sup> It will be recalled that the Dumbarton Oaks Proposals spoke of 'the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations' and thus the UN 'should facilitate solutions of international economic, social and other humanitarian problems and promote respect for human rights and fundamental freedoms'. UN GA, 'Proposals for the Establishment' (n 62) 8.

<sup>155</sup> 'The discussions at the United Nations Conference made it clear that there were two dominant interests which were sometimes in conflict. On the one hand, there was a general desire to make the organisation an effective agency for achieving international cooperative action in dealing with certain specified matters in the attainment of declared purposes. On the other hand, there were some delegations which were obviously concerned lest the words used would provide the basis for intervention by the Organisation in affairs regarded by them as being essentially within the domestic jurisdiction of a state'. Goodrich and Hambro (n 30) 190.

<sup>156</sup> Goodrich and Hambro (n 38) 321, citing the Report of the Rapporteur of Committee 4/3.

affairs of member states by the UN.<sup>157</sup> Despite these statements of principle, the issue of domestic jurisdiction persisted, particularly as regards human rights and fundamental freedoms, as the situation regarding the treatment of Indians in South Africa and the response by the GA thereto exemplified.<sup>158</sup>

In respect of provision for human rights and fundamental freedoms, it is noteworthy that at Dumbarton Oaks the UK, and to a lesser extent the Soviet Union, both opposed the inclusion of human rights provisions in the Charter on the basis of domestic jurisdiction. Nevertheless the US position as regards human rights prevailed at Dumbarton Oaks.<sup>159</sup> This position was succinctly summarised by Leland Goodrich, Edvard Hambro and Anne Simons as entailing ‘respect for basic human rights and fundamental freedoms . . . as an end in itself but also as a condition favourable to the maintenance of international peace and respect for law’.<sup>160</sup> Once the initial reluctance of the UK and the Soviet Union in respect of human rights and fundamental freedoms was overcome at Dumbarton Oaks, the four powers at Dumbarton Oaks which sponsored the Conference on International Organisation at San Francisco embraced human rights and economic and social co-operation even proposing changes to the Dumbarton Oaks Proposals at San Francisco. These proposals primarily related to strengthening the provisions in respect of international co-operation in the economic and social fields and in relation to human rights and fundamental freedoms and to clearly delineating the powers, functions and responsibilities

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<sup>157</sup> Article 2 (7) reads as follows: ‘Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.’

<sup>158</sup> See for example, Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics and Morals* (2<sup>nd</sup> edn OUP Oxford 2000) 588 – 592.

<sup>159</sup> Leland M. Goodrich, Edvard Hambro and Anne Simons in their commentary on the UN Charter remark that the comparable provision to Article 55 in the Dumbarton Oaks Proposals reflected the ‘twofold preoccupation’ of the US. According to the authors, the US was preoccupied with, first, international cooperation in respect of economic and social fields as necessary to avoid war and, second with human rights as an end in itself and a means by which to achieve international peace and security. In support of this proposition the authors cite the Four Freedoms, the Atlantic Charter and the Declaration by United Nations. However, it is misleading to characterise international economic and social cooperation as being of the sole concern of the US. As Robert C Hilderbrand observes the UK strongly supported this proposition and pushed for international economic and social cooperation as a purpose of the proposed organisation at Dumbarton Oaks against considerable resistance from the Soviet Union. Indeed, Hilderbrand observes that the US insisted on the inclusion of economic provisions in the Atlantic Charter while the UK similarly insisted on the social provisions found in the Atlantic Charter. See Goodrich, Hambro and Simons (n 38) 371-372 and Hilderbrand (n 21) 86 – 94.

<sup>160</sup> Goodrich, Hambro and Simons (n 38) 371 – 372.

of the UN and its principal organs in this regard.<sup>161</sup> The proposals of the US, the UK, the Soviet Union and China pertaining to human rights and international co-operation in the economic and social fields, aided by the delegates of smaller states in conjunction with the pressure applied by non-governmental organisations, were ultimately accepted at the Conference on International Organisation.

The changes to the human rights provisions at San Francisco in effect amounted to the insertion of 'observance of' and 'without distinction as to race, sex, language, or religion' into Article 55 (c).<sup>162</sup> While 'observance of' human rights and fundamental freedoms had been present in previous drafts of Article 55, weight must not be attached to the subsequent re-insertion, for as Wolfrum remarks '[e]arly UN practice did not distinguish between the two terms'.<sup>163</sup> Notwithstanding the issue pertaining to the creation of legal obligations raised by the use of 'respect for' and 'observance of' and indeed the inclusion of the non-discrimination clause canvassed above,<sup>164</sup> it is without doubt that the change in terminology of Article 55 (c) effected at San Francisco served to strengthen the provision for human rights in the UN Charter. Nevertheless, the change in terminology also correspondingly heightened the tension between human rights and Article 2 (7) and the principle of non-intervention in the domestic affairs of member states expressed therein. While the response of the GA to the treatment of Indians in South Africa is typical of the position adopted in respect of Article 2 (7),<sup>165</sup> subsequent practice by the GA,<sup>166</sup> and indeed other principal organs of the UN,<sup>167</sup> has ensured that the relationship between domestic jurisdiction and human rights has less currency. For as Wolfrum observes 'it is widely recognised that

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<sup>161</sup> Russell (n 21) 778 – 785.

<sup>162</sup> The changes at San Francisco relating to international co-operation in the economic and social fields may be said to have primarily concerned the delineation of the powers, functions and responsibilities of the General Assembly and the Economic and Social Council as the principal organs of the UN charged with responsibility in this regard.

<sup>163</sup> Wolfrum, 'International Economic and Social Cooperation' (n 146) 922 and 900 (cf. Article 55 (a) and (b)).

<sup>164</sup> Ibid 922 -924.

<sup>165</sup> Henry J. Steiner and Philip Alston, *International Human Rights in Context :Law, Politics and Morals* (1<sup>st</sup> edn OUP Oxford 1996) 164; Steiner and Alston, *International Human Rights* (n 158) 588. See also Antonio Cassese, *International Law* (2<sup>nd</sup> edn OUP Oxford 2001) 380.

<sup>166</sup> Steiner and Alston, *International Human Rights* (n 158) 588.

<sup>167</sup> For example, when the SC first acted in respect of the situation in South Africa and Southern Rhodesia, by way of sanctions, there was considerable disquiet amongst UN member states as to whether Article 2 (7) was violated. See generally, Steiner and Alston (n 158) 649 – 650. The Permanent Court of International Justice stated that to the extent that states have assumed obligations towards other states, such as under international treaties, 'jurisdiction which, in principle, belongs solely to the State, is limited by rules of international law'. Steiner and Alston (n 165) 161, citing *Tunis-Morocco Nationality Decrees* (Merits) PCIJ Rep Series B No 5.

human rights protection no longer belongs to matters' within the purview of Article 2 (7).<sup>168</sup>

At this juncture it is pertinent to observe a fissure in the subsequent practice of the UN in respect of Article 55, resulting in what may be described as the bifurcation of Article 55, along the fault line of Article 55 (a) and (b) on the one hand and Article 55 (c) on the other. The former subsections of Article 55 provide for international economic and social cooperation, while Article 55 (c) provides for the respect for and observance of human rights and fundamental freedoms. This bifurcation is unsurprising given the drafting history of Article 55, in particular the inclusion of human rights and fundamental freedoms. Indeed, in terms of post-war planning within the US Department of State, Russell remarks that preparation as regards international economic and social co-operation and human rights occurred separately.<sup>169</sup> In fact, it was only at Dumbarton Oaks that the two subject areas came together, representing the 'twofold pre-occupation' of the US,<sup>170</sup> and largely as a result of the compromise between the US, the UK and the Soviet Union noted above.<sup>171</sup> Furthermore, and as previously noted, the allocation of responsibility for drafting the provisions relating to international economic and social co-operation and human rights to different committees within different commissions at San Francisco, resulted in different phraseology being employed and thus further compounded the fault line that was to emerge in respect of Article 55. Nevertheless, it remains that the UN by virtue of Article 55, has pledged to promote international co-operation in the economic and social spheres in addition to respect for and observance of human rights and fundamental freedoms in order to create 'conditions of stability and well-being which are necessary for peaceful and friendly relations among nations'.

However, a number of commentaries have remarked on the 'astonishing' presence of human rights in Article 55. For example, by the time the third edition of *The Charter of the United Nations* was published in 1969, Leland Goodrich, Edvard Hambro, and Anne Simons, considered it necessary to explain the presence of a 'highly political matter' such

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<sup>168</sup> Wolfrum, 'International Economic and Social Cooperation' (n 146) 923.

<sup>169</sup> Russell (n 21) 303-304.

<sup>170</sup> Goodrich, Hambro and Simons (n 38) 371 – 372.

<sup>171</sup> See generally Hilderbrand (n 21) 86 – 94.

as human rights in a provision of the Charter dealing chiefly with international economic and social co-operation. Wolfrum in his 2002 analysis of Article 55 (c) made a similar observation which he explained by way of the drafting history of Article 55. Indeed, Wolfrum's overall analysis of Article 55 is testimony to the ossification of the bifurcation of UN practice in respect of Article 55, comprising as it does of two separate chapters each dealing with Article 55 (a) and (b) and Article 55 (c) respectively.

### ***B. The UN Charter Human Security Mandate***

The proposition that the UN Charter is a constitution is neither new nor novel.<sup>172</sup> Indeed as James Crawford commented as a matter of international institutional law it is 'straightforward' and 'uncontroversial' that the UN Charter is the constitutive document of the UN and therefore the constitution of the UN.<sup>173</sup> However, in the light of the idea of constitutionalism, the UN Charter has been described by various commentators as 'the constitution of the international community'<sup>174</sup> or, alternatively, as the 'constitutional 'Law of Nations'.<sup>175</sup> These two interpretations of the UN Charter rest on an understanding of the key term 'constitution'.<sup>176</sup> Crawford neatly denotes these interpretations as 'weak' and 'strong' constitutions respectively whereby a 'weak' constitution simply means 'the constituent instrument of an organisation' while a constitution that 'constitutes a society

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<sup>172</sup> Armin von Bogdandy traces the idea back to the end of the Second World War and notes the distinctive German origin. He further remarks that Hans Kelsen was advancing similar arguments before the Second World War. See Armin von Bogdandy, 'Constitutionalism in International Law: Comment on a Proposal from Germany' (2006) 47 *Harvard International Law Journal* 223. The argument has also been advanced in respect of the Covenant of the League of Nations. See Edward A. Harriman, *The Constitution at the Cross Roads: A study of the legal aspects of the League of Nations, the Permanent Organisation of Labor and the Permanent Court of International Justice* (2<sup>nd</sup> edn George H. Doran Company New York 2004).

<sup>173</sup> James Crawford, 'The Charter of the United Nations as a Constitution' in Hazel Fox (ed), *The Changing Constitution of the United Nations* (British Institute of International and Comparative Law London 1997) 10.

<sup>174</sup> See for example, Bardo Fassbender 'The United Nations Charter as Constitution of the International Community' (1998) 36 *Columbia Journal of Transnational Law* 529, 532 and Christian Tomuschat, *The United Nations at Age Fifty: A legal perspective* (Kluwer Law International The Hague/London 1995) ix. See also Bardo Fassbender, *UN Security Council Reform and the Right of Veto: A Constitutional Perspective* (Kluwer Law International London/The Hague 1998) 161 where he makes a similar assertion. Here he adopts a constitutional approach to the reform of the UN Security Council, arguing that such reform must be principled and that such principles are found in the UN Charter as the constitution of the international community. See also Christian Tomuschat, 'Obligations arising for States without or against their will', (1993) 241 *Receuil des Cours Academie de Droit International* 195.

<sup>175</sup> Pierre-Marie Dupuy, 'The Constitutional Dimension of the Charter of the United Nations Revisited', (1997) *Max Planck Yearbook of United Nations Law* 1, 11.

<sup>176</sup> See generally Christian Walter, 'Constitutionalising (Inter)national Governance: Possibilities for and Limits to the Development of an International Constitutional Law' (2001) 44 *German Yearbook of International Law* 170. Walter speaks of the 'disaggregation' of the role of the state in international law as contributing to the development of an international constitutional law.

and not just an organisation' is a constitution in a strong sense.<sup>177</sup> Notwithstanding that Crawford questions whether the UN Charter falls within the latter category of 'constitution', he does acknowledge a half-way house between 'weak' and 'strong' constitutions where he places the UN Charter.<sup>178</sup> To Crawford a 'constituent instrument of an organisation' may exhibit 'constitutional virtues' such as accountability, transparency and the guarantee of rights 'without being anything so fine as the constitution of a body politic'.<sup>179</sup>

Nigel D. White adopts Crawford's distinction between 'weak' and 'strong' constitutions in order to emphasise the issue of whether the UN Charter is the constitution of the international community 'as well as of the United Nations'.<sup>180</sup> White's assertion that the UN Charter is the 'supreme treaty of the UN legal order' and as such, sits at the apex of the UN system, is sufficiently grounded in international institutional law to provide the basis to identify the purposes of the UN system.<sup>181</sup> According to White, the purposes and principles of the UN, as found in Article 1 and Article 2 of the UN Charter, may be seen together as constituting the values of the UN system. In this respect White draws a qualitative distinction between goal values and right values of the UN system, and thus concludes:

The purposes are the collective goals of the UN community as a whole, whereas the principles respect or secure the rights and duties of member states as well as the organization. Purposes and principles establish the general legal framework within which the United Nations and its member states can operate.<sup>182</sup>

Thus according to White the UN Charter is the constitution of the UN in the sense that it is more than the constitutive document of the UN, but it is not the 'constitution of the international community'. The Charter is the supreme treaty of the UN which sets out the goal and right values of the UN and the member states which in turn provide the general

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<sup>177</sup> Crawford (n 173) 8.

<sup>178</sup> Crawford pointed towards the rule of law, in particular the separation of powers in relation to the role and function of the UN SC, as supporting the questionable status of the UN Charter as a strong constitution.

<sup>179</sup> Crawford (n 173) 8 – 9. Crawford concludes that the UN Charter does exhibit such constitutional virtues after examining the terms of the Charter and practice to determine whether these include accountability, transparency and the guarantee of rights.

<sup>180</sup> White (n 98) 16.

<sup>181</sup> Ibid 12.

<sup>182</sup> Ibid 14.

legal framework necessary for achieving the goal values of the 'UN community as a whole'.<sup>183</sup>

On such an understanding of the UN Charter, human security, by virtue of Article 1 which proclaims the three historically predicated components of freedom from fear and freedom from want - security, economic development and human rights - as purposes of the UN, is a goal value of the UN. Bringing a constitutional perspective to bear on the UN Charter further illuminates the 'general legal framework within which the United Nations and its member states can operate' in pursuit of the goal values articulated in Article 1. For while, for example, Article 1 (3) does not create specific legal obligations for the UN or for UN member states, the legal significance of a purpose of the UN lies in the fact that it is legally binding on the UN and the UN member states. In contrast, the legal significance of the Preamble is minimal in terms of creation of legal obligations, nonetheless, the analysis of Article 1 (3) showed the interpretative function of the Preamble. Article 55 of the UN Charter was similarly plagued by issues of legal obligation but nevertheless, clearly sets down a programme by which the UN is to implement Article 1 and Article 1 (3) in particular. In doing so, the relevant provisions of the Charter combine to produce a UN Charter mandate to achieve human security, that is the UN is charged with realizing human security.

In addition the Charter provisions speak about the interdependence of international peace and security, human rights and international economic and social cooperation, specifically the contribution or foundation provided by human rights and international economic and social cooperation in the maintenance of international peace and security. Moreover, by placing the provision for human rights within international economic and social cooperation, the Charter provisions underscore the inter-relationship between human rights and international economic and social cooperation, which given the subsequent bifurcation of human rights and international economic and social cooperation in UN policy and practice, may appear surprising. Nonetheless, under the UN Charter mandate the essence of human security, freedom from fear and want, correlates to human rights and fundamental freedoms, as situated within international economic and social cooperation and in

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<sup>183</sup> Ibid.

possession of an intricate relationship with international peace and security. Thus the UN in realizing the Charter mandate operates within the terrain of international peace and security and international economic and social cooperation, while the promotion of and encouragement of respect for human rights and fundamental freedoms underpins this operational terrain of human security.

## V. CONCLUDING REMARKS

There are three related benefits of bringing such a historical perspective to bear on human security. Firstly, the analysis reveals the importance and place of human security within the UN Charter. Indeed, human security finds expression in, although not exclusively, Article 1 (3) and Article 55 of the Charter. Thus it is clear that human security is a purpose of the UN which, as the Charter is the constitution of the UN, means that human security is a goal value of the UN which ensures that human security permeates all the activities of the UN, especially in relation to security, development and human rights. Thus there is a clear Charter mandate to achieve human security which, although multidimensional in approach, is based on human rights and which is bequeathed to the UN. Secondly, the historical perspective underscores the perennial value of human security – the quest for human security is neither new nor novel – and finally, the Chapter illuminates innate features of human security, such as the multidimensional character. However, perhaps more importantly for the purposes of the study, enduring problems of pursuing such a quest for human security within the UN system are revealed as sovereignty and legal basis in the Charter. This is amply illustrated in the drafting history of the relevant Charter provisions especially those pertaining to human rights. Finally, the Chapter hints at the existence of further potential issues to undermine the realization of the Charter mandate by the UN, as the relationship between human rights and international peace and security, and the divorce of human rights in policy and practice from its Charter home of international economic and social cooperation.

## CHAPTER THREE

### HUMAN SECURITY AND THE UNITED NATIONS: REALISING THE CHARTER MANDATE

#### I. INTRODUCTION

In 2000 the United Nations (UN) Secretary-General (SG), Kofi Annan, proclaimed that the UN 'exists for, and must serve, the needs and hopes of peoples everywhere' and declared freedom from fear and freedom from want as two of the founding aims of the UN.<sup>1</sup> This Chapter provides an account of human security and the UN which places a particular emphasis on assessing the extent to which the UN has embraced the Charter mandate to achieve human security. More specifically the Chapter is concerned with *how* the UN realizes the Charter mandate to achieve human security and to this end, delineates the role of human rights in the UN Charter mandate (Part II) and maps the operational terrain occupied by human security in the fields of development and security (Part III). This examination of human security and the UN, which departs from the relevant Charter provisions and the scheme contemplated therein, reveals the mixed record of the UN in this regard. Indeed, underlying the challenges faced by the UN in the fields of human rights, development and security - normative, operational and institutional - is the question of the achievement of human security by the UN as a 'goal value'.<sup>2</sup> In this respect, UN reform not only provides the broader policy context within which the account of human security and the UN is necessarily situated but, by employing the rhetoric of human security, UN reform documents impart a deeper resonance and contemporary significance to the Charter mandate to achieve human security (Part IV).

#### II. HUMAN RIGHTS IN THE CHARTER MANDATE TO ACHIEVE HUMAN SECURITY

Human rights are at the heart of the Charter mandate to achieve human security. Indeed, as was evident in Chapter Two, the UN Charter human rights provisions heralded the

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<sup>1</sup> UN SG, *We the Peoples: The role of the United Nations in the 21<sup>st</sup> Century* (UN Dept of Public Information New York 2000) 6 and 17.

<sup>2</sup> Nigel D. White, *The United Nations: Toward International Justice* (Lynne Reiner Boulder 2002) 14

beginning of the protection of the individual in international law. In addition, the UN Charter makes provision for the creation of institutional arrangements for the promotion of and encouragement of respect for human rights and fundamental freedoms. This Part explores these substantive and institutional aspects of human rights in the Charter mandate to achieve human security and advances the specific argument that human rights, in particular UN human rights law, provides the normative and legal basis for achieving human security by the UN which is buttressed by the institutional architecture put in place by the Charter for achieving human security.

### *A. Human Rights in International Law: An Overview*

The protection of human rights in international law is a relatively new phenomenon dating to the end of the Second World War and the establishment of the UN.<sup>3</sup> Before 1945 protection of individuals by international law, for example, was extended by virtue of minority treaty as administered by the League of Nations or on the basis of foreign national status. The academic literature also frequently counts humanitarian law and the abolition of slavery as historical antecedents of the international law of human rights.<sup>4</sup> As Chapter Two clearly illustrates, the post-1945 'striking development' of the international law of human rights is closely associated with the UN.<sup>5</sup> Indeed the UN may be seen as the progenitor of the international law of human rights in at least two pertinent senses - the influence of the Universal Declaration of Human Rights (UDHR) and the prolific treaty-making activities

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<sup>3</sup> A.H. Robertson and J.G. Merrills, *Human Rights in the World: An introduction to the study of the international protection of human rights* (3<sup>rd</sup> edn rev Manchester University Press Manchester 1989) 1; Louis Henkin, Gerald L. Neuman, Diane F. Orentlicher and David W. Leeborn, *Human Rights* (Foundation Press New York 1999) 274-5 and 304.

<sup>4</sup> Christian Tomuschat, *Human Rights: Between Idealism and Realism* (OUP Oxford 2003) 6-24; Manfred Nowak, *Introduction to the International Human Rights Regime* (Martinus Nijhoff Publishers Leiden/Boston 2003) 16-20; Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, politics and morals* (Clarendon Press Oxford 1996) 59-117; and Antonio Cassese, *International Law*, (2<sup>nd</sup> edn OUP Oxford 2005) 376-7.

<sup>5</sup> Robertson and Merrills (n 3) 1. The term the international law of human rights is used in preference to international human rights law. This follows Ian Brownlie's comment that 'international human rights law' 'can only be a source of confusion' as it is not possible to speak of a coherent body of law. Ian Brownlie, *Principles of Public International Law* (6<sup>th</sup> edn OUP Oxford 2003) 530. A. H. Robertson and J. G. Merrills and Manfred Nowak also raise a similar point. Nowak, *Introduction* (n 4) 273; Robertson and Merrills (n 3) 291. For an insightful analysis of the issue and a novel suggestion as to the way forward, see also Jack Donnelly, 'International Human Rights: A regime analysis' (1986) 40 *International Organisation* 599.

undertaken by the UN. This Section explores the position of the individual in international law by way of reference to the international protection of human rights.<sup>6</sup>

The UDHR which the UN General Assembly (GA) unanimously adopted in 1948,<sup>7</sup> clearly influenced the regional treaties for the protection of human rights concluded under the auspices of the Council of Europe (CoE), the Organisation of American States (OAS) and the African Union (AU) formerly the Organisation for African Unity.<sup>8</sup> The UDHR also provided the basis for human rights provisions in national constitutions.<sup>9</sup> In this way the UDHR has exerted a political and moral universal reach.<sup>10</sup> Furthermore, the early years of UN activity in the field of human rights have been characterised by treaty-making.<sup>11</sup> Indeed between 1948, the adoption of the UDHR and 1966, the adoption of the International Covenant on Civil and Political Rights<sup>12</sup> and the International Covenant on Economic, Social and Cultural Rights,<sup>13</sup> a remarkable 18 international treaties pertaining to the protection of human rights were concluded under the aegis of the UN.<sup>14</sup> This is an all

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<sup>6</sup> The position of the individual in international law is subject to much debate and commentary. See for example Hersch Lauterpacht, *Oppenheim's International Law: A Treatise Vol. 1 - Peace* (7th edn Longmans Green London 1948) Chapter III; Ian Brownlie, *Principles of Public International Law* (6<sup>th</sup> edn OUP Oxford 2003) 65 -66; Robert McCorquodale, 'The Individual and the International Legal System' in Malcolm D. Evans, *International Law* (2<sup>nd</sup> edn OUP Oxford 2006) 307; Louis B. Sohn, 'The New International Law: Protection of the Rights of Individuals Rather than States' (1982) 32 *American University Law Review* 1; Claudio Grossman and Daniel D. Bradlow, 'Are we being Propelled towards a People-Centred Transnational Legal Order?' (1993) 9 *American University Journal of International Law and Policy* 1; Alexander Orakhelashvili, 'The Position of the Individual in International Law' (2001) 31 *California Western International Law Journal* 241.

<sup>7</sup> UN GA Res 217 A (III), 'Universal Declaration of Human Rights' (10 December 1948).

<sup>8</sup> For example, the Preamble of the ECHR provides: 'Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10<sup>th</sup> December 1948; Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared'.

<sup>9</sup> Philip Alston remarks that '82 per cent of the national constitutions that had been drafted between 1788 and 1948 contained some form of protection for human rights'. Nevertheless, he continues to observe that upon the adoption of the UDHR 'the percentage increased further so that 93 per cent of the constitutions drafted between 1949 and 1975 included human rights provisions'. See Philip Alston, 'Bills of Rights: An Analytical Framework' in Philip Alston (ed), *Promoting Human Rights through Bills of Rights* (OUP Oxford 1999) 3.

<sup>10</sup> Antonio Cassese is adamant that human rights can only exert this type of influence. Cassese *International Law* (n 4) at 381.

<sup>11</sup> Tom J. Farer and Felice D. Gaer, 'The UN and Human Rights: At the end of the beginning' in Adam Roberts and Benedict Kingsbury (eds), *United Nations, Divided World: The UN's roles in international relations* (2<sup>nd</sup> edn OUP Oxford 1994) 254; Cassese (n 4) 382 - 383.

<sup>12</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966), entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

<sup>13</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 23 March 1976) 993 UNTS 3 (ICESCR).

<sup>14</sup> Centre for Human Rights, *Human Rights: A compilation of International Instruments of the United Nations* (United Nations New York 1973) as reproduced in James Avery Joyce, *Human Rights: International Documents Volume 1* (Alphen aan den Rijn Sijthoff and Noordhoff 1978) Chapter 1. The compilation counts

the more remarkable feat when viewed comparatively against the protection afforded to individuals prior to 1945 which prompted Hurst Hannum to comment that the UN has been prolific in the 'adoption of new international norms for the protection of human rights'.<sup>15</sup> Nevertheless, scholars have observed a discernible shift in emphasis in UN human rights activity from promotional or standard-setting activities typified by treaty-making to activities relating to implementation.<sup>16</sup> For instance, A.H. Robertson and J.G. Merrills, writing in 1989, saw 1966 and the adoption of the two International Covenants as providing the temporal demarcation noting a 'widespread recognition of the need to render the system of international protection more effective' from this date.<sup>17</sup> Recently a few commentators have pushed beyond the traditional protection measures included in UN human rights implementation activities such as monitoring and supervision, to include preventive strategies of the ilk of early warning systems.<sup>18</sup>

Nonetheless, the emphasis on UN treaty-law is perhaps misleading as international conventions are only one source of the international law of human rights.<sup>19</sup> As a species of general public international law the sources of the international law of human rights also include international custom and 'general principles of law recognised by civilised nations'.<sup>20</sup> However, as Bruno Simma and Philip Alston succinctly articulate, customary

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a total 34 human rights instruments concluded between 1948 and 1966, with a further seven instruments completed by 1971.

<sup>15</sup> Hurst Hannum, 'Human Rights' in Oscar Schachter and Christopher C. Joyner (eds) *United Nations Legal Order (Vol. 1)* (CUP Cambridge 1995) 319. Ian Brownlie has stated that there is 'no doubt that the main corpus of human rights standards consists of an accumulated code of multilateral standard-setting conventions'. Brownlie (n 5) 536. Cf. Philip Alston, 'Conjuring Up New Human Rights: A Proposal for Quality Control' (1984) 78 *American Journal of International Law* 607.

<sup>16</sup> Farer and Gaer (n 11) 257 – 269; Robertson and Merrills (n 3) 74.

<sup>17</sup> Robertson and Merrills (n 3) 74 and 2. Similarly the first phase of Thomas Buergenthal's evolution of 'international human rights law' began 'with the entry into force of the UN Charter and continues at least through the adoption in 1966 of the International Covenants on Human Rights'. Thomas Buergenthal, 'The Normative and Institutional Evolution of International Human Rights' (1997) 19 *Human Rights Quarterly* 703, 705.

<sup>18</sup> Nowak, *Introduction* (n 4) 29 – 30.

<sup>19</sup> Article 2 (1) (a) of the Vienna Convention on the Law of Treaties reads: 'treaty' means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designated'. As such no significance attaches to the nomenclature of a given instrument. Brownlie (n 5) 536.

<sup>20</sup> Article 38 (1) of the Statute of the International Court of Justice provides: 'the Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: (a) international conventions, whether general or particular, establishing rules expressly recognised by the contesting states; (b) international custom, as evidence of a general practice accepted as law; (c) the general principles of law recognised by civilised nations; (d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of

international law as a source of human rights law is a highly contentious area of international law.<sup>21</sup> This comment is somewhat tempered by the observation of Louis Henkin, Gerald L. Neuman, Diane F. Orentlicher and David W. Leeborn of the small role of customary law in the international law of human rights, particularly in comparison to the role of international treaties.<sup>22</sup> Similarly ‘general principles of law recognised by civilised nations’ would appear to play a smaller role than international treaties as a source of the international law of human rights.<sup>23</sup> Moreover international conventions or treaties emanate from a multiplicity of diverse origins, extending beyond the UN. As noted the CoE, the OAS and the AU have adopted international treaties pertaining to the protection of human rights. These regional organisations operate, to varying degrees, sophisticated regional systems for the protection of human rights within their geographical area as based on multilateral treaties.<sup>24</sup> These human rights treaties, including the European Convention on Human Rights 1950, the American Convention on Human Rights 1969 and the African Charter on Human and People’s Rights 1981, all form part of the corpus of the international law of human rights. Nonetheless this Part concentrates on the UN as the progenitor of international human rights law and the phrase UN human rights law is adopted herein to refer to international treaties concluded under the auspices of the UN and which necessarily includes customary international law and ‘general principles’ as sources of UN human rights law. As UN human rights law bears a (near) universality in both scope and application,<sup>25</sup> the analysis has a deeper resonance with the task at hand, namely, the exploration of the position of the individual in international law. Indeed, such universality portends a greater penetration of this examination beyond UN human rights law to echo within the international law of human rights more generally.

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rules of law’. See Bruno Simma and Philip Alston, ‘The Sources of Human Rights Law: Custom, *jus cogens* and general principles’ (1988 - 1989) 12 *Australian Year Book of International Law* 82.

<sup>21</sup> Ibid 88 – 100.

<sup>22</sup> Henkin et al (n 3) 304. This is not to say that custom does not play a part. Henry J. Steiner and Philip Alston (ed), *International Human Rights in Context: Law Politics and Morals* (2<sup>nd</sup> edn OUP Oxford 2000) 224 237. In this respect it is noteworthy that Bruno Simma and Philip Alston have characterised treaty law as ‘unsatisfactory’ thus placing emphasis on the role of custom. Simma and Alston (n 20) 82.

<sup>23</sup> On the role of general principles in the international law of human rights see Simma and Alston (n 20) 102 – 106; Javaid Rehman, *International Human Rights Law: A practical approach* (Longman Harlow 2003) 20 - 21.

<sup>24</sup> For an overview of the regional systems for the protection of human rights see Nowak, *Introduction* (n 3) 157 – 188 (CoE); 189 – 202 (OAS); 203 – 211 (AU). Also for an overview of the supervisory mechanisms in place see Tomuschat (n 4) 198 – 215.

<sup>25</sup> Henry J. Steiner, ‘International Protection of Human Rights’ in Malcolm D. Evans (ed), *International Law* (2nd edn OUP Oxford 2006) 755.

The UN Charter sits at the apex of the UN legal regime for the protection of human rights.<sup>26</sup> It contains seven ‘terse, even cryptic’<sup>27</sup> references to human rights beginning with the Preamble which reaffirms ‘faith in fundamental human rights’.<sup>28</sup> This is swiftly followed by Article 1 (3) which proclaims the achievement of international cooperation ‘in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion’ as a purpose of the UN. In this way the UN Charter unequivocally brings human rights into the purview of legitimate international concern, prompting what Thomas Buergenthal has termed ‘the internationalisation of human rights and the humanisation of international law’.<sup>29</sup> Article 55 of the Charter, when read in conjunction with Article 56, constitute the key Charter provisions on human rights. In combination these articles see the UN and member states of the UN pledge to promote ‘universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion’.<sup>30</sup> As noted in Chapter Two, no *specific* legal obligations in respect of human rights are created for the UN and similarly for UN member states by virtue of these provisions.<sup>31</sup> Nevertheless the articles provide a clear normative basis for the development of UN human rights law, in no small part due to the clear Charter mandate for the UN as an ‘engine for human rights’.<sup>32</sup>

The first step of the UN in fulfilling its Charter pledge to promote respect for and observance of ‘human rights and fundamental freedoms’ was to embark on a ‘programme

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<sup>26</sup> See generally Thomas Buergenthal, ‘The Normative and Institutional Evolution of International Human Rights’ (1997) 19 *Human Rights Quarterly* 703; John P. Humphrey, ‘The UN Charter and the Universal Declaration of Human Rights’ in Evan Luard, *The International Protection of Human Rights* (Thames and Hudson London 1979) 39; John P. Humphrey, ‘The Universal Declaration of Human Rights: Its history, impact and juridical character’ in Bertrand G. Ramcharan (ed), *Human Rights: Thirty years after the Universal Declaration: commemorative volume on the occasion of the thirtieth anniversary of the Universal Declaration of Human Rights* (Nijhoff The Hague 1979) 21.

<sup>27</sup> Steiner and Alston (n 4) 118; Humphrey, ‘The UN Charter and the Universal Declaration’ (n 26) 46.

<sup>28</sup> These are the Preamble, Articles 1 (3), 13 (1) (b), 55, 56, 62 (2) and Article 68. For an overview see Humphrey, ‘The UN Charter and the Universal Declaration’ (n 26) 39 – 46; Rehman (n 22) 24 – 46.

<sup>29</sup> Buergenthal, ‘Normative and Institutional’ (n 26) 703.

<sup>30</sup> UN Charter, Article 55 (c).

<sup>31</sup> John P. Humphrey forcefully stated in respect of Article 56 that it ‘probably creates the only clear legal obligation in the Charter on members to *promote* respect for human rights’. Humphrey, ‘The UN Charter and the Universal Declaration’ (n 26) 42. (Emphasis added).

<sup>32</sup> Farer and Gaer (n 11) 245. According to Thomas Buergenthal the UN Charter provisions provided the normative foundation for the first stage in the evolution of international human rights law. Buergenthal, ‘Normative and Institutional’ (n 26) 707.

of codification'.<sup>33</sup> The UN Charter provisions on human rights, in addition to not creating specific legal obligations, are vague and unclear. Notwithstanding the ultimately unsuccessful Panamanian proposal to include a Bill of Rights in the Charter, the key term 'human rights and fundamental freedoms' was remarkably, left undefined.<sup>34</sup> Consequently the newly established Commission on Human Rights (CHR) was charged with drafting the International Bill of Rights a task that, within a relatively short period, had been divided into three parts.<sup>35</sup> The mandate of the CHR was first to prepare a declaration, followed by a convention<sup>36</sup> and finally 'measures of implementation'.<sup>37</sup> The logic of this division of labour was to accommodate concerns voiced by the US and the UK. According to Leland M. Goodrich the US was reluctant to accept 'legally binding commitments' and favoured a declaration of general principles, while the UK 'was sceptical of the value of a declaration' and preferred a treaty.<sup>38</sup> This buttressed the contemporaneous general understanding that the CHR's declaration submitted to the GA for consideration towards the end of 1948 was not intended to be legally binding, which no doubt contributed to the unanimous adoption of what became known as the UDHR.<sup>39</sup>

Notwithstanding this apparently legally innocuous beginning, the UDHR has 'acquired a legal aura', that is, according to Tom J. Farer and Felice Gaer, the UDHR has 'the appearance of stating, if not having by its existence created, binding norms of state

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<sup>33</sup> Brownlie (n 5) 534.

<sup>34</sup> Leland M. Goodrich and Edvard Hambro remarked that while there was 'no attempt made to define the 'human rights' and fundamental freedoms', there was a common understanding at the Conference on an International Organisation at San Francisco that the terms related in substance to the four freedoms articulated by President Roosevelt in 1941, which the Atlantic Charter and Declaration by United Nations gave 'express recognition' of as objectives. Leland M. Goodrich and Edvard Hambro, *The Charter of the United Nations: Commentary and Documents* (1<sup>st</sup> edn World Peace Foundation Boston 1946) 63. Between the entry into force of the UN Charter and the commencement of the work of the CHR in respect of the UDHR, Panama submitted the draft Bill of Rights which it had prepared for the negotiations at San Francisco to the GA. See Humphrey, 'The UN Charter and the Universal Declaration' (n 26) 47; Humphrey, 'The Universal Declaration' (n 26) 22.

<sup>35</sup> The Commission on Human Rights was established in 1946 with a mandate to submit proposals and reports on '(a) an international bill of rights; (b) international declarations or conventions on civil liberties, the status of women, freedom of information, and similar matters; (c) the protection of minorities; (d) the prevention of discrimination on grounds of race, sex, language or religion'. Leland M. Goodrich, *The United Nations* (Stevens London 1960) 247.

<sup>36</sup> This had to be amended due to ideological impasse and as such the Commission ultimately produced two conventions, one covering civil and political rights and the other economic, social and cultural rights.

<sup>37</sup> Humphrey, 'The UN Charter and the Universal Declaration' (n 26) 47.

<sup>38</sup> Goodrich (n 35) 248. The US cited difficulties in obtaining the necessary consent from the Senate for a treaty as the reason for their position.

<sup>39</sup> Humphrey, 'The UN Charter and the Universal Declaration' (n 26) 54 – 55.

behaviour'.<sup>40</sup> Indeed a persistent debate eddies around the UDHR as to whether legally binding obligations are created therein. There are three prevalent arguments advanced in favour of this proposition the first of which, perhaps the most longstanding, is the assertion that the UDHR derives legal force as an authoritative interpretation of the UN Charter.<sup>41</sup> Nigel S. Rodley has expanded upon this position to contend that each right found in the UDHR 'is effectively incorporated into the Charter'.<sup>42</sup> The second argument commonly advanced and perhaps the most familiar is that the UDHR constitutes customary international law. However it is important to note that this is a nuanced argument for instance, the mediated position is that not all the rights found in the UDHR represent customary international law.<sup>43</sup> Finally it is argued that to the extent that the UDHR contains a number of norms of the status of *jus cogens* such as freedom from torture or cruel, inhuman or degrading treatment or punishment as found in Article 5 of the UDHR, legally binding obligations are created.<sup>44</sup>

The first argument noted above that of the UDHR as an authoritative interpretation of the UN Charter was advanced by René Cassin, a member of the CHR who was instrumental in the drafting of the Declaration, in the 1951 Hague Academy of International Law lecture series.<sup>45</sup> Here, Cassin also provided an insightful description of the UDHR as consisting of sub-sets of human rights, which he characterised as four fundamental pillars. The first pillar comprises of the personal rights found in Articles 3 to 11 of the UDHR which, amongst others, enumerate the right to life, liberty and security of the person. Articles 12 to 17 form the second category and relate to rights that belong to the individual in his relationships with social groups and thus include the right to marry (Article 16) and freedom of movement (Article 13). The third pillar in Cassin's taxonomy of rights under the UDHR are those traditionally associated with civil liberties and political rights and are

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<sup>40</sup> Farer and Gaer (n 11) 249; Burns H. Weston has recently observed that the UDHR 'has acquired a status juridically more important than originally intended'. Burns H. Weston and Richard Pierre Claude, *Human Rights in the World Community: Issues and Action* (University of Pennsylvania Press Bristol 2006) 25.

<sup>41</sup> Robertson and Merrills (n 3) 27.

<sup>42</sup> Nigel S Rodley, *The Treatment of Prisoners in International Law* (2<sup>nd</sup> edn Clarendon Press Oxford 1999) 63.

<sup>43</sup> For instance Ian Brownlie states that some of the provisions in the UDHR, such as a 'right of asylum' 'could hardly be said to represent legal rules'. Brownlie (n 5) 535.

<sup>44</sup> For a succinct presentation of these three arguments see Rehman (n 23) 57 - 61.

<sup>45</sup> Taken from Antonio Cassese, *Human Rights in a Changing World* (Polity Press Cambridge 1994) 38 - 39. John P. Humphrey is dismissive of the role played by Cassin in drafting the UDHR. Humphrey, 'The Universal Declaration' (n 26) 25.

contained in Articles 18 to 21. Finally Articles 22 to 27 of the UDHR pertain to rights exercised in the economic and social area. To Cassin the 'pediment of the temple' is provided by the remaining three articles of the UDHR beginning with Article 28 which states that 'everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised'. Articles 29 and 30 set out possible limitations on the exercise of the rights contained in the UDHR such as 'the just requirements of morality, public order and the general welfare in a democratic society'.<sup>46</sup>

This early schema for the classification of human rights may be seen as a germinal precursor to Karel Vasek's well-known and oft cited notion of 'three generation of rights'.<sup>47</sup> As the appellation suggests this classification divides human rights into 'generations' with the first generation comprising of civil and political rights. The second generation of rights are economic and social rights and a persuasive argument has been made by a number of commentators in favour of an emerging third generation of rights which are commonly referred to as 'solidarity rights'.<sup>48</sup> While this classification has been criticised on a number of grounds, notably the interdependence of human rights, it remains a useful vantage point to view the UDHR.<sup>49</sup> As Burns H. Weston observes Vasek's classification was not 'intended as a literal representation'.<sup>50</sup> Indeed the UDHR represents an amalgamation of the three generations of human rights. Thus as Weston notes Articles 2 to 21 of the Declaration fall to be considered as civil and political rights and Articles 22 to 27 illustrate economic, social and cultural rights.<sup>51</sup> Finally Article 28 is often referred to in support of the existence of third generation human rights such as the right to development.<sup>52</sup> In this sense Antonio Cassese offers an accurate description of the UDHR as the 'lodestar' of UN human rights law, regardless of its disputed juridical status.<sup>53</sup>

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<sup>46</sup> UDHR, Article 29 (2).

<sup>47</sup> See generally, Tomuschat (n 4) 24 – 28; 48 – 54..

<sup>48</sup> For example the right to development would fall to be considered as a third generation right. Ibid 48.

<sup>49</sup> Ibid.

<sup>50</sup> Weston (n 40) 18.

<sup>51</sup> Ibid 18 - 19.

<sup>52</sup> Mohammed Bedjaoui advances this argument. Mohammed Bedjaoui, 'The Right to Development' in Mohammad Bedjaoui (ed), *International Law: Achievements and Prospects* (Martinus Nijhoff Publishers Dordrecht/Boston/London 1991) 1177.

<sup>53</sup> Indeed Cassese adheres to the view that the UDHR is 'not legally binding, but possesses only moral and political force'. Cassese, *International Law* (n 4) 381.

The next step in the 'programme of codification' taken by the UN as part of its human rights standard-setting activities, was to draft the ICCPR and the sister covenant, the ICESCR.<sup>54</sup> Notwithstanding 'the eighteen-year trudge'<sup>55</sup> from 1948 to the adoption of the International Covenants in 1966, the UN built upon the normative foundations provided by the human rights provisions of the UN Charter and the 'lodestar' status of the UDHR.<sup>56</sup> In this respect, reference has already been made to the fact that the UN was prolific during this period producing a total of 34 human rights instruments of which 18 are international treaties for the protection of human rights. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 1965 is included amongst the latter and is also counted by the UN as one of seven core human rights treaties.<sup>57</sup> The other six core UN human rights treaties are: the ICCPR 1966; the ICESCR 1966; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979; the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984; the Convention on the Rights of the Child (CRC) 1989; and the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW) 1990.<sup>58</sup> Thus, while the UN Charter provides the legal basis for UN human rights law and the UDHR the normative foundation, it is the international treaties concluded under the auspices of the UN that create legal obligations for state parties.<sup>59</sup>

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<sup>54</sup> The original intention was to draft one covenant. However the entrenchment of cold war ideologies ensured that an impasse was reached as regards the International Bill of Rights, ultimately producing the ICCPR and the ICESCR.

<sup>55</sup> Farer and Garer (n 11) 250.

<sup>56</sup> Cassese, *International Law* (n 4) 382.

<sup>57</sup> OHCHR, <<http://www.ohchr.org/english/law>> accessed 4 October 2006.

<sup>58</sup> International Convention on the Elimination of all Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTA 195 (ICERD); International Convention on the Elimination of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW); International Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (CAT); International Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC); and, International Convention on the Protection of the Rights of all Migrant Workers and members of their Families (adopted 18 December 1990, entered into force 1 July 2003) UN GA Res 45/158 (18 December 1990) UN Doc A/RES/45/158.

<sup>59</sup> Alexander Orakhelashvili stressed that while human rights treaties 'affirm the objective to protect individual human beings and, moreover, to create collective enforcement mechanisms for this purpose, the human rights treaties create rights and impose obligations on *states*'. Orakhelashvili (n 6) 265. (Emphasis added). See Chapter Five.

It is possible to conclude this brief overview of human rights in international law with three inter-related observations. First, the position accorded to the individual in international law bequeathed by the UN Charter has been strengthened by the law-making activities of the UN in the field of human rights<sup>60</sup> which prompted Louis Sohn to rather provocatively proclaim that: ‘States have had to concede to ordinary human beings the status of subjects of international law, to concede that individuals are no longer mere objects, mere pawns in the hands of states’.<sup>61</sup> A somewhat more tempered observation was forthcoming from Antonio Cassese when he noted that the ‘seeds of subversion’ had been injected into the international legal order.<sup>62</sup> Indeed the ‘four different law-building stages’ represented by the UN Charter, the UDHR, the International Covenants and the proliferation of general and specific human rights treaties,<sup>63</sup> demonstrate the diminishing relevance of domestic jurisdiction to the protection of human rights at the UN level documented in Chapter Two. As such, Henry J. Steiner and Philip Alston speak of the ‘waning obstacle of domestic jurisdiction’, noting that the defense afforded by Article 2 (7) ‘has changed considerably’ since the inception of the UN which is in large part due to the codification process in respect of human rights.<sup>64</sup> Hence, the overview illustrates the penetrating effect of UN human rights law on the traditional notion of sovereignty as expressed in Article 2 (7). Third, it is clearly apparent from the overview that the UN Charter sits at the apex of the corpus of UN human rights instruments, the totality of which was described by Louis Sohn as a ‘veritable internationalization and codification of human rights law’.<sup>65</sup> It is this well-developed and evolving legislative function of the UN, that Nigel D. White considers of ‘paramount importance as a significant, and perhaps the only viable, method of ensuring that the goals and values of the UN system are achieved’.<sup>66</sup> In sum these three inter-locked observations produce the proposition that UN human rights law provides the legal and normative basis for achieving human security which will be explored in depth in Chapter Four.

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<sup>60</sup> This does not mean that the position or status of the individual in international law is settled. Ibid 241.

<sup>61</sup> Sohn (n 6) 1.

<sup>62</sup> Cassese, *Human Rights* (n 45) 23.

<sup>63</sup> Sohn (n 6) 11.

<sup>64</sup> Steiner and Alston (n 4) 364; Cassese, *International Law* (n 4) 383 – 4.

<sup>65</sup> Sohn (n 6) 12.

<sup>66</sup> White (n 2) 18.

## ***B. The UN Institutional Architecture for Achieving Human Security***

The GA and the Economic and Social Council (ECOSOC) are the UN bodies with specific responsibility for human rights under the UN Charter. The CHR, which was replaced in 2006 by the UN Human Rights Council, was created by ECOSOC pursuant to Article 68 of the UN Charter. This Section examines the relevant Charter provisions in order to produce an overview of the institutional arrangements put in place by the UN Charter to realise the Charter mandate to achieve human security.

Article 13 of the UN Charter vests the GA with the authority to initiate studies and make recommendations in order, first, to promote international cooperation in the political field second, to encourage the progressive development and codification of international law, third, to promote international cooperation in the 'economic, social, cultural, educational, and health fields' and, finally, to assist the realisation of 'human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion'. Notwithstanding the broad sweep of the provision, commentators have condemned Article 13 as adding 'little to what other articles of the Charter provide',<sup>67</sup> and indeed, this is borne out by paucity of practice by the GA under Article 13. For example, Carl-August Fleischhauer observed that the GA has been asked by the whole range of UN actors, from the SG to member states, to initiate studies in the areas covered by Article 13 (1)(b), predominantly human rights, and has issued recommendations on foot of such studies. Yet such activity in the field of human rights tended to be based on other Charter provisions. Nonetheless, Fleischhauer does highlight the 'leading role of the GA in formulating instruments for the realization of human rights and fundamental freedoms'.<sup>68</sup>

The adoption of a legislative role by the GA evolved incrementally with the first steps taken in the period between the inception of the UN and the late 1950's of which the adoption of the UDHR provides the highlight. This period, according to Cassese, was also characterized by a gradual restriction of the defence of domestic jurisdiction under Article 2

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<sup>67</sup> Leland M Goodrich, Edvard Hambro and Anne Simons, *Charter of the United Nations: Commentary and Documents* (Columbia University Press New York 1969) 133.

<sup>68</sup> Carl-August Fleischhauer, 'Article 13' in Bruno Simma (eds), *The Charter of the United Nations: A Commentary* (OUP Oxford 2002) 317.

(7) to human rights activities by the GA.<sup>69</sup> For instance, as noted in Chapter Two, the GA was faced with the question of Article 2 (7) as early as 1946 when the issue of the treatment of Indians in South Africa was raised therein.<sup>70</sup> Cassese remarks that the gradual inroads into domestic jurisdiction occurred on the basis of linking human rights violations with international peace and security or, in the alternative, on a pre-existing legal obligation for example, under treaty law. The second period identified by Cassese, between the late 1950's and 1974, saw the consolidation of the legislative role with the elaboration of international human rights standards in instruments such as the International Covenants.<sup>71</sup> This consolidation was matched by a comparable ossification of the position adopted by the GA in respect of domestic jurisdiction and the restriction placed on human rights protection by Article 2 (7). Indeed, Cassese observes that the GA dropped the two pre-conditions to activity in the field of human rights, that of a link with international peace and security or an existing legal obligation, during this period.<sup>72</sup> This heralded the emergence of the doctrine informing GA activity in respect of human rights, whereby the GA will consider gross and systematic violations of human rights.<sup>73</sup> From the mid 1970's onwards 'an international legislative framework' was in existence which is 'binding on a large number of states, and which regulates the most important aspects of human rights and fundamental freedoms'.<sup>74</sup>

While many commentators have remarked on the adoption of new international norms and standards in the field of human rights as a success of the UN and have commended the 'original contribution' of the GA in this regard,<sup>75</sup> the GA also discharges what may be

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<sup>69</sup> Antonio Cassese, 'The General Assembly: Historical Perspective 1945 – 1989' in Philip Alston, *The United Nations and Human Rights: A Critical Appraisal* (Clarendon Press Oxford 1992) 30 - 35.

<sup>70</sup> For example, UN GA Res 44 (I), 'Treatment of Indians in the Union of South Africa' (8 December 1946).

<sup>71</sup> Cassese, 'The General Assembly' (n 69) 35 – 37. See also Egon Schwelb and Philip Aston, 'The Principal Institutions and other Bodies Founded under the Charter' in Karel Vasak and Philip Alston (ed), *The International Dimensions of Human Rights Vol. 1*. (Greenwood Press Westport Connecticut 1982) 234.

<sup>72</sup> Cassese, 'The General Assembly' (n 69) 37.

<sup>73</sup> Nonetheless, the record of responding to human rights violations requiring urgent intervention is poor. Ibid 52.

<sup>74</sup> Ibid 50.

<sup>75</sup> Hannum (n 15) 319. Hannum continues to assert that: 'The most tangible output of the United Nations in the human rights field is the series of international instruments built on the foundation of the UDHR and the International Covenants'. Ibid. See also John Quinn, 'The General Assembly into the 1990's' in Alston (ed), *Critical Appraisal* (n 69) 65; According to Egon Schwelb and Philip Alston: 'An original contribution of the UN General Assembly has been the proclamation of solemn, standard-setting Declarations in matters of human rights'. Schwelb and Alston (n 71) 235.

described as a 'quasi-legislative' role through the issuance of resolutions.<sup>76</sup> GA resolutions, as readily testified to by the UDHR, may assume a legal significance and at the very least, reflect a consensus of opinion and thus provide 'evidence of international law'.<sup>77</sup> The 1986 GA resolution on the right to development and the 2001 on disability demonstrate the continued importance of this quasi-legislative role of the GA in the field of human rights, which is further heightened in the light of the diminished role of the GA in the formulation of human rights treaties in recent times.<sup>78</sup> Indeed of the core UN human rights treaties, the ICRMW was actually drafted within the GA while, others such as the International Covenants, as detailed below, were drafted by the CHR and the CEDAW received the GA's imprimatur having been primarily drafted within the Commission on the Status of Women. Nonetheless, the GA retains a 'unique oversight role in relation to the UN's human rights activities' which is attributable in part due to its status as a principal organ of the UN.<sup>79</sup> Indeed, GA resolutions, such as those on apartheid, have prompted other organs of the UN to act in defense of human rights.<sup>80</sup>

Nonetheless, ECOSOC, under the authority of the GA, is the principal UN organ in respect of international economic and social cooperation and the promotion of universal respect for and observance of, human rights under the UN Charter.<sup>81</sup> To this end, ECOSOC may make or initiate studies in respect of international economic, social, cultural, educational, health and related matters along with recommendations in respect of such matters to the GA, UN member states and the specialised agencies such as the International Labour Organisation (ILO). The UN Charter similarly empowers ECOSOC to make recommendations in order to promote to promote 'respect for, and observance of, human rights and fundamental

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<sup>76</sup> Philippe Sands and Pierre Klein, *Bowett's Law of International Institutions* (5th edn Sweet and Maxwell London 2001) 29.

<sup>77</sup> *Ibid.*

<sup>78</sup> UN GA Res 41/128, 'Declaration on the Right to Development' (4 December 1986) UN Doc A/RES/41/128; UN GA Res 56/169, 'Comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities' (19 December 2001) UN Doc A/RES/56/168.

<sup>79</sup> Quinn (n 75) 56.

<sup>80</sup> Tomuschat (n 4) 121-122. On the role of the UN SC with respect to apartheid see Chapter Five.

<sup>81</sup> Article 60 provides: 'Responsibility for the discharge of the functions of the Organisation set forth in this Chapter shall be vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X'. Originally, ECOSOC was seen as a subsidiary organ of the UN. However, it was proposed at San Francisco to include the ECOSOC as a principal organ of the UN largely on the insistence of smaller nations, who wished to see the provisions on international economic and social cooperation strengthened. This has blurred the relationship between ECOSOC and the GA as principal organs. See Rainer Lagoni and Oliver Landwehr, 'Functions and Powers - Article 62' in Simma et al (n 68) 987.

freedoms for all'.<sup>82</sup> However, ECOSOC was undeterred by the absence of an explicit mandate to make or initiate studies in respect of human rights and indeed such activity has not met with serious or sustained objection.<sup>83</sup> In respect of both these areas of competence, ECOSOC may 'prepare draft conventions for submission to the General Assembly'<sup>84</sup> and call 'in accordance with the rules prescribed by the United Nations, international conferences'.<sup>85</sup> These powers, found in Article 62 (3) and Article 62 (4) respectively, were innovative changes to the original Dumbarton Oaks Proposals at San Francisco,<sup>86</sup> and are testimony to the desire to strengthen the provisions on international economic and social cooperation and the body charged with the discharge of the functions of the UN in this regard.

ECOSOC discharges a predominately coordinating and facilitative role in the spheres of economic, social, cultural, educational, health and related matters and in respect of promoting respect for and observance of human rights and fundamental freedoms. ECOSOC practice has centred on policy formulation and the coordination of the relevant specialised agencies, which is due in part to historic necessity as a wealth of institutions dedicated to and successfully operating within the sphere of international economic and social cooperation, such as the ILO, pre-dated the UN Charter.<sup>87</sup> Furthermore, the Charter needed to take into account the establishment of contemporary institutions such as the World Bank and the International Monetary Fund (IMF) created at Bretton Woods in 1944.<sup>88</sup> While the GA has confirmed that ECOSOC is the coordinating body for UN activity with respect to international economic and social cooperation with policy

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<sup>82</sup> Anomalies in the wording of the Charter provisions can be explained by reference to the drafting process and thus, no significance is accorded to the absence of the non-discrimination clause. Ibid 992.

<sup>83</sup> Ibid 993

<sup>84</sup> UN Charter, Article 62 (3).

<sup>85</sup> UN Charter, Article 63 (4).

<sup>86</sup> Dumbarton Oaks Proposal provided: 'The Economic and Social Council should be empowered: (a) to carry out, within the scope of its functions, recommendations of the General Assembly; (b) to make recommendations, on its initiative, with respect to international economic, social and other humanitarian matters; (c) to receive and consider reports from the economic, social and other organisations or agencies brought into relationship with the Organisation, and to co-ordinate their activities through consultations with, and recommendations to, such organisations or agencies; (d) to examine the administrative budgets of such specialised organisations or agencies with a view to making recommendations to the organisations or agencies concerned; (e) to enable the Secretary-General to provide information to the Security Council; (f) to assist the Security Council upon its request; and (g) to perform such other functions within the general scope of its competence as may be assigned to it by the General Assembly.

<sup>87</sup> For a list of the pre-existing institutions see Robertson and Merrills (n 3)

<sup>88</sup> A. LeRoy Bennett offers a concise overview of the Bretton Woods system. A. LeRoy Bennett, *International Organisations: principles and Issues* (Prentice Hall New Jersey 1995) 290 – 291.

formulation and review responsibilities,<sup>89</sup> commentators have observed a shift from ECOSOC to the GA as the preferred forum for coordinating activities pertaining to international economic and social cooperation.<sup>90</sup> The creation of specialised bodies by the GA, such as the UNDP, UNEP and UNICEF, some of which are autonomous institutions, are cited in support of this shift.<sup>91</sup> This situation is further exacerbated by the absence of a clearly delineated relationship, either in the UN Charter or through practice, between the GA and ECOSOC.<sup>92</sup> The consequent degree of overlap between the relevant bodies, as an 'obstacle to the efficiency of ECOSOC',<sup>93</sup> has occurred to such an extent that Werner Meng concludes that there has been a 'reduction in the practical influence of ECOSOC'.<sup>94</sup>

The dilution of the coordinating role of ECOSOC prompted one academic to scathingly describe ECOSOC as a post office 'with in- and out-going mail both from the UN central bodies and the specialised agencies' to illustrate the absence of clear coordination in respect of development,<sup>95</sup> while Theo van Boven simply stated that ECOSOC had failed to secure the coordination of policies in relation to human rights.<sup>96</sup> Given the apparent difficulty in coordinating activities within its areas of competence and thereby fulfilling its Charter mandate, the decline of ECOSOC 'as a principal feature' of the UN Charter is unsurprising.<sup>97</sup> Indeed, the issue is further exacerbated by the fact that recommendations made by ECOSOC are not legally binding. For instance, while ECOSOC has issued recommendations to the UN, organs of the UN, member states, non-governmental organisations and others, on issues ranging from apartheid, criminal justice, to AIDS and concerning minorities and women,<sup>98</sup> the recommendations remain at best persuasive.<sup>99</sup>

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<sup>89</sup> UN GA Res 32/197, 'Restructuring of the economic and social sectors of the United Nations system' (20 December 1977) UN Doc A/RES/32/197, Annex para.5.

<sup>90</sup> Werner Meng, 'Article 60' in Simma (n 68) 973.

<sup>91</sup> Ibid 973. The newly instituted Human Rights Council is a subsidiary organ of the UN General Assembly.

<sup>92</sup> For a brief overview of the origins and complexities of the relationship between the General Assembly and ECOSOC see Meng (n 90) 972 – 975; Lagoni and Landwehr (n 82) 987.

<sup>93</sup> Lagoni and Landwehr (n 82) 987.

<sup>94</sup> Meng (n 90) 971.

<sup>95</sup> Koen de Feyter, *World Development Law: Sharing responsibility for development* (Intersentia Antwerpen 2001) 74.

<sup>96</sup> Theo van Boven, 'Human Rights and Development: The UN Experience' in David P. Forsythe (ed), *Human Rights and Development: International Views* (Macmillan Basingstoke 1989) 128.

<sup>97</sup> Declan O'Donovan, 'The Economic and Social Council' in Alston (ed) *Critical Appraisal* (n 69) 107 – 125.

<sup>98</sup> For instance ECOSOC adopted a resolution pertaining to apartheid which addressed the Sub-Commission on the Prevention of Discrimination and Protection of Minorities and governments. ECOSOC Res 1992/3. 'Adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to the racist regime of South Africa' (20 July 1992). See also ECOSOC Res 1992/59,

This was confirmed as early as 1949 when the ECOSOC was asked to consider violations of trade union rights and to consequently issue a recommendation naming the member states which were involved. The proposed draft recommendation was rejected on the basis that ECOSOC 'was an organ of international cooperation with the duty to encourage solution of problems but with no power to enforce a solution'.<sup>100</sup>

On a more positive note, ECOSOC established the CHR pursuant to Article 68 of the UN Charter in 1946. The CHR was mandated by ECOSOC Resolution 5 (1) to submit proposals, recommendations and reports to ECOSOC on international human rights treaties, the protection of minorities, the prevention of discrimination on grounds of race, sex, language or religion and 'any other matter concerning human rights not covered' under these headings.<sup>101</sup> Under the terms of reference of the establishing Resolution, the Commission could also recommend the establishment of sub-commissions to assist it in discharging its functions, which resulted in the creation of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1947, renamed in 1999 as the Sub-Commission on the Protection and Promotion of Human Rights (the Sub-Commission). The mandate of the CHR was further extended in 1979 when the Commission was charged with assisting ECOSOC in 'the coordination of activities concerning human rights in the UN system'.<sup>102</sup> The Commission undertook three main types of activity in furtherance of its mandate the first of which related to the drafting of international human rights treaties, the second concerned the provision of advisory services which is now generally known as technical assistance, and finally the CHR developed mechanisms by which to respond to gross violations of human rights and fundamental freedoms.

Notwithstanding the success of the CHR in the field of standard-setting, for example, having been instrumental in the drafting of the UDHR and the International Covenants, and

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'Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialised agencies and the International institutions associated with the United Nations' (31 July 1992). This is a sample of the resolutions adopted by ECOSOC in 1992 <<http://www.un.org/docs/ecosoc/index.html>> accessed 22 December 2005.

<sup>99</sup> Lagoni and Landwehr (n 82) 990.

<sup>100</sup> Goodrich Hambro and Simons (n 67) 415.

<sup>101</sup> ECOSOC Res 5 (I) (16 February 1946) as amended by ECOSOC Res 9 (II) (21 June 1946).

<sup>102</sup> ECOSOC Res 1979/36, 'Further Promotion and Encouragement of Human Rights and Fundamental Freedoms' (10 May 1979) para. 3.

in a less visible manner, technical assistance and advisory services, it was its record in human rights protection that garnered the most attention from academics and practitioners alike.<sup>103</sup> Having declared that it had ‘no power to take any action in regard to any complaints concerning human rights’, at its first full meeting in 1947, the CHR tenaciously adhered to this restrictive interpretation of its terms of reference under ECOSOC Resolution 5 (1) for twenty years opting to devote its energies to promotional activities such as standard-setting and technical assistance.<sup>104</sup> The latter aspect was not specifically provided for under the establishing Resolution and originated from a proposal by the US in 1953, which was apparently motivated by a desire to avoid undertaking specific treaty obligations in respect of human rights and may be seen as an attempt to counteract the activities of the CHR in respect of standard-setting.<sup>105</sup> The effectiveness of advisory services as a mechanism by which to promote and protect human rights has a mixed record. Concern regarding provision of advisory services and technical assistance to states has frequently been raised by states and NGO’s before the CHR,<sup>106</sup> while in stark contrast Weiss et al point to the increased provision of advisory services and technical assistance by the CHR as a positive factor in human rights promotion and protection.<sup>107</sup>

The CHR enthusiastically embraced its mandate to draft international human rights treaties and instruments, most notable among its achievements in this regard is the UDHR which was adopted by the GA a mere 18 months after the establishment of the Commission. Notwithstanding this illustrious beginning, it took the CHR another 18 years to complete the International Covenants. Furthermore, early in the drafting process for what would become the ICCPR and the ICESCR a pattern was established whereby the CHR would

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<sup>103</sup> Philip Alston, ‘The Commission on Human Rights’ in Alston (ed), *Critical Appraisal* (n 69) 138: see Schwelb and Alston (n 71) 245 – 251 (standard-setting); 285 (technical assistance/advisory services).

<sup>104</sup> ECOSOC Res 75 (V), ‘Communications concerning Human Rights’ (5 August 1947) preambular para. 2. See Chapter Four.

<sup>105</sup> Tom J. Farer and Felice D. Gaer are particularly scathing of the outcome of the proposal whereby it was left to the discretion of states whether to engage in reporting. In short Farer and Gaer claim ‘the reporting process was not calculated to upset any of the world’s chancelleries’. Farer and Gaer (n 11) 273.

<sup>106</sup> See Alston, ‘The Commission on Human Rights’ (n 103) 185 - 187. Jamal Benomar who was kidnapped and tortured by the Moroccan secret police in 1976, asks the question: ‘Would this situation have been avoided if the United Nations had provided technical assistance to Morocco in human rights at the time? My answer is obviously no’. See Jamal Benomar, ‘Technical Cooperation in the Field of Human Rights, Past and Present, Reflections for further development’ in Yael Danieli, Elsa Stamatopoulou, and Clarence J. Dias, *The Universal Declaration of Human Rights: Fifty Years and Beyond* (Baywood Publishing Company, Inc. New York 1999) 237.

<sup>107</sup> Thomas G. Weiss, David P. Forsythe and Richard A. Coate, *The United Nations and Changing World Politics* (Westview Press Boulder 2004) 174.

defer controversial political issues to ECOSOC or the GA for consideration and resolution. Additionally the devotion to drafting the International Covenants left the CHR isolated in relation to other important standard-setting initiatives during this period such as those undertaken by the Commission on the Status of Women.<sup>108</sup> In conjunction with being consciously excluded from issues relating to freedom of information and freedom of the press the CHR was experiencing a forerunner of the fallow period in standard-setting activities which occurred between 1961 and 1976.<sup>109</sup> The Commission nevertheless played a significant role in producing many declarations during this period such as the Declaration on the Elimination of All Forms of Racial Discrimination which was adopted by the GA in 1963.<sup>110</sup> In the words of one commentator the CHR 'worked effectively in generating new standards throughout the 1980s'<sup>111</sup> including the CRC, 1989. This momentum carried the CHR through into the ensuing decade when it produced instruments such as the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Nonetheless the Commission did not always play a dominant role in standard-setting in the area of human rights leading to allegations of 'forum shopping' for drafting purposes on the part of states.<sup>112</sup> Moreover, the drafting competence displayed by the CHR has been criticized further underlining the questionable effectiveness of the Commission's activities in this regard.<sup>113</sup>

Having declared itself without the power to pronounce on allegations of violations of human rights and fundamental freedoms the CHR, faced with a veritable mountain of communications received alleging violations of human rights,<sup>114</sup> created what one

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<sup>108</sup> See Alston, 'The Commission on Human Rights' (n 103) 134 – 135; Schwelb and Alston (n 71254 – 260 (Commission on the Status of Women)).

<sup>109</sup> Alston, 'The Commission' (n 103) 134 – 135.

<sup>110</sup> See generally Schwelb and Alston (n 71) 245 – 249.

<sup>111</sup> Alston, 'The Commission' (n 103) 136.

<sup>112</sup> Ibid 137.

<sup>113</sup> Thomas G. Weiss et al comment that those within the UN human rights system tend to use words such as effective and significant, pointing only to instances within the system in support. Weiss (n 107) 174. See for example Sir Samuel Hoare, UK representative to the CHR, describing the UDHR as the 'only single and comprehensive international instrument covering the whole field of human rights' Sir Samuel Hoare, 'The Commission on Human Rights' in Luard, *The International Protection of Human Rights* (n 26) 66; 66 – 70..

<sup>114</sup> The earliest statistics available are for a 13 month period in 1951 - 1952 during which over 25, 000 communications were received alleging violations of human rights and fundamental freedoms. While, as Sir Samuel Hoare points out, a degree of overlap/repetition in complaints does not as Hoare implies reduce the force of complaints but rather reinforces the impotency of the CHR in the face of a consistent pattern of violations. Hoare (n 113) 90. Christian Tomuschat makes a similar point. Tomuschat (n 4) 118.

commentator has described as 'the world's most elaborate waste-paper basket'.<sup>115</sup> ECOSOC passed Resolution 728 F in 1959 which consolidated and formalised the practice of the CHR since 1947 whereby every author of a communication received written notification from the UN SG, which reminded the author that the CHR does not have the authority to pronounce on communications pertaining to human rights.<sup>116</sup> The Resolution demonstrated what Tom J. Farer and Felice Gaer scathingly call the 'fierce commitment to inoffensiveness' on the part of the Commission.<sup>117</sup> Notwithstanding contemporaneous concern emanating from within the UN itself as to the potential damage to the reputation and authority of the CHR and the UN,<sup>118</sup> this 'doctrine of impotence'<sup>119</sup> persisted until 1967, when against mounting concern regarding apartheid in South Africa and racial discrimination in Southern Rhodesia, ECOSOC passed Resolution 1235 which was followed by Resolution 1503 in 1970. These Resolutions instituted procedures of a public and confidential nature to address allegations of violations of human rights and fundamental freedoms and marked the beginning of an era of responding to gross violations of human rights by the Commission.<sup>120</sup> When viewed in such historical perspective there is a discernible shift in the evolution of the role and functions of the CHR from primarily as a technical body undertaking promotional activities to a more political body engaged in protective activity.<sup>121</sup> Nonetheless, the CHR was plagued throughout its 60 year history by accusations of double standards and selectivity,<sup>122</sup> and on 27 March 2006 the CHR concluded its final annual meeting and, by GA Resolution 60/251 the Human Rights Council, a subsidiary body of the GA, was established on 15 March 2006.<sup>123</sup> The Human Rights Council has the primary function of 'promoting universal respect for the protection of all human rights and fundamental freedoms for all'<sup>124</sup> and retains the advisory role

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<sup>115</sup> John P. Humphrey, 'The Right of Petition in the United Nations', (1971) 2/3 *Human Rights Journal* 463.

<sup>116</sup> Sir Samuel Hoare approved of the enhanced formality bestowed by the Resolution. Hoare (n 113) 89.

<sup>117</sup> Farer and Gaer (n 11) 273.

<sup>118</sup> Alston, 'The Commission' (n 103) 139, citing UN Secretary-General, 'Report on the Present Situation with Regard to Communications Concerning Human Rights' (1949), 138.

<sup>119</sup> Farer and Gaer (n 11) 273.

<sup>120</sup> See Chapter Five.

<sup>121</sup> Nigel S. Rodley asserts that any assessment of the CHR must be seen in historical perspective. See Nigel S. Rodley, 'United Nations Non-Treaty procedures for Dealing with Human Rights Violations' in Hurst Hannum (ed), *Guide to International Human Rights Practice* (3<sup>rd</sup> edn Transnational Publishers Inc New York 1999) 61. Philip Alston makes a similar assertion. Alston, 'The Commission' (n 103) 126.

<sup>122</sup> See Chapter Five.

<sup>123</sup> UN GA Res 60/251, 'Human Rights Council' (15 March 2006) UN Doc A/RES/60/251.

<sup>124</sup> *Ibid* para. 2.

etched out by the CHR in respect of technical assistance<sup>125</sup> along with an explicit responsibility to ‘address situations of violations of human rights’.<sup>126</sup>

The above exposition of the main Charter bodies with specific responsibilities under the UN Charter for human rights and fundamental freedoms indicates the role of the UN in achieving human security. In the quest to realize the Charter mandate the UN has employed promotional and protective measures through the auspices of the GA, ECOSOC and the CHR. Yet, the foregoing account of the powers and functions of the GA, ECOSOC and the CHR exposed challenges to the operation of this institutional architecture for achieving human security. Indeed, the hand of sovereignty weighed heavily on the institutional architecture, which saw the CHR and ECOSOC constrained by the doctrine of impotence. The GA, while initially restricted by arguments as to Article 2 (7) and domestic jurisdiction, gradually developed a practice of considering gross and systematic violations of human rights. Thus, as an international organization founded on the principle of sovereignty the UN has ‘some ability to compel member states to comply with rules and decisions’.<sup>127</sup> Indeed, the role and consequent activity of the UN in the field of human rights readily attests to the potential of the UN to at least challenge and at most perhaps undermine the foundational basis upon which it rests.

### **III. MAPPING THE TERRAIN OF HUMAN SECURITY: FREEDOM FROM FEAR AND FREEDOM FROM WANT**

The Charter mandate to achieve human security emphasized the interdependence of human rights, international economic and social cooperation and international peace and security as an important element of the Charter mandate to achieve human security. This Part examines UN activity in the fields of international peace and security and international economic and social cooperation in order to map the operational terrain occupied by human security. The examination departs from an overview of the relevant Charter provisions and concludes with an articulation of the UN agenda in each sphere of activity.

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<sup>125</sup> Ibid para. 5 (a).

<sup>126</sup> Ibid para. 3.

<sup>127</sup> Grossman and Bradlow (n 6) 2.

### *A. Freedom from Fear: The UN Security Agenda*

As noted in Chapter Two, the maintenance of international peace and security is of paramount importance to the UN<sup>128</sup> and to this end the UN Charter makes provision for two complementary avenues, the peaceful settlement of disputes under Chapter VI and the collective security system under Chapter VII. This section concentrates on the collective security system as a particularly innovative and indeed ‘revolutionary’<sup>129</sup> feature of the UN Charter which was ‘designed to protect the value of peace’.<sup>130</sup>

The UN collective security system rests on the prohibition on the use or threat of force in international relations,<sup>131</sup> with the Charter providing for two strictly construed exceptions, firstly the use of force by the UN and secondly, the exercise of self-defence pursuant to Article 51. In this way, the Charter creates a UN monopoly on the use of force which is concentrated in the UN Security Council (SC) as the principal UN organ with ‘primary responsibility for the maintenance of international peace and security’,<sup>132</sup> and which is a central tenet of the collective security system. Thus, under the Charter the SC may authorise the use of force or measures falling short of the use of force, such as the imposition of economic sanctions in order to fulfill its Charter mandate in respect of the maintenance of international peace and security. Such powers have been recognized by commentators as affording the SC ‘very wide discretion’ in the field of international peace and security.<sup>133</sup> Nonetheless, the collective security system envisaged in the UN Charter makes provision for a ‘standing force’ which, according to Article 43, the SC calls upon when authorizing the use of force under Article 42.<sup>134</sup> Indeed, the provision for a ‘standing force’ along with the UN monopoly on the use of force, are the central features of the collective security system contemplated by the UN Charter.

However, the UN collective security system as contemplated in the UN Charter did not materialise in practice in large part due to deficiencies in the Charter provisions

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<sup>128</sup> UN Charter, Article 1 (1).

<sup>129</sup> Cassese, *International Law* (n 4) 323.

<sup>130</sup> White (n 66) 46.

<sup>131</sup> UN Charter, Article 2 (4).

<sup>132</sup> UN Charter, Article 24 (1).

<sup>133</sup> Goodrich (n 35) 161; Jost Delbruck, ‘Functions and Powers – Article 24’ in Simma et al (eds) (n 68) 445.

<sup>134</sup> UN Charter, Article 43.

themselves.<sup>135</sup> For instance, the monopoly on the use of force, while buttressed by the prohibition on the use or threat of force, depended on the continued agreement of the five permanent members of the SC to authorize the use of force or measures short of the use of force in order to maintain international peace and security.<sup>136</sup> The provision for a 'standing force' similarly depended on the political will of UN member states while the onset of the cold war guaranteed that these central tenets of the UN collective security system were unrealized.<sup>137</sup> Nevertheless, the Charter provisions have produced a decentralised collective security system which one commentator described as 'erratic'.<sup>138</sup> Indeed, the mixed record of the UN in the field of international peace and security is well recognized,<sup>139</sup> with scholars counting additional challenges such as conflict *within* states, which was not contemplated by the Charter, and the adherence to a rather narrow and negative understanding of peace as the absence of war as placing strain on the already embattled collective security system.<sup>140</sup>

It was against this backdrop that the High-Level Panel on Threats, Challenges and Change (HLP) delivered a damning assessment of the UN collective security system in its 2004 Report.<sup>141</sup> The Report, entitled *A More Secure World: Our shared responsibility*, was commissioned by the SG of the UN, Kofi Annan, to examine the current challenges to international peace and security; to consider the contribution of collective action to address such challenges; and to recommend ways to ensure effective collective action, including review of the principal organs of the UN.<sup>142</sup> According to the HLP while UN collective security institutions, in particular the SC, have demonstrated an ability to perform in particular areas, they have also proven 'particularly poor at meeting the challenge posed by

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<sup>135</sup> Evan Luard points to the UN Charter as the 'chief contributor' in this respect. Evan Luard, *The United Nations: How it works and what it does* (2<sup>nd</sup> ed Macmillan London 1994) 30. Cassese, *International Law* (n 4) 324.

<sup>136</sup> See Leland M. Goodrich, *The United Nations* (Thomas Y. Crowell Company New York 1959) 164 - 168.

<sup>137</sup> Cassese, *International Law* (n 4) 325.

<sup>138</sup> White (n 66) 145.

<sup>139</sup> Ibid 141; A LeRoy Bennett, *International Organisations: Principles and issues* (Prentice Hall New Jersey 1995) 175 - 177; Evan Luard remarks: 'It is undeniable that the achievement of the Security Council in keeping the peace over the past half century is considerably less impressive than had been hoped at the time of the UN's foundation'. Luard, *The United Nations* (n 135) 29. See Chapter Six.

<sup>140</sup> Cassese, *International Law* (n 4) 325.

<sup>141</sup> HLP, *A More Secure World: Our shared responsibility* (United Nations New York 2004).

<sup>142</sup> Ibid 119. See also UN SG, 'The Secretary-General Statement to the General Assembly' (Speech delivered to the UN General Assembly, New York, 21 March 2005)

<<http://www.un.org/webcast/ga/58/statements/sg2eng030923>> accessed 26 February 2006.

large-scale, gross human rights abuses and genocide'.<sup>143</sup> This, the HLP remarks, produces a normative and operational challenge for the UN, which is further exacerbated upon the demonstrable 'unwillingness to get serious about preventing deadly violence' on the part of the SC and the UN more generally.<sup>144</sup> Finally, the Report speaks of discrimination in responding to threats to international peace and security, with the HLP noting the 'glacial speed at which our institutions have responded to massive human rights violations in Darfur, Sudan'.<sup>145</sup> This woefully inconsistent record of the UN in the field of international peace and security prompted the HLP to make 101 recommendations<sup>146</sup> spanning the spectrum from development to international terrorism and covering conflict prevention, the use of force, and an effective UN,<sup>147</sup> which were based on a 'more comprehensive concept of collective security'.<sup>148</sup>

The concept of comprehensive collective security advanced by the HLP is premised on the recognition that '[t]oday's threats recognize no boundaries, are connected, and must be addressed at the global and regional as well as national levels'.<sup>149</sup> While the UN SG implicitly recognised the inter-related nature of threats and that a threat to one is a threat to all, along with the limits of self-protection in the 2000 Millennium Report,<sup>150</sup> the HLP courted controversy by founding the new comprehensive collective security on a re-cast notion of sovereignty. To the HLP sovereignty is 'the obligation of a State to protect the welfare of its own peoples and meet its obligations to the wider international

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<sup>143</sup> HLP (n 141) para. 36.

<sup>144</sup> Ibid para. 39.

<sup>145</sup> Ibid para. 42.

<sup>146</sup> Thomas G. Weiss remarks that this 'lengthy shopping list of recommendations' is 'unkindly known as the '101 Dalmatians''. See Thomas G. Weiss, 'An Unchanged Security Council: The Sky Ain't Falling' (2005) 36 *Security Dialogue* 367, 368.

<sup>147</sup> A summary of the recommendations is found in Annex I of the Report. See HLP (n 141) 97 - 116. J. Peter Burgess and Robert Piper observe that the Report 'unites a wide range of perspectives and presuppositions' which they continue to identify as global security, the debate regarding the relationship between the nation-state, sovereignty and responsibility, the importance of prevention and finally, the relationship between force, legitimacy and the role of the UN. See J. Peter Burgess and Robert Piper, 'Editors' Introduction to Special Section: Report of the High-Level Panel on Threats, Challenges and Change' (2005) 36 *Security Dialogue* 361 at 362.

<sup>148</sup> UN SG, *In Larger Freedom: Towards Security, Development and Human Rights for All* (UN Dept of Public Information New York 2005) para. 77.

<sup>149</sup> HLP (n 141) 9.

<sup>150</sup> For example, the SG acknowledges the 'changed nature of threats to peace and security faced by the world's people today' and the inadequacy of the Charter provisions on collective security and concludes 'we have not yet adapted our institutions to this new reality'. See UN SG, *We the Peoples* (n 1) 11.

community'.<sup>151</sup> This, according to the HLP, is logically entailed from UN membership for by signing the UN Charter states benefit from the privileges and responsibilities of sovereignty. In this way, the Westphalian concept of sovereignty as power is necessarily transformed, the effect of which is that when a state is unable or unwilling to meet the responsibilities of sovereignty, the principles of collective security dictate that 'some portion of those responsibilities should be taken up by the international community'.<sup>152</sup> The HLP hastens to add that the international community shall act in accordance with the UN Charter and the UDHR in order to temper the controversial credentials of this recasting of sovereignty.<sup>153</sup> Nonetheless, the HLP is not alone in undertaking such an endeavour. Indeed the International Commission on Intervention and State Sovereignty (ICISS) offered a similar re-conceptualisation of sovereignty in its 2001 Report, *The Responsibility to Protect* and the HLP has been clearly influenced by the Report.<sup>154</sup> Here the ICISS advanced the notion of the responsibility to protect, which was founded on a recasting of sovereignty as responsibility.<sup>155</sup> A facet of the notion of the responsibility to protect involves the international community exercising a secondary responsibility to protect when a state is unable or unwilling to do so when faced with, for instance, genocide and mass human rights violations.<sup>156</sup>

According to Anne-Marie Slaughter the Report of the HLP constitutes a 'blueprint for profound change'<sup>157</sup> as the HLP 'proposes that the United Nations, an organisation founded on a commitment to the protection of state security, must now subordinate state security to human security'.<sup>158</sup> To Slaughter this piece of 'text-based revisionism'<sup>159</sup> on the part of the HLP occurs when the HLP observes that the founders of the UN while preoccupied with state security also understood the 'invisibility of security, economic development and human freedom'.<sup>160</sup> Slaughter states that the drafters of the Charter would have countenanced poverty and disease as threats insofar as they threatened state security.

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<sup>151</sup> HLP (n 141) para. 29.

<sup>152</sup> Ibid para. 30.

<sup>153</sup> Ibid para. 30.

<sup>154</sup> ICISS, *The Responsibility to Protect* (International Development Research Centre Ottawa 2001).

<sup>155</sup> Ibid 2.14 – 2.15. See Chapter Five.

<sup>156</sup> Ibid 2.29.

<sup>157</sup> Anne-Marie Slaughter, 'Security, Solidarity, and Sovereignty: The grand themes of UN reform' (2005) 99 *American Journal of International Law* 619 at 619.

<sup>158</sup> Ibid 619.

<sup>159</sup> Ibid 623.

<sup>160</sup> HLP (n 141) 1 and 9. See Slaughter (n 157) 623.

However by undertaking the ‘eminently defensible’ exercise in revisionism the HLP advanced several steps from this position in that threats such as poverty and disease constituted threats in and of themselves as they ‘threaten the lives of citizens within states’.<sup>161</sup> This is an undoubtedly persuasive argument, but it obscures the nuanced position adopted by the HLP in proposing a more comprehensive notion of collective security.

The HLP does speak of security threats ‘beyond States waging aggressive war’ and thus adds a further five security threats,<sup>162</sup> which as Simon S. C. Tay observes, ‘include economic and social threats’ such as poverty, disease and environmental degradation.<sup>163</sup> Yet, the HLP saw these clusters as inter-dependent when it remarked ‘poverty, infectious disease, environmental degradation and war feed one another in a deadly cycle’, an inter-relationship which is recognized in the UN Charter. Further, the Panel discussed these clusters of security threats in terms of the state when, for instance, it spoke of ‘[c]ivil war, disease and poverty’ as increasing the ‘likelihood of State collapse’ and facilitating ‘the spread of organised crime, thus also increasing the risk of terrorism’.<sup>164</sup> This bears remarkable resemblance to the assertion by Slaughter not only that the UN Charter acknowledges poverty and disease as security threats to the extent that they ‘contribute to state collapse’, but that these in turn threatens neighbouring states while other states provide ‘a safe haven for terrorists and other criminals’.<sup>165</sup> Hence the broadening of the threats to be subsumed under the rubric of security advocated by the HLP has clear roots in the Charter, and does not, as Slaughter presents it, represent an unwelcome advance from the UN Charter position. In the last analysis the understanding of security put forward by the HLP as providing the ‘new security consensus’ is one ‘that tackles both new and old threats, and addresses the security concerns of all States’.<sup>166</sup>

The UN SG saw the understanding of security advanced by the HLP as bridging the ‘gap between divergent views of security’ and, as such, he endorsed this ‘more comprehensive

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<sup>161</sup> Slaughter (n 157) 623.

<sup>162</sup> HLP (n 141) 1 and 9.

<sup>163</sup> Simon S.C. Tay, ‘A More Insecure World: Conflicting Perspectives for Asia’ (2005) 36 *Security Dialogue* 392, 393.

<sup>164</sup> HLP (n 141) 16.

<sup>165</sup> Slaughter (n 157) 623.

<sup>166</sup> HLP (n 141) vii.

notion of collective security' in his 2005 Report, *In Larger Freedom*.<sup>167</sup> To the UN SG, the wholesale assimilation of the HLP's understanding of security provided the basis for the UN security agenda articulated therein in addition to informing the transformation of the 'UN into the effective instrument for preventing conflict that it was always meant to be'.<sup>168</sup> However, UN member states gathered at the 2005 World Summit could only muster a reaffirmation of the 'commitment to work towards a security consensus'.<sup>169</sup> Notwithstanding the Outcome Document did continue to record the recognition of UN member states that:

many threats are interlinked, that development, peace, security and human rights are mutually reinforcing, that no State can best protect itself by acting entirely alone and that all States need an effective and efficient collective security system pursuant to the purposes and principles of the Charter<sup>170</sup>

Further, and importantly for present purposes, UN member states recognised 'a whole range of threats'<sup>171</sup> which know 'no national boundaries'<sup>172</sup> and thus acknowledged a wider conception of security beyond the confines of the traditional or classical understanding whereby security pertains to the protection of the political integrity and territorial independence of a state from external aggression of another state.<sup>173</sup>

In conclusion, the Outcome Document marks the culmination of a series of conversations between the SG and the GA in 2000 and 2005 whereby the UN security agenda underwent a 'broadening and deepening' of the threats and actors falling within the UN security agenda. Thus, the SG's Millennium Report spoke of the 'changed nature of threats to

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<sup>167</sup> UN SG, *In Larger Freedom* (n 148) para. 77.

<sup>168</sup> *Ibid* para. 83.

<sup>169</sup> UN GA Res 60/1, '2005 World Summit Outcome' (16 September 2005) UN Doc A/RES/60/1, para. 72.

<sup>170</sup> *Ibid*. Peggy Hicks remarked that the Report of the HLP 'takes an important step by recognising that security, development, and human rights are intertwined, and that all three prongs need to be addressed to create a more secure world'. See Peggy Hicks, 'Correct Diagnosis, Wrong Prescription: The Human Rights Component of Security' (2005) 36 *Security Dialogue* 380, 380. Chris Landsberg was more forthright in his observation in respect of the refrain of the Secretary-General in the Report *In Larger Freedom* that 'there can be no development without security, no security without development, and neither without human rights, is an important new paradigm'. Chris Landsberg, 'The UN High-Level Reports and Implications for Africa' (2005) 36 *Security Dialogue* 388, 389.

<sup>171</sup> UN GA Res 60/1 (n 170) para. 69.

<sup>172</sup> *Ibid* para. 71.

<sup>173</sup> Barry Buzan has described national security as 'the ability of states to maintain their independent identity and their functional integrity'. Barry Buzan, *People, States and Fear: An agenda for international security studies in the post-cold war era* (Lynne Rienner Publishers Colorado 1991) 116.

peace and security faced by the world's people today'<sup>174</sup> and, to this end, adopted a human centred approach to security, which includes 'the protection of communities and individuals from internal violence'.<sup>175</sup> The subsequent Millennium Declaration by the GA declared that member states 'will spare no effort to free our peoples from the scourge of war'<sup>176</sup> and, amongst others, addressed a number of issues such as international terrorism, economic sanctions and weapons of mass destruction.<sup>177</sup> As indicated above the 2005 Report of the SG, *In Larger Freedom*, provided the basis for the UN security agenda articulated therein which included the prevention of catastrophic terrorism, addressing the threat posed by nuclear, biological and chemical weapons, and reducing the risk and prevalence of war.

### ***B. Freedom from Want: The UN Development Agenda***

International economic and social cooperation occupies a prominent place in the UN Charter as a purpose of the UN and indeed, under the Charter, provides a basis for international peace and security.<sup>178</sup> As such, it is unsurprising that the UN devotes a considerable amount of 'time, effort and money' to the field of international economic and social cooperation.<sup>179</sup> Yet, the Charter is largely silent on the direction of international cooperation in the economic and social fields<sup>180</sup> and it is only by looking to subsequent practice by the UN, in particular the GA and ECOSOC, in these fields that a UN approach can be discerned.<sup>181</sup>

The GA and ECOSOC are charged under the Charter with responsibility for international economic and social cooperation and to this end have pursued a three pronged approach the first of which is creation of new institutions 'with specific responsibilities in the field of economic development',<sup>182</sup> such as the UNDP which was formed by the GA in 1965 as a 'voluntary programme for development work'.<sup>183</sup> The GA has also called international conferences on economic and social matters such as the 1995 World Summit on Social

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<sup>174</sup> UN SG, *We the People* (n 1) 11.

<sup>175</sup> *Ibid* 43.

<sup>176</sup> UN GA Res 55/2, 'Millennium Declaration' (18 September 2000) UN Doc A/RES/55/2, para 8.

<sup>177</sup> *Ibid* para. 9.

<sup>178</sup> UN Charter, Article 1 (3) and Article 55 (a) and (b).

<sup>179</sup> Peter R. Baehr and Leon Gordenker, *The United Nations in the 1990s* (Macmillan London 1992) 131. A. LeRoy Bennett makes a similar observation. See Bennett (n 139) 288 and 294.

<sup>180</sup> Cassese, *International Law* (n 4) 330.

<sup>181</sup> See Baehr and Gordenker (n 179) 131.

<sup>182</sup> Rüdiger Wolfrum, 'International Economic and Social Co-operation' in Simma et al (n 68) 905.

<sup>183</sup> Luard, *The United Nations* (n 135) 64.

Development which was conducted under the auspices of the UNDP and centred on human security, and has issued resolutions such as the Declaration on the Right to Development 1986. Finally, the UN provides technical assistance for development and the UNDP is the primary UN organ in this regard. Indeed, the UNDP has been pivotal in broadening the concept of development ‘beyond its purely economic dimension’,<sup>184</sup> by championing the notion of *human* development. According to the UNDP, as noted in Chapter One, human development was ‘a process of enlarging people’s choices’,<sup>185</sup> which clearly resonates with the definition of development given in the GA Declaration of the Right to Development, namely, that ‘every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised’.<sup>186</sup>

Indeed, and notwithstanding the absence of clear direction from the UN Charter, sufficient consensus has emerged around UN activity in relation to international economic and social cooperation for the UN SG, Kofi Annan, to declare the existence of a UN development agenda. Nevertheless, it is important to acknowledge that the UN structure for international economic and social cooperation is highly complex, diverse and decentralized.<sup>187</sup> It comprises of a multitude of specialized agencies such as the World Bank and the IMF, along with the World Trade Organisation (WTO) which, although existing outside the UN system, ‘is increasingly part of it’.<sup>188</sup> This in turn highlights the poor record, noted above, of ECOSOC in executing its coordinating and facilitative role under the Charter. In this context, Cassese’s observation that the UNDP ‘has become very important as a means of coordinating various UN technical assistance activities’ assumes added significance.<sup>189</sup> Thus, any examination of the UN development agenda must be set against the backdrop of the existence of a myriad of UN institutions and organs devoted to development.

The UN development agenda has been developed in a series of key documents primarily emanating from the UN SG and the GA. For instance, the UN development agenda

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<sup>184</sup> de Feyter (n 95) 32.

<sup>185</sup> UNDP, *Human Development Report 1990* (OUP Oxford 1990) 9.

<sup>186</sup> *Ibid.*

<sup>187</sup> Bennett (n 139) 294.

<sup>188</sup> White (n 2) 265. On the role of these organisations in economic and social development see *Ibid* Chapter

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<sup>189</sup> Cassese, *International Law* (n 4) 330.

articulated by the UN SG in the Millennium Report was subsequently endorsed by UN member states in the Millennium Declaration. In the Millennium Report the UN SG called for the reduction of the number people living in poverty by half by 2015<sup>190</sup> as poverty is not merely ‘an affront to our common humanity’ it also exacerbates other problems such as ethnic and religious conflict.<sup>191</sup> As such sustainable growth was identified by the UN SG as key to reducing poverty, along with other priority areas such as opportunities for the young, education, employment, health and HIV/AIDS. The Millennium Report made a number of recommendations in respect of these areas, for instance, states were urged to ensure that by 2015 all children, irrespective of gender, completed primary education.<sup>192</sup> The SG also set a dual target of reducing the rate of HIV infection in people aged between 14 and 25 years by 2005 and again in 2010.<sup>193</sup> In this latter regard the SG also called upon states to set their own national targets to reduce HIV infection.<sup>194</sup> The Millennium Declaration similarly spoke of sparing no effort to free people ‘from the abject and dehumanising conditions of extreme poverty,’<sup>195</sup> of the resolve to create an environment conducive to the elimination of poverty,<sup>196</sup> in addition to recognising the importance of good governance in pursuing such laudable objectives.<sup>197</sup> UN member states in the Millennium Declaration accepted the SG’s proposal in the Millennium Report to reduce the number of people living in poverty by half by 2015 and similarly those without access to safe and affordable drinking water.<sup>198</sup> Furthermore, UN member states resolved, amongst others, to address primary education, HIV/AIDS, opportunities for young people, in a manner comparable to that proposed in the Millennium Report.<sup>199</sup> These commitments were given concrete expression in 2001 in the Millennium Development Goals (MDGs) produced as a result of this constructive dialogue between the UN SG and the GA.<sup>200</sup>

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<sup>190</sup> UN SG, *We the Peoples* (n 1) 20.

<sup>191</sup> *Ibid* 19.

<sup>192</sup> *Ibid* 25.

<sup>193</sup> *Ibid* 27-28.

<sup>194</sup> *Ibid* 28.

<sup>195</sup> UN GA Res 55/2 (n 176) para. 11.

<sup>196</sup> *Ibid* para. 12.

<sup>197</sup> *Ibid* para. 13.

<sup>198</sup> *Ibid* para. 19.

<sup>199</sup> *Ibid* paras. 19 and 20.

<sup>200</sup> UN SG, ‘Road Map Towards the Implementation of the United Nations Millennium Declaration’ (Report of the Secretary-General) (6 September 2001) UN Doc A/56/326.

The MDGs were the result of a consultative process which involved the Secretariat of the UN, the various UN specialised agencies, and representatives from the IMF, the World Bank and the Organisation for Economic Co-Operation and Development (OECD). The objective of the consultations was to produce a set of defined ‘time-bound and measurable goals and targets’<sup>201</sup> based on the commitments made in the Millennium Declaration including the right to development. The consultations, which also drew on the wealth of international expertise with respect to development generally, produced the eight MDGs which UN member states have pledged to achieve. These are: the eradication of extreme poverty and hunger; the achievement of universal primary education; the promotion of gender equality and the empowerment of women; the reduction of child mortality; the improvement of maternal health; combat HIV/AIDS, malaria and other diseases; ensure environmental sustainability; and to develop a global partnership for development.<sup>202</sup>

By 2005 and *In Larger Freedom* the SG was able to speak of a ‘common consensus’ as to the UN development agenda which had emerged on the basis of the MDGs which reflected ‘an urgent and globally shared and endorsed set of priorities’.<sup>203</sup> Nevertheless, the SG stressed that the MDGs alone were not sufficient in terms of the UN development agenda for two primary reasons. First, the MDGs required practical implementation strategies and in this regard the SG referred to the work of the Millennium Project, in particular their 2005 Report, *Investing in Development*.<sup>204</sup> The Report describes how to achieve the MDGs by setting out a practical plan of action premised on, amongst others respect for human rights.<sup>205</sup> Second, the SG emphasised that the MDGs must be seen as ‘part of an even larger development agenda’ as broader issues such as good governance and the particular needs of middle-income developing countries are not addressed by the MDGs.<sup>206</sup>

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<sup>201</sup> See <[http://unstats.un.org/unsd/mi/mi\\_goals.asp](http://unstats.un.org/unsd/mi/mi_goals.asp)> accessed 21 March 2006.

<sup>202</sup> For definitions and explanations as regards these MDGs and the targets and indicators see <[http://unstats.un.org/unsd/mi/mi\\_goals.asp](http://unstats.un.org/unsd/mi/mi_goals.asp)> accessed 21 March 2006.

<sup>203</sup> UN SG, *In Larger Freedom* (n 148) para. 29.

<sup>204</sup> Ibid. UN Millennium Project, *Investing in Development* (United Nations New York 2005). For more information on the Millennium Project see <http://www.unmillenniumproject.org>

<sup>205</sup> On the role of human rights see Millennium Project (n 204) 118

<sup>206</sup> UN SG, *In Larger Freedom* (n 148) para. 30.

Notwithstanding, the SG recognized ‘the urgency of achieving the Millennium Development Goals’<sup>207</sup> and, for example, detailed the importance of national development strategies to combat extreme poverty, the first MDG. The emphasis which such strategies place on good governance is readily apparent and indeed, the SG remarked that ‘transparent, accountable systems of governance, grounded in the rule of law, encompassing civil and political as well as economic and social rights and underpinned by accountable and efficient public administration’ is vital for the strategies to work in practice.<sup>208</sup> The SG also stipulated that such national development strategies must take into account considerations pertaining to gender equality, the environment, rural development, urban development, health systems, education, and finally science, technology and innovation. These, to borrow the terminology of the SG, seven broad ‘clusters’ directly address the MDGs and were seen in the Millennium Project as essential for the implementation and realisation of the MDGs.<sup>209</sup> The broad base of the UN development agenda underscores the need for institutional coordination and coherency and indeed it is unsurprising, given the myriad of development institutions and organs with responsibility for aspects of development, that the UN SG stressed the importance of a global partnership for development. He also highlighted the essential part of environmental sustainability and HIV/AIDS to the UN development agenda before concluding that measures with respect to human rights and security are essential to the realisation of the MDG, ‘just as development is itself an indispensable underpinning for longer-term security, human rights and the rule of law.’<sup>210</sup>

#### **IV. HARNESSING THE UN RHETORIC: THE UN HUMAN SECURITY PACKAGE**

The documents canvassed in the preceding Part all draw inspiration from the historical roots of human security, freedom from fear and freedom from want.<sup>211</sup> Indeed, these documents equate freedom from fear with the UN security agenda and freedom from want with the UN development agenda. Nevertheless, these documents view human rights, and the promotion of respect for and observance of UN human rights law, as a broader

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<sup>207</sup> Ibid.

<sup>208</sup> Ibid para. 36.

<sup>209</sup> Ibid para. 39.

<sup>210</sup> Ibid para. 73.

<sup>211</sup> See for example, UN SG, *We the Peoples* (n 1); SG, *In Larger Freedom* (n 148).

objective within which the agendas in respect of development and security are to be pursued. This is particularly apparent in the Millennium Declaration where UN member states pledged to promote and strengthen respect for internationally recognised human rights and fundamental freedoms, including the right to development.<sup>212</sup> Unsurprisingly, this was subsequently endorsed by the SG in the report *In Larger Freedom*<sup>213</sup> when he stated: ‘we will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights’.<sup>214</sup> Indeed it would appear that the recognition of the inter-relationship between human rights, development and security, as the ‘three great purposes of the UN’, is founded on the understanding that human rights are the linchpin of the ‘comprehensive strategy’ proposed in *In Larger Freedom* in respect of development and security.<sup>215</sup> Thus human rights, especially UN human rights law, underpin the UN security and development agendas.

Indeed the centrality of human rights to the UN security agenda is evident in the ‘human-centred approach to security’ advocated in the Millennium Report when the SG emphasised the strengthening of UN human rights law. The ‘human-centred approach to security’ also demands a deeper understanding of the causes of conflict that includes recognition of the relationship between development and security. Hence, the SG remarked that the strategies detailed in the Millennium Report in respect of development are relevant to the prevention and deterrence of conflict. Moreover, the Report observed that a more integrated approach is required by those involved in conflict prevention and more generally development, such as the UN, the Bretton Woods institutions, governments and civil society.<sup>216</sup> Similarly the key recommendation of the Millennium Project in respect of implementing the MDGs was that MDG-based poverty reduction strategies should provide a framework for the promotion of human rights.<sup>217</sup> This recommendation stemmed from the position that

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<sup>212</sup> UN GA Resolution 55/2 (n 176) para. 24.

<sup>213</sup> UN SG, *In Larger Freedom* (n 148) 34-39.

<sup>214</sup> *Ibid* para. 17.

<sup>215</sup> The Secretary-General of the United Nations, ‘The Secretary-General Statement to the General Assembly’ (Speech delivered to the UN General Assembly, New York, 21 March 2005) <<http://www.un.org/largerfreedom/sg-statement.html>> accessed 26 February 2006.

<sup>216</sup> *Ibid* 45. The Secretary-General also stresses the role of civil society generally and the social responsibility of global companies and banks in conflict prevention.

<sup>217</sup> Overview, Recommendation 2,

<<http://www.unmillenniumproject.org/documents/overviewEngLowRes.pdf>> accessed 11 August 2006.

integration of human rights and development holds ‘tremendous potential and relevance’.<sup>218</sup> Hence, MDG-based poverty reduction strategies should reference obligations existing under UN human rights law and be consistent with the human rights principles of equity and non-discrimination.<sup>219</sup> The SG confirmed the centrality of human rights strategies in achieving the MDGs and indeed the broader UN development agenda in *In Larger Freedom*, which speaks of the necessity of investment strategies to encompass ‘civil and political rights as well as economic and social rights’.<sup>220</sup>

That human security is founded on the inter-relationship of ‘the three great purposes’ of the UN – human rights, development, and security - is unsurprising. As Don Hubert has observed: ‘[a]ll approaches to human security focus on the security and development nexus, and all see improvements in socio-economic conditions as crucial for the prevention of conflict; the differences are not of substance, but of packaging’.<sup>221</sup> Thus the UN human security ‘package’, as underpinned and informed by freedom from fear and want, is concerned with addressing the nexus between security and development, especially within the operational terrain of the UN security and development agendas. Second, as freedom from fear and want not only relates to security and development, but also to human rights, further support for the tentative identification of human rights and more particularly UN human rights law as providing the normative and legal basis for achieving human security is forthcoming. Moreover, due to the centrality of human rights in the UN human security package, human rights must also be considered as part of the operational terrain occupied by human security. In the last analysis therefore, human security is comprised of a series of relationships between human rights and security on the one hand and human rights and development on the other.

These documents also firmly situate human security within the wider policy context of UN reform. For instance, the Millennium Report reaffirmed that UN will continue to be guided by its founding principles and that the objectives of the UN remain altered. However, the SG concluded ‘the means we use to achieve those ends must be adapted to the challenges of

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<sup>218</sup> UN Millennium Project, *Investing in Development* (n 204) 118.

<sup>219</sup> *Ibid* 119.

<sup>220</sup> UN SG, *In Larger Freedom*, (n 148) para. 36.

<sup>221</sup> Don Hubert, ‘An Idea the Works in Practice’ (2004) 35 *Security Dialogue* 351, 351.

the new era'.<sup>222</sup> Indeed, the SG acknowledged that reform of the UN is necessary as the founding aims of the UN, that of freedom from fear and freedom from want, remain elusive.<sup>223</sup> Similarly the Millennium Declaration spoke of the determination of member states to 'spare no effort to make the United Nations a more effective instrument' and accordingly detailed a number of measures of reform.<sup>224</sup> The SG re-issued the call for reform in the 2005 Report *In Larger Freedom* arguing '[i]f the United Nations is to be a useful instrument for its Member States and for the world's peoples . . . it must be fully adapted to the needs and circumstances of the twenty-first century'.<sup>225</sup> While calls to reform the UN are not new, this current outbreak of feverish pleas provoked one commentator to caustically remark that 'the current reform drive was poorly conceived' and, as premised on serious misjudgements, 'started off on the wrong foot'.<sup>226</sup>

The Millennium Report may be said to mark the beginning of the present efforts to reform the UN.<sup>227</sup> Edward C. Luck observed that UN reform is a cyclical process composed of six steps, the first of which is the call to reform by the UN SG, by national leaders or a combination of both. This triggering event is followed by the appointment of a 'blue-ribbon commission' to give substance 'to the instincts of the political leaders'.<sup>228</sup> As the third step, the SG translates the findings of the commission duly appointed 'into digestible policy steps for consideration by the membership'.<sup>229</sup> The fourth step in the cycle of reform identified by Luck involves member states engaging in negotiations which lead to 'some kind of culminating event' after which the cycle ends with a flourish of UN rhetoric in the form of 'declarations about unfinished work and renewed dedication'.<sup>230</sup> This in turn provides the impetus for the next cycle of reform efforts which lends the process of UN reform its cyclical nature.

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<sup>222</sup> UN SG, *We the Peoples*, (n 1) 74.

<sup>223</sup> *Ibid* 17.

<sup>224</sup> UN GA Res 55-2 (n 176) para. 30.

<sup>225</sup> UN SG, *In Larger Freedom* (n 148) para. 153.

<sup>226</sup> Edward C. Luck, 'How not to Reform the United Nations' (2005) 11 *Global Governance* 407, 409 and 407 respectively.

<sup>227</sup> See generally, Joachim Müller (ed), *Reforming the United Nations: The Quiet Revolution* (Kluwer Law International London/The Hague 2001) 156 - 189.

<sup>228</sup> Luck (n 226) 407.

<sup>229</sup> *Ibid* 408.

<sup>230</sup> *Ibid*.

The call to reform by the SG in the Millennium Report to advance ‘freedom from fear, freedom from want and the freedom of future generations to sustain their lives on this planet’<sup>231</sup> prompted the creation of two independent commissions, the ICISS and, as discussed in Chapter One, the Commission on Human Security (CHS). The UN member states responded to the call to reform the UN by adopting, without a vote, the Millennium Declaration at the ‘culminating event’<sup>232</sup> of the Millennium Summit, which stipulated a review of the progress towards meeting the goals articulated therein by the SG, which produced the next conversation between the SG and the GA and indeed, in this sense, all future conversations originate from the Millennium Declaration.<sup>233</sup> In the 2005 progress Report, *In Larger Freedom*, the SG translated and distilled the Reports of the CHS and ICISS<sup>234</sup> in addition to drawing ‘inspiration from two wide-ranging reviews of our global challenges’ provided by the HLP and the Millennium Project.<sup>235</sup> The recommendations made by the SG in *In Larger Freedom* to meet the challenges of the 21<sup>st</sup> century, were debated by member states at the 2005 World Summit, and subsequently the Outcome Document was adopted without a vote of the GA amid a flurry of declarations and statements.<sup>236</sup>

This illuminates the current UN reform effort as a dialogue between the SG and the GA, the latest conversation in which is comprised of the SG's 2005 Report, *In Larger Freedom*, and the Outcome Document of the 2005 UN World Summit. Here, for example, the SG recommended ‘bold measures to rationalise’<sup>237</sup> the work of the GA which were welcomed by members states in the Outcome Document, which also contained a call to strengthen cooperation between the GA and the other principal organs of the UN.<sup>238</sup> The Outcome Document also recognised, as did the SG in *In Larger Freedom* the ‘need for a more

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<sup>231</sup> UN SG, ‘Secretary-General Statement to the General Assembly on the presentation of the Millennium Report’ (Speech delivered to the UN General Assembly, New York, 3 April 2000) <<http://www.un.org/millennium/sg/report/state.htm>> accessed 22 July 2004, para 13. More generally see, UN SG, *We the Peoples* (n 1).

<sup>232</sup> Ibid.

<sup>233</sup> UN GA Res 55/2 (n 176) para. 31.

<sup>234</sup> UN SG, *In Larger Freedom* (n 148) para. 133 (human security) and para. 135 (responsibility to protect).

<sup>235</sup> Ibid para. 4.

<sup>236</sup> See generally, Global Policy Forum <<http://www.globalpolicy.org/msummit/millenni/undocindex.htm>> accessed 28 August 2007.

<sup>237</sup> UN SG, *In Larger Freedom* (n 148) para. 160.

<sup>238</sup> UN GA Res 60/1 (n 169) para. 150 (welcome of measures) and para. 151 (call for cooperation and coordination between principal organs).

effective Economic and Social Council'.<sup>239</sup> However, while the Outcome Document approved the institution of a Peacebuilding Commission, agreement was not forthcoming in respect of either of the two models for the reform of the SC suggested by the SG as based on the recommendations of the HLP, although member states did endorse reform of the SC in principle.<sup>240</sup> In general the reform provisions of the Outcome Document elicited a mixed response from the academic community.<sup>241</sup>

A particularly noteworthy feature of the Outcome Document was the endorsement of the proposed Human Rights Council,<sup>242</sup> which was seen as part of the 'commitment to further strengthen the United Nations human rights machinery'.<sup>243</sup> Similarly the notion of the responsibility to protect, adopted from the Report of the ICISS, is a measure designed to strengthen the UN machinery for human rights protection. Such measures take on added significance in light of the inter-relationship between human rights, security and development. This is not merely because measures, such as strengthening the Office of the High Commissioner for Human Rights and establishing a Human Rights Council, address the deficiencies in the UN machinery for the promotion and protection of human rights, but also because they seek to restore the balance between the three great purposes of the UN.<sup>244</sup> Thus the SG explained the innovative proposal to institute a Human Rights Council in terms of reflecting 'the increasing importance being placed on human rights in our collective rhetoric' and raising 'human rights to the priority accorded' in the UN Charter on a par to the SC and ECOSOC.<sup>245</sup> Indeed the Outcome Document rests on the explicit acknowledgement of the inter-relationship between peace and security, development and

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<sup>239</sup> Ibid para. 155. The SG observes that 'visible gaps' need to be addressed as regards the effectiveness of ECOSOC. UN SG, *In Larger Freedom* (n 148) para. 174.

<sup>240</sup> UN SG, *In Larger Freedom* (n 148) paras. 167- 180. The SG proposed two models for the reform of the SC based on the recommendations of the HLP. In this respect Simon Chesterman scathingly remarked that 'the report [of the SG] endorses the fence-sitting position of the High-Level Panel, laying out options but not choosing between them, while urging member-states to take a decision on Council expansion even if consensus is not possible'. Simon Chesterman, 'Great Expectations: UN Reform and the Role of the Secretary-General' (2005) 36 *Security Dialogue* 375, 376.

<sup>241</sup> For instance the endorsement of the UN Human Rights Council was well received, while the deadlock as regards SC reform was greeted with resigned dissatisfaction.

<sup>242</sup> UN SG, *In Larger Freedom* (n 148) paras. 181 - 192.

<sup>243</sup> UN GA Res 60/1 (n 169) 157 - 160.

<sup>244</sup> Ibid paras. 142, 144 and 145 (OHCHR) and paras. 181-183 (Human Rights Council).

<sup>245</sup> UN SG, 'Human Rights Council: Explanatory Note by the Secretary-General' in UN Secretary-General, *In Larger Freedom: Towards Security, Development and Human Rights for All* (UN Dept of Public Information New York 2005), Appendix 1, para. 1

human rights as ‘the pillars of the United Nations system and the foundations for collective security and well-being’.<sup>246</sup>

The Outcome Document may be considered the culmination of the current cycle of reform which exhibits two facets to UN reform, the first of which relates to the *capacity* of the UN as an organisation to fulfil the mandates in respect of human rights, development and security as the three pillars of the organisation. UN reform measures in this regard are designed, to borrow the terminology of the Outcome Document, to invigorate the organs of the UN.<sup>247</sup> For instance the SG saw the Human Rights Council as replacing the embattled CHR.<sup>248</sup> The second facet of UN reform pertains to adapting the UN to changing needs and therefore concerns the *effectiveness* of the UN in respect of the three pillars. As such, the measures introduced in this regard are designed to give effect to the particular agenda. Hence the Human Rights Council and the notion of the responsibility to protect are both designed to give effect to the UN human rights agenda and, by implication, the UN development and security agendas.

In summary this overview of the UN documents as they pertain to current efforts to reform the UN establishes a clear link between human security and UN reform. For as the SG acknowledged in the Millennium Report, reform of the UN is necessary as the founding aims of the UN, that of freedom from fear and freedom from want, remain elusive.<sup>249</sup> This link was reiterated and strengthened in the Millennium Declaration and *In Larger Freedom*.<sup>250</sup> In this respect, by consistently reaffirming the purposes of the UN, the documents ensure that the link between human security and UN reform is firmly rooted in

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<sup>246</sup> UN GA Res 60/1 (n 169) para. 9.

<sup>247</sup> Ibid para. 146.

<sup>248</sup> The SG noted that the capacity of the CHR ‘to perform its tasks has been increasingly undermined by its declining credibility and professionalism’, before urging member states to replace the CHR with a HR Council. UN SG, *In Larger Freedom* (n 148) para. 182 (Commission on Human Rights failures) and para. 183 (replacement of the Commission on Human Rights).

<sup>249</sup> UN SG, *We the Peoples* (n 1) 17.

<sup>250</sup> For example, the Millennium Declaration states: ‘We will spare no effort to make the United Nations a more effective instrument for pursuing all these priorities’ of human rights, security and development. UN GA Res 55/2 (n 176) para. 29. Similarly the SG asserts that for the UN to respond to the challenges, in the fields of human rights, security and development, ‘it must be fully adapted to the needs and circumstances of the twenty-first century’. UN SG, *In Larger Freedom* (n 148) para. 153.

the UN Charter.<sup>251</sup> Thus, the primary conclusion to be drawn from the overview is that a symbiotic and mutually reinforcing relationship exists between human security and UN reform. In short, human security provides the impetus for and the principled direction of the efforts to reform the UN. The implications of this proposition are explored in more depth in Chapters Five and Six.

## V. CONCLUDING REMARKS

The UN has embraced the Charter mandate to achieve human security to varying degrees and with varying success. The process of codification of human rights standards and norms by the UN has undoubtedly consolidated the position of the individual in international law and has tempered the adverse affect of sovereignty, in particular the resort to Article 2 (7) and domestic jurisdiction, on UN human rights protection as has UN activity in the field of human rights. Thus, by emphasizing the centrality of human rights and by etching out a role for the UN, human security challenges the traditional notion of sovereignty. Nonetheless, while blue ribbon commissions such as the HLP and the ICISS are re-casting this traditional notion of sovereignty, the issue of sovereignty persists for the achievement of human security by the UN as key organs such as ECOSOC and the CHR have been constrained by references to sovereignty. In addition to considerations of sovereignty and human rights protection, the capacity and effectiveness of the UN in realizing the Charter mandate to achieve human security was questioned by the existence of operational and institutional challenges in the fields of security and development, exemplified by a decentralized collective security system and a diaspora of institutions dedicated to development. In the last analysis, the UN possesses an inconsistent record in terms of realizing the Charter mandate to achieve human security. Nevertheless, the centrality accorded to the interdependence of human rights, development and security in UN reform is an important step towards the achievement of human security by the UN.

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<sup>251</sup> For example the SG reaffirms the purposes and principles of the Charter and indeed the Universal Declaration of Human Rights when putting forward his proposals for consideration by the Millennium Summit. UN SG, *We the Peoples* (n 1) 77.

## CHAPTER FOUR

### ACHIEVING HUMAN SECURITY THROUGH UN HUMAN RIGHTS LAW: PROSPECTS AND CHALLENGES

#### I. INTRODUCTION

This Chapter explores the prospects and challenges of achieving human security through United Nations (UN) human rights law. The Chapter does not aim to pronounce definitively on the achievement of human security by way of UN human rights law that is, to assess the achievement of human security *per se* 'as a future end state'.<sup>1</sup> Rather the focus of the Chapter is firmly placed on the *capacity* of UN human rights law to contribute to the achievement of human security. The Chapter departs from the premise that if human rights are the linchpin of human security, then the international law of human rights and UN human rights law in particular should have something to say about the achievement of human security. More particularly the Chapter explores the implications of the argument advanced in Chapter Three that UN human rights law provides a normative and legal basis for achieving human security.

The Chapter consists of three substantive parts the first of which assesses the prospects of achieving human security through UN human rights law (Part II). This is conducted by drawing out the dynamic elements or features of UN human rights law that contribute to the progressive achievement of human security. Nevertheless, while the prospects of achieving human security through UN human rights law would appear assured, the assessment reveals the detrimental impact of sovereignty on human rights protection. Hence the next part of the Chapter is devoted to detailing the mechanics of the countervailing and opposing logics of 'sovereignty' and 'human rights protection' which are born from situating human rights in international law (Part III). It is against this background that the Chapter moves to identify and critically examine the challenges and obstacles of achieving human security through UN human rights law in the final part of the Chapter (Part IV).

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<sup>1</sup> David Beetham, *Democracy and Human Rights* (Polity Press Cambridge 1999) 144.

## II. UN HUMAN RIGHTS LAW: PROSPECTS FOR ACHIEVING HUMAN SECURITY

This Part provides an exposition of the UN legal regime for the protection of human rights. The task is to identify the dynamic elements of UN human rights law that contribute to the progressive achievement of human security. This is undertaken by analysing the UN legal regime for human rights protection by way of reference to two guiding questions namely, *who* does UN human rights law provide security for, and *what* does UN human rights law provide security for. However, before embarking on this exercise it is useful to recall why these two questions guide the assessment of UN human rights law.<sup>2</sup>

The questions guiding the analysis of the UN legal regime for the protection of human rights are taken from David Baldwin's treatise on security.<sup>3</sup> As noted in Chapter One, Baldwin devised a series of questions to specify more closely the term security. He departed from an understanding of the essence of security as captured in 'the basic intuitive notion underlying most uses of the term security'.<sup>4</sup> From this starting point Baldwin derived the two fundamental questions namely 'security for whom' and 'security for what values', which are sufficient for the specification of 'security'. As the essence of human security is freedom from fear and want, from which the proposition that human rights provide the normative and legal basis for achieving human security emerged in Chapter Three, adapting Baldwin's two fundamental questions to UN human rights law provides further specification of human security. Thus the questions identified in Chapter One 'human security for whom' and 'human security for what values' are reformulated as '*who* does UN human rights law provide human security for' and '*what* does UN human rights law provide human security for'. By asking these questions the analysis of the UN human rights legal regime is firmly focused on the essence of human security that is, freedom from fear and want, and provides further specification of what is meant by 'human security'. These questions also provide the basis from which to begin to analyse the implications of the proposition that human

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<sup>2</sup> See Chapter One.

<sup>3</sup> David Baldwin, 'The Concept of Security' (1997) 23 *Review of International Studies* 5. Kanti Bajpai produced an excellent analysis of human security by way of reference to David Baldwin's questions to which I am indebted for this approach. See Kanti Bajpai, 'Human Security: Concept and Measurement' (Kroc Institute Occasional Paper #19:OP:1, August 2000)

<[http://www.nd.edu/~krocinst/ocpapers/op\\_19\\_1.pdf](http://www.nd.edu/~krocinst/ocpapers/op_19_1.pdf)> accessed 16 May 2005. See Chapter One.

<sup>4</sup> Baldwin (n 3) 13.

rights are the defining linchpin of human security, and from there, to identify the prospects and challenges of achieving human security through UN human rights law.

### *A. UN Human Rights Law*

As explained in Chapter Three, the term ‘UN human rights law’ refers to the corpus of international treaties concluded under the auspices of the UN for the protection and promotion of human rights and which necessarily includes customary international law and ‘general principles’ as sources of UN human rights law. This body of law includes, although it is not limited to, the relevant UN Charter provisions such as Article 55, the Universal Declaration of Human Rights (UDHR),<sup>5</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>6</sup> and the International Covenant on Civil and Political Rights (ICCPR).<sup>7</sup> The latter three documents are often collectively referred to as the International Bill of Rights. Other international human rights treaties include: the Convention on the Elimination of all Forms of Racial Discrimination (CERD) 1965, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984, the Convention on the Rights of the Child (CRC) 1989 and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICPRMW) 1990.<sup>8</sup> Thus, while the UN Charter provides the legal basis for UN human rights law and the UDHR the normative foundation, it is the international treaties concluded under the auspices of the UN that create legal obligations for state parties. As such the multitude of UN treaty law pertaining to the promotion and protection of human rights provides the reference point from which to begin to answer the questions of *who* does UN human rights law provide security for and *what* does UN human rights law provide security for. The first step is to impose order on the ever-increasing plethora of UN human rights treaties.<sup>9</sup>

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<sup>5</sup> UN GA Res 217A (III), ‘Universal Declaration of Human Rights’ (10 December 1948).

<sup>6</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

<sup>7</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

<sup>8</sup> The UN Office of the High Commissioner for Human Rights lists these five international treaties as the belonging to the core international human rights instruments. See Office of the High Commissioner for Human Rights <<http://www.ohchr.org/english/law/index.htm>> accessed 27 November 2006.

<sup>9</sup> Between 1948 and the adoption of the UDHR and the signing of the International Covenants in 1966, the UN produced a total of 34 human rights instruments of which 18 are international treaties for the protection of human rights.

**(i) UN human rights treaties**

While the list of ‘core’ UN human rights treaties varies from commentator to commentator<sup>10</sup> it is possible to classify the profusion of UN human rights treaties and the attendant protocols into two categories, the first of which is occupied by the ICCPR and the ICESCR as treaties of a *general* or *comprehensive* character. This is the first prong of what Antonio Cassese described as a ‘twofold strategy’ in translating the general principles of the UDHR into legally binding obligations.<sup>11</sup> UN treaties concluded in respect of *specific* areas fall to be considered within the second prong and thus include the Genocide Convention and the CEDAW. In this way this category may be further sub-divided, as Ian Brownlie does, into ‘conventions dealing with specific wrongs’ and ‘conventions relating to the protection of particular categories of people’.<sup>12</sup> These UN human rights treaties supplement the legally binding obligations created for state parties to the ICCPR and the ICESCR. As Louis Henkin et al explain:

Such conventions are generally designed to establish international obligations on a particular subject, for states that may not be prepared to assume all the obligations provided in the principal covenants; or to elaborate and enhance obligations on the particular subject beyond those in the covenants; or to establish procedures and provide remedies that states might be willing to assume in respect of a particular subject though not for all the subjects included in the principal covenants.<sup>13</sup>

Moreover the ICCPR rights and ICESCR rights are ‘basic rights’ in the sense employed by Henry Shue. Shue identified subsistence rights, security rights and rights pertaining to liberty as basic rights. To Shue these three rights fall to be considered as basic rights, although the enumeration is not exhaustive, as they:

are a shield for the defenseless against at least some of the more devastating and more common of life’s threats. . . [restrain] . . . economic and political forces that would otherwise be too strong to be resisted. They are social guarantees against actual and threatened deprivations of at least some basic needs. Basic rights are an attempt to give to the powerless a veto over some of the forces that would otherwise harm them the most.<sup>14</sup>

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<sup>10</sup> See for example, Manfred Nowak, *Introduction to the International Human Rights Regime* (Martinus Nijhoff Publishers Leiden/Boston 2003) 78-96; Hurst Hannum, ‘Human Rights’ in Oscar Schachter and Christopher C. Joyner (eds) *United Nations Legal Order (Vol. 1)* (CUP Cambridge 1995) 326 – 336; Antonio Cassese, *International Law* (2nd edn OUP Oxford 2005) 383; A.H. Robertson and J.G. Merrills, *Human Rights in the World: An introduction to the study of the international protection of human rights* (3<sup>rd</sup> edn rev Manchester University Press Manchester 1989) 73.

<sup>11</sup> Cassese, *International Law* (n 10) 382.

<sup>12</sup> Ian Brownlie, *Principles of Public International Law* (6<sup>th</sup> edn OUP Oxford 2003) 536.

<sup>13</sup> Louis Henkin, Gerald L. Neuman, Diane F. Orentlicher and David W. Leebron, *Human Rights*, (Foundation Press New York 1999) 331.

<sup>14</sup> Henry Shue, *Basic Rights: Subsistence, Affluence and US Foreign Policy* (Princeton University Press Princeton 1996) 18.

He acknowledges that most would not deny that security rights, such as the right not be subjected to torture, rape or physical assault, are basic rights. However, Shue presents an in-depth explication of the underlying assumptions informing this axiom in order to expose the fallacy of the common assertion that subsistence rights, or 'minimal economic security' are not basic rights for the same reasons.<sup>15</sup> He concludes that subsistence and security rights are basic rights 'because of the role that they play in both the enjoyment and the protection of all other rights'.<sup>16</sup> Rights to liberties - freedom of movement - are basic rights insofar as 'its enjoyment is a constituent part of the enjoyment of every other right'.<sup>17</sup> In sum, the three basic rights identified are needed for the enjoyment of other rights irrespective of the intrinsic value of the rights in question.

Thus the International Covenants may be properly considered as the cornerstones of UN human rights law. Furthermore, to borrow from Theodor C. van Boven, the ICCPR and the ICESCR exhibit four common features which are present and very much part of the anatomy of UN human rights treaty law.<sup>18</sup> These four features are the general provisions of the treaty, including the legal obligation imposed on states, the enumeration of rights protected, the limitation clauses and provisions detailing the implementation of the rights protected. As such an analysis these features of the ICCPR and ICESCR provide the baseline from which to begin to answer the questions of *who* does UN human rights law provide security for and *what* does UN human rights law provide security for.

## (ii) The International Covenants

The provisions of the International Covenants detail the general legal obligation undertaken by state parties, set out the human rights protected therein, institute mechanisms of supervision and monitoring compliance with the Covenants and deal with procedural aspects, such as signature and ratification of the treaties. Furthermore, in addition to structural similarities, the substance of the ICCPR and the ICESCR are comparable, for instance the Preambles to the International Covenants both proclaim the

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<sup>15</sup> This argument echoes the premise on which human rights were traditionally classified into so-called 'generation' of rights.

<sup>16</sup> Shue (n 14) 30.

<sup>17</sup> Ibid 67.

<sup>18</sup> Theodor C. van Boven, 'Survey of International Law of Human Rights' in Karel Vasak and Philip Alston (eds), *The International Dimensions of Human Rights (Vol. 1)* (Greenwood Press Westport Connecticut 1982) 91.

interdependence and interrelatedness of civil and political rights and economic, social and cultural rights,<sup>19</sup> while Part I of the ICCPR and the ICESCR contains common Article 1, the right to self-determination. There is also a degree of overlap as to the human rights protected by the Covenants, for example, the right to form a trade union and family rights are present in both the ICCPR and the ICESCR.

However, as Matthew Craven observes, a primary difference between the International Covenants is the nature of the general legal obligation created for states parties under Part II of the ICCPR and the ICESCR.<sup>20</sup> According to Article 2 (1) of the ICCPR state parties undertake 'to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant'.<sup>21</sup> Article 2 (1) of the ICESCR provides: 'each state party to the present Covenant undertakes to take steps . . . with a view to achieving progressively the full realisation of the rights recognised in the present Covenant'. These provisions are read as imposing *immediate* obligations on state parties to the ICCPR and as creating *progressive* obligations for state parties to the ICESCR. The difference in these key provisions of the International Covenants is explained by reference to the nature of the rights protected under the ICCPR and the ICESCR. The dominant view at the time of the drafting of the International Covenants and indeed which led to the bifurcation of the proposal for a single International Covenant, was the 'widely held belief . . . of a fundamental difference between human rights of the first and second generation' that is between civil and political rights and economic, social and cultural rights.<sup>22</sup> The contemporaneous UN record summarised the reasoning in the following terms:

civil and political rights were enforceable, or justiciable, or of an 'absolute' character, while economic, social and cultural rights were not or might not be; that the former were immediately applicable, while the latter were to be progressively implemented; and that, generally speaking, the former were rights of the individual 'against' the State, that is, against unlawful and unjust action of the State, while the latter were rights which the State would have to take positive action to promote. Since the nature of civil and political rights and that of economic, social and cultural rights, and the obligations of the State in respect

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<sup>19</sup> ICCPR and ICESCR, preambular para. 1 and 3.

<sup>20</sup> Matthew Craven, 'The International Covenant on Economic, Social and Cultural Rights' in Raija Hanski and Markku Suski (eds) *An Introduction to the International Protection of Human Rights: A Textbook* (Åbo Institute of Human Rights Åbo 1999) 102.

<sup>21</sup> For the meaning of 'within its territory and subject to its jurisdiction' see Henkin et al (n 13) 323 and Thomas Buergenthal, 'To Respect and to Ensure: State obligations and permissible derogations' in Louis Henkin (ed), *The International Bill of Rights: the covenant on civil and political rights* (Columbia University Press New York 1981) 73-75.

<sup>22</sup> Manfred Nowak, 'The Covenant on Civil and Political Rights' in Hanski and Suski (eds) (n 20) 86.

thereof, were different, it was desirable that two separate instruments should be prepared.<sup>23</sup>

This understanding of human rights established a dual dichotomy between negative rights/immediate obligation and positive rights/progressive obligation which dominated academic commentary and to a certain extent still reverberates.<sup>24</sup> In this regard Magdalena Sepúlveda's assertion that 'developments in international human rights law have rendered many of the drafters' assumptions untenable', is notable as it demands a re-evaluation of Article 2(1) of the International Covenants, which focuses attention on the nature of the legal obligation of states parties and thereby challenges the traditional dichotomous model of negative rights/immediate obligation and positive rights/progressive obligation.<sup>25</sup>

The second common feature of UN human rights treaties is the enumeration of rights. Part III of the International Covenants catalogue an extensive list of human rights that cover a comprehensive range of human activity. There are 23 human rights articulated in the ICCPR which Thomas Buergenthal asserts are 'drafted with juridical specificity'.<sup>26</sup> Manfred Nowak, however, is somewhat dismissive of such a claim stating that the majority of the rights in the ICCPR are couched in 'rather general terms'.<sup>27</sup> Such generality as Cassese ably demonstrates in respect of the UDHR does not lend itself to juridical specificity.<sup>28</sup> Similar observations have been made in respect of Part III of the ICESCR. For example, Buergenthal praises the ICESCR for the considerable detail with which the rights therein are described and defined, along with the frequency with which the steps that should be taken to achieve their realisation are set out.<sup>29</sup> In stark contrast Craven laments the 'excessively general manner' with which the rights are phrased.<sup>30</sup> Douglas Lee Donoho characterises the textual and interpretive indeterminateness of the normative human rights framework resulting from such

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<sup>23</sup> Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, politics and morals* (2<sup>nd</sup> edn OUP Oxford 2000) 245 citing UN SG, *Annotations on the Text of the Draft International Covenants on Human Rights*, (Geneva United Nations 1955) UN Doc A/2929, 7.

<sup>24</sup> All the standard texts refer to these dichotomies. See for example *ibid* 246.

<sup>25</sup> Magdalena Sepúlveda, *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights* (Intersentia Oxford 2003) 134.

<sup>26</sup> Thomas Buergenthal, *International Human Rights in a Nutshell* (2<sup>nd</sup> edn West Publishing Co St Paul Minn 1995) 39-40.

<sup>27</sup> Nowak, 'The Covenant on Civil and Political Rights' (n 22) 85.

<sup>28</sup> Antonio Cassese, *Human Rights in a Changing World* (Polity Press Cambridge 1990) 40.

<sup>29</sup> Buergenthal, *International Human Rights in a Nutshell* (n 26) 52.

<sup>30</sup> Craven (n 20) 105.

imprecision as a 'fundamental weakness' of UN human rights law.<sup>31</sup> He points towards the vagueness in which the substantive rights are phrased describing them as 'generally stated principles' and to the existence of 'accommodation clauses' as inviting diverse interpretations and resulting in inconsistent application.<sup>32</sup> The thrust of Donoho's position is that such a fundamental weakness renders UN human rights law ineffective as little guidance is forthcoming as to the 'specific content and meaning' of the enumerated rights.<sup>33</sup> Nevertheless the International Covenants remain an extensive catalogue of human rights.<sup>34</sup>

In order to gain a full picture of the International Covenants it is important to note the existence of limitation or what Donoho terms 'accommodation clauses'. These may be general or specific in application in the sense that it operates in respect of the entire instrument or is specific in that it limits the exercise of a particular articulated right. A general limitation provision is Article 4 of the ICESCR which provides for the limitation of the rights protected therein for the 'purpose of promoting the general welfare in a democratic society'. The UDHR contains a similar provision limiting the operation of the Declaration mentioning, amongst others, the just requirements of morality, public order and the general welfare in a democratic society. Such factors mirror those to be considered in limiting the exercise of specific civil and political rights enumerated in the ICCPR. For example Articles 18 to 22 of the ICCPR all provide for the limitation of the right recognised therein as provided by law and which is necessary to, amongst others, protect public order, health, or the fundamental rights and freedoms of others. Furthermore, the civil and political rights recognised in the ICCPR are subject to an additional limitation clause. Article 4 of the ICCPR provides for derogation from the obligations imposed therein in times of public emergency, although no derogation is permitted in respect of certain rights recognised by the ICCPR, such as the right to life (Article 6). Donoho places emphasis on the 'accommodation clauses' of UN human rights treaties as an additional point of concern for the overall effectiveness of UN human rights law. Accommodation or limitation clauses restrict the application of the substantive right by way of reference to public order and national security,

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<sup>31</sup> Douglas Lee Donoho, 'The Role of Human Rights in Global Security Issues' (1993) 14 *Michigan Journal of International Law* 827

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid* 840.

<sup>34</sup> The majority of literature proceeds on the basis of a comparison with the UDHR to produce a selective synthesis of the rights enumerated in the International Covenants. However in terms of the ICCPR comparative analysis also occurs against the ECHR and the ACHR. See for example Nowak, *Introduction* (n 10) 79.

amongst others, and must be prescribed by the *national* law of the state party. Thus not only does the indeterminateness of UN human rights provisions invite, on Donoho's analysis, diverse interpretations and inconsistent application by states, but it also ensures that the state maintains control of the human rights obligation in question.

The provisions of the ICCPR and the ICESCR setting out the supervisory mechanism constitute the fourth common feature of UN human rights laws. In addition to the difference between the general legal obligation imposed under the ICCPR and the ICESCR, Craven points to the supervisory or monitoring machinery instituted for the 'implementation' of the Covenants as a second primary difference.<sup>35</sup> There are four mechanisms traditionally employed by UN human rights treaties which are provided for to varying degrees. These implementation mechanisms are the creation of a monitoring body, the institution of reporting procedures, the establishment of complaint mechanisms and lastly, the provision for investigation procedures. The ICCPR has a double system of supervision with provision for state reports and an inter-state complaints procedure,<sup>36</sup> while the ICESCR provides for state reports as the primary supervisory mechanism. State parties to the ICCPR are under an obligation to submit periodic reports to the Human Rights Committee (HRC) detailing the measures taken to 'give effect to the rights recognised therein and on the progress made in the enjoyment of those rights'.<sup>37</sup> The ICCPR also makes detailed provision for inter-state complaints to be received and considered by the HRC which is contingent upon a declaration by a state party recognising the competency of the HRC in this regard.<sup>38</sup> Since the entry into force of the ICCPR in 1976, state parties have not exercised this option. In contrast the ICESCR only directly provides for the state reporting procedure under Article 16. As with its sister Covenant, and indeed UN human rights law generally, the obligation imposed on state parties to submit periodic reports to the ICESCR, is a *compulsory* supervisory mechanism.

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<sup>35</sup> Craven correctly and somewhat ironically, observed that these provisions were originally called the 'implementation' measures. Craven (n 20) 102. See generally, Matthew Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (Clarendon Paperbacks Oxford 1998) 35 – 43.

<sup>36</sup> Robertson and Merrills (n 10) 41.

<sup>37</sup> ICCPR, Article 40.

<sup>38</sup> ICCPR, Articles 41 and 42.

The compulsory nature of the obligation to submit periodic reports detailing the measures and progress in giving effect to protected human rights prompted the observation that:

In the UN human rights system, states give up their sovereignty only insofar as they are obliged to submit a report to the international organisation.<sup>39</sup>

Upon closer inspection of the reporting procedure under the International Covenants the potency for human rights protection, if any, of this observation is somewhat diluted. The ICCPR and the ICESCR have comparable reporting procedures in that both stipulate that state parties submit their initial state report one year following the entry into force of the International Covenants which occurred in 1976. Subsequent state reports are made every five years in the case of the ICESCR and usually every four years under the ICCPR. States acceding to the Covenants after 1976 have one year to submit their initial report to the HRC and two years to submit under the ICESCR reporting procedure. There are currently 160 state parties to the ICCPR and 155 state parties to the ICESCR and the number of overdue state reports stands at 203 and 229 respectively. Amongst the proposals to streamline the state reporting procedure currently being considered by the UN is the production of a single report thereby consolidating reporting obligations.<sup>40</sup> Thus it remains that states have reduced the potency of the only compulsory supervisory mechanism of UN human rights law.<sup>41</sup>

Markus G. Schmidt described the procedure for individual petition to various UN human rights treaty monitoring bodies as ‘one of the major achievements of UN efforts aimed at the protection and promotion of human rights’.<sup>42</sup> Indeed Theodor Meron, writing in 1990, bemoaned the absence of the individual petition procedure from the

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<sup>39</sup> Christoph Schreuer, ‘The Waning of the Sovereign State: Towards a New Paradigm for International Law?’ (1993) 4 *European Journal of International Law* 448, 448.

<sup>40</sup> See for example Office of the United Nations High Commissioner for Human Rights, ‘Note on Effective Functioning of Human Rights Mechanisms’ (26 February 2003) E/CN.4/2003/126. See also the proposals for a universal periodic review (UPR) under the HR Council. Felice D. Gaer, ‘A Voice not an Echo: Universal Periodic Review and the UN Treaty Body System’ (2007) 7 *Human Rights Law Review* 109.

<sup>41</sup> This is not to suggest that treaty-monitoring bodies have not been complicit in reducing the potency of state reporting. Donoho argues that the HRC has consciously delimited its role in relation to state-reporting and states: ‘No votes are taken, no committee findings are made, and there are no official majority positions adopted by the HRC regarding the state reports’. He continues to note the consensus within the HRC and other similar treaty bodies whereby general comments do not directly address particular violations or country-specific conditions. Donoho (n 31) 860 – 861.

<sup>42</sup> Markus G. Schmidt, ‘Individual Human Rights Complaints Procedures based on United Nations Treaties and the Need for Reform’ (1992) 41 *International and Comparative Law Quarterly* 645, 645.

CEDAW and urged the adoption of an Optional Protocol to the treaty to this end.<sup>43</sup> Such warm endorsements of the procedure for individual petition as a supervisory mechanism are unsurprising. As Cassese contends by providing for individual petition UN human rights law is directly conferring the right to petition to an international body which is exercised by an *individual* at the *international level*.<sup>44</sup> In other words, the right to petition, albeit procedural in nature, is not contingent upon state action beyond the initial accession to the relevant treaty and acceptance of the individual petition procedure. Hence, the individual petition procedure is an 'arrangement' for the guarantee of human rights in the sense employed by Shue, that is a right is only fulfilled once arrangements are in place 'for people to enjoy whatever it is to which they have the right'.<sup>45</sup>

Nevertheless there are a number of limitations to the individual petition procedure.<sup>46</sup> For instance not all states have accepted the competence of UN human rights treaty monitoring bodies to receive and consider individual petitions. The Optional Protocol to the ICCPR, arguably the 'most visible and most effective' of the individual petition procedures,<sup>47</sup> has 105 state parties as of November 2006 as against the 160 state parties to the ICCPR.<sup>48</sup> The HRC has received a total of 1490 communications and issued 547 views and decisions since the entry into force of the Optional Protocol in 1976. The volume of communications has increased exponentially in tandem with increased legal complexity of the issues raised.<sup>49</sup> Nevertheless, the mechanism is under-utilised in UN human rights law more generally as readily illustrated by the fact that the ICESCR has no provision for individual petition.<sup>50</sup>

This reveals the 'precarious' position of the right to individual petition.<sup>51</sup> As Cassese succinctly stated, the right to individual petition, 'rests on the will of states' to make

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<sup>43</sup> Theodor Meron, 'Enhancing the Effectiveness of the Prohibition of Discrimination Against Women', (1990) 84 *American Journal of International Law* 213, 216. The Optional Protocol to the CEDAW, providing for the individual petition procedure opened for signature in 1999 and came into force in 2000. As of 2 November 2006 it has 83 state parties.

<sup>44</sup> Cassese, *International Law* (n 10) 146 - 147.

<sup>45</sup> Shue (n 14) 16.

<sup>46</sup> Cassese, *International Law* (n 10) 148 -149.

<sup>47</sup> Schmidt (n 42) 646.

<sup>48</sup> <<http://www.ohchr.org/english/countries/ratification/5.htm>> accessed 9 November 2006.

<sup>49</sup> Schmidt (n 42) 647 - 648.

<sup>50</sup> An Optional Protocol to the ICESCR which would provide for an individual petition mechanism is currently being considered by an Open-Ended Working Group on an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. See <<http://www.ohchr.org/english/issues/escr/intro.htm>> accessed 28 August 2007.

<sup>51</sup> Cassese, *International Law* (n 10) 149.

provision for and to accept the procedure.<sup>52</sup> Furthermore, state parties may withdraw from UN human rights treaties at any time, with the notable exception of the International Covenants. Thus, a situation may arise, such as that which did occur when Jamaica decided to withdraw from the Optional Protocol to the ICCPR in 1997. Hence, through indeterminate provisions and supervisory mechanisms states, to paraphrase Christoph Schreuer, retain control over their human rights obligations at the international level.<sup>53</sup>

***B. Who does UN human rights law provide human security for? What does UN human rights law provide human security for?***

As noted in Chapter Three the protection of human rights in international law is a relatively new phenomenon dating to the end of the Second World War and the establishment of the UN. Before 1945 protection of individuals by international law was extended, for example, by virtue of a minority treaty or on the basis of foreign national status. The UN Charter unequivocally brings human rights into the purview of legitimate international concern, prompting what Thomas Buergenthal has termed ‘the internationalisation of human rights and the humanisation of international law’.<sup>54</sup> Louis Sohn goes further stating that the UN Charter has ‘deprived the sovereign states of the lordly privilege of being the sole possessors of rights under international law’ and thus has heralded the beginning of ‘the human rights revolution’.<sup>55</sup> Steiner and Alston voiced a similar sentiment noting the ‘radical premise’ of human rights.<sup>56</sup> The focus on the human being is undoubtedly the driving force behind UN human rights law. The recognition of the inherent dignity and equal and inalienable rights of ‘all members of the human family’ in the UDHR along with the pledge to protect human rights by the rule of law is illustrative of this dynamic force as is the subsequent treaty making activity of the UN documented above.<sup>57</sup> However the simplicity of this truism obscures an old recurring tension in UN human rights law between individual rights and group or collective rights.<sup>58</sup> As Tom J. Farer and Felice D. Gaer observe the old polarity of

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<sup>52</sup> Ibid.

<sup>53</sup> Schreuer (n 42) 448.

<sup>54</sup> Thomas Buergenthal, ‘The Normative and Institutional Evolution of International Human Rights’ (1997) 19 *Human Rights Quarterly* 703.

<sup>55</sup> Louis Sohn, ‘The New International Law: Protection of the rights of individuals rather than states’, (1982) 32 *American University Law Review* 1, 1.

<sup>56</sup> Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics and Morals* (1<sup>st</sup> edn OUP Oxford 1996) 148.

<sup>57</sup> UDHR, Preamble.

<sup>58</sup> Henkin et al observe that the term ‘group rights’ is misleading and ambiguous as it simultaneously refers to rights vested in a collectivity and to rights vested in individuals that belong to a particular group.

'individual liberty versus communal needs' resurfaced during the drafting of the International Covenants.<sup>59</sup> The prevailing cold war ideologies set in opposition the logics of individual rights and group or collective rights in terms of the status of economic, social and cultural rights in relation to civil and political rights, having already settled in favour of individual rights. Thus the rights set forth in the International Covenants are primarily individual rights and hence 'the individualistic perspective' dominates UN human rights law.<sup>60</sup>

Nonetheless it would be fallacious to assume that UN human rights law does not countenance group or collective rights. Indeed, van Boven warns against dogmatic adherence to the distinction between the rights of individuals and the rights of groups or collectives pointing towards the explicit recognition in the UDHR of the place of the individual within the community.<sup>61</sup> A similar sentiment is expressed in the Preambles to the ICCPR and the ICESCR.<sup>62</sup> Furthermore, all three instruments recognise the family as the 'natural and fundamental group unit of society'<sup>63</sup> and the UDHR also entreats all human beings to 'act towards one another in a spirit of brotherhood'.<sup>64</sup> In addition many of the rights found in the ICCPR have a collective or group dimension in that meaningful exercise of the right in question is only possible in association with others. Examples of such civil and political rights are freedom of association (Article 22) and freedom of religion (Article 18), both of which make explicit reference to the exercise of the right with others. In a similar manner, albeit somewhat more readily visible, the individual rights protected under the ICESCR have economic, social and cultural dimensions and thus the individual as a member of a community or society is easily discernible. The right to form trade unions protected under Article 8 of the ICECSR is an obvious example as are the family rights enumerated in Article 10

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See Henkin et al (n 13) 428. Thus the phrase group or collective rights is employed here to denote rights that pertain to the individual by virtue of membership of a group and 'rights that pertain to and are exercised by the collectivity'. See Steiner and Alston (n 23) 143.

<sup>59</sup> Tom J. Farer and Felice D. Gaer, 'The UN and Human Rights: At the end of the beginning' in Adam Roberts and Benedict Kinsbury (eds), *United Nations, Divided World: The UN's roles in international relations* (2<sup>nd</sup> edn OUP Oxford 1994) 250.

<sup>60</sup> Henkin et al (n 13) 429 citing Adeno Addis, 'Individualism, Communitarism, and the Rights of Ethnic Minorities' (1991) 66 *Notre Dame Law Review* 1219.

<sup>61</sup> Theodoor C. Van Boven, 'Distinguishing Criteria of Human Rights', in Vasak and Alston (ed) (n 18) 53. Article 29 (1) of the UDHR provides: 'Everyone has duties to the community in which alone the free and full development of his personality is possible'.

<sup>62</sup> The fifth preambular paragraph of both the International Covenants provide: realising that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognised in the present Covenant'.

<sup>63</sup> ICESCR, Article 10; ICCPR, Article 23; UDHR, Article 16 (1).

<sup>64</sup> UDHR, Article 1.

pertaining to, inter alia, special measures of protection and assistance for children and young persons. Hence, it is easy to appreciate van Boven's observation that the UDHR and the International Covenants place:

the human person in various social relationships of which he is an integral part, e.g. his family, his religious community, his employment, and the local, national and international order.<sup>65</sup>

There are two notable exceptions to the individualistic orientation or perspective of UN human rights law, namely the right to self-determination and the rights of minorities.<sup>66</sup> As noted above Article 1 of the International Covenants contains the right to self-determination. It proclaims that all peoples 'freely determine their political status and freely pursue their economic, social and cultural development'. This has been described as the political perspective of self-determination, whereas the economic perspective is found in Article 1 (2).<sup>67</sup> Article 1 (2) provides that all peoples may 'freely dispose of their natural wealth and resources'. Article 27 of the ICCPR makes provision for the rights of minorities in that state parties undertake not to deny to persons belonging to ethnic, religious or linguistic minorities the right 'in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language'. Thus the right to self-determination is a collective right of 'peoples' while the rights articulated in Article 27 of the ICCPR are rights of individuals by virtue of belonging to an ethnic, religious or linguistic minority. Yet, as one commentator has observed 'the terminology does not fully negate the collective nature' of the rights therein.<sup>68</sup>

It is clear that UN human rights law provides security for human beings primarily on the basis of individual rights. The avowed commitment to the full and free development of the human being within the community which is evidenced in rights such as freedom of

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<sup>65</sup> Van Boven, 'Distinguishing Criteria of Human Rights' (n 61) 54.

<sup>66</sup> These are controversial areas of UN human rights law not in the least because they challenge the individualistic foundations of UN human rights law. See more generally Sarah Joseph et al, *The International Covenant on Civil and Political Rights: Cases and Commentary* (OUP Oxford 2004) 99 (self-determination) and 571 (minorities); Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR commentary* (N.P. Engel Kehl 1993) 5 – 26 (peoples' right of self-determination); 480 – 508 (protection of minorities); Louis Henkin (ed), *International Bill of Rights: The Covenant on Civil and Political Rights* (Columbia University Press New York 1981); 92 (the self-determination of peoples) and 270 (the rights of minorities);, and Alex Conte, Scott Davidson, and Richard Burchill (ed.), *Defining Civil and Political Rights: The jurisprudence of the United Nations Human Rights Committee* (Ashgate Aldeshot 2004) Chapters 3 and 9.

<sup>67</sup> Richard Burchill, 'Self-Determination' in Conte, Davidson and Burchill (ed) (n 66) 33.

<sup>68</sup> Richard Burchill, 'Minority Rights' in Conte, Davidson and Burchill (ed) (n 66) 185. See also Allan Rosas and Martin Scheinin, 'Categories and Beneficiaries of Human Rights' in Hanski and Suski (eds) (n 20) 56-57.

religion and family rights, along with the right to self-determination and provision for minority rights, ensures that the focus of human security is the human being. As such human security is *human centred*. However, the discovery that individuals are the primary right holders under UN human rights law does expose the related issue of duty bearers.

The foregoing exposition clearly establishes that states are the duty bearers under UN human rights law in that it creates legally binding obligations for states.<sup>69</sup> In this way, human security is imbued with a *legal* character. However, as was evident from the discussion above in respect of the International Covenants, the nature of the legal obligation created can vary considerably. It will be recalled that the nature of the legal obligations assumed by state parties to the International Covenants has been debated since the drafting of the ICCPR and ICESCR, with the argument advanced that civil and political rights as being of an absolute character were immediately applicable. In contrast economic, social and cultural rights were to be progressively realised by the state thereby imposing positive obligations on the state. The minority rights provision of the ICCPR, Article 27, adds a further layer of legal obligation which is distinct from the obligation undertaken by states by virtue of Article 2 (1).<sup>70</sup>

To make sense of the multiplicity of obligations undertaken by states under UN human rights law, commentators have developed a useful analytical tool, that of typologies of obligations. Shue, having identified, as noted above, the three basic rights of security rights, subsistence rights and liberty, asserted that three correlative duties attach to these basic rights. These duties are the obligations ‘to avoid depriving’, ‘to protect from deprivation’ and ‘to aid the deprived’.<sup>71</sup> While Shue’s ‘very simple tripartite typology of interdependent duties’<sup>72</sup> has been subject to academic scrutiny and debate,<sup>73</sup> and indeed other commentators have added new typologies of obligations,<sup>74</sup> the most cited and arguably the authoritative typology of obligations under UN human rights law<sup>75</sup> is

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<sup>69</sup> See also, Christian Tomuschat, *Human Rights: Between Idealism and Realism* (OUP Oxford 2003) 37. Allan Rosas and Martin Scheinin also discuss whether non-state actors, particularly in conflict situations, have human rights obligations. Rosas and Scheinin (n 68) 59 – 60.

<sup>70</sup> Burchill, ‘Minority Rights’ (n 68) 183.

<sup>71</sup> Shue (n 14) 52.

<sup>72</sup> *Ibid.*

<sup>73</sup> See generally Sepúlveda (n 25) 157 - 164.

<sup>74</sup> For example, Steiner and Alston (n 23) 182 - 184.

<sup>75</sup> The Committee on Economic, Social and Cultural Rights has adopted a tripartite typology. See Committee on Economic, Social and Cultural Rights, ‘Outline for drafting general comments on specific rights of the International Economic, Social and Cultural Rights’ (19 November 1999) E/C.12/1999/11.

remarkably similar to that advanced by Shue.<sup>76</sup> This 'tripartite typology' consists of the obligation 'to respect', 'to protect' and 'to fulfil'.<sup>77</sup>

The *obligation to respect* human rights requires states, as the principal duty bearer under UN human rights law, to refrain from interfering with or limiting the enjoyment of the articulated rights. This necessarily involves non-discriminatory laws, practices or policies on the part of the state party and thus may require legislative or judicial measures.<sup>78</sup> An example of the obligation to respect is found in Article 2 (1) of the ICCPR which clearly demonstrates the duty of non-interference, principle of non-discrimination, and the institution of legislative or other measures. It is unsurprising that the obligation to respect has been likened to the negative right and immediate obligation dichotomy that characterised the drafting of the International Covenants.<sup>79</sup> Indeed the duty of non-interference on the part of the state is the hallmark of this dichotomy which essentially means, for example, the right to life imposes the correlative duty on the state to refrain from killing. The obligation to respect makes clear that the principle of non-discrimination and necessary legislative and other measures are required in addition to the duty of non-interference. Furthermore, Steiner and Alston argue that the obligation to respect extends beyond the state and enjoins individuals and non-state entities to respect the articulated rights.<sup>80</sup> In contradistinction, Manfred Nowak identifies the withdrawal of the state from 'areas relevant for human rights' by way of, for example, privatisation, as diminishing the state's obligation to respect and therefore increasing the likelihood of human rights violations, apparently as individuals and non-state actors do not have a comparable obligation to respect.<sup>81</sup>

The *obligation to protect* human rights requires states to prevent violations of human rights by *third parties*. It thus demands positive action by the state, for example, to create laws protecting against violation and to guarantee access to enforceable legal

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Annex IX 135 – 136. Magdalena Sepúlveda assesses the typology proposed by the Committee – obligations of immediacy, obligations of conduct and obligation to respect, to protect and to fulfil and obligation to promote. Sepúlveda (n 25) 174 – 209.

<sup>76</sup> Sepúlveda (n 25) 157.

<sup>77</sup> Cecilia M. Ljungman, 'Applying a Rights-Based Approach to Development: Concepts and Principles' (Paper presented at 'The Winners and Losers from the Rights-Based Approaches Development', University of Manchester, February 2005) 4; Nowak, Introduction (n 10) 49- 51.

<sup>78</sup> The creation of 'institutional machinery essential to the realisation of rights' is the second component of Steiner and Alston's typology. Steiner and Alston (n 23) 182 - 183.

<sup>79</sup> Ibid 182 and Nowak, Introduction (n 10) 49.

<sup>80</sup> Steiner and Alston (n 23) 182.

<sup>81</sup> Nowak, Introduction (n 10) 49.

remedies. Such positive state action is directed towards individuals and non-state entities. This challenges not only the utility of the traditional negative/positive rights distinction as Steiner and Alston contend,<sup>82</sup> but also the dominant position accorded to the vertical relationship of state and individual in UN human rights law.<sup>83</sup> It does so by entailing the ‘application of human rights between individuals or other private subjects’.<sup>84</sup> Nonetheless, Nowak’s warning against conflating the obligation to protect with the issue of the extent to which human rights obligations under UN human rights law have horizontal effect remains.<sup>85</sup>

According to Nowak the *obligation to fulfil* ‘refers to the state’s obligation to take legislative, administrative, judicial and practical measures necessary to ensure that the rights in question are implemented to the greatest extent possible’.<sup>86</sup> To Cecilia M. Ljungman the obligation to fulfil involves ‘issues of advocacy, public expenditure, governmental regulation of the economy, the provision of basic services and related infrastructure and redistributive measures’.<sup>87</sup> In many respects this understanding of the obligation to fulfil human rights resembles an amalgamation of the fourth and fifth components in Steiner and Alston’s typology of obligations that of the obligation to provide goods and services to satisfy rights and the obligation to promote rights, the content of which are self-evident.<sup>88</sup> It is unsurprising that this third pillar in the tripartite typology has been further sub-divided to include the obligation to facilitate, the obligation to provide and the obligation to promote.<sup>89</sup> The obligation to facilitate refers to the active engagement by the state by way of measures to guarantee opportunities to enjoy the human rights in question, while the state’s obligation to provide pertains to the *direct* provision of the relevant right. This aspect of the obligation to fulfil is evident in the right to primary education (Article 14 ICESCR) where the right demands direct provision by the state, although the obligation to provide also applies to situations when

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<sup>82</sup> Steiner and Alston (n 23) 183.

<sup>83</sup> It is acknowledged that there are reasons for this position, in particular the argument that if international law recognises obligations as regards human rights between individuals this would arguably ‘dilute the notion of individual inalienable rights’. See Rosas and Scheinin (n 68) 58.

<sup>84</sup> Ibid 50.

<sup>85</sup> Nowak, *Introduction* (n 10) 50.

<sup>86</sup> Ibid 49.

<sup>87</sup> Ljungman (n 77) 4.

<sup>88</sup> Steiner and Alston (n 23) 183 - 184.

<sup>89</sup> UN Committee on Economic, Social and Cultural Rights. ‘General Comment No. 12’ (12 May 1999) UN Doc E/C.12/1999/5; Maastricht Guidelines, ‘Maastricht Guidelines on Violations of Economic, Social and Cultural Rights’ (22 – 26 January 1999) <[http://www1.umn.edu/humanrts/instree/Maastrichtguidelines\\_.html](http://www1.umn.edu/humanrts/instree/Maastrichtguidelines_.html)> accessed 28 August 2007, paras. 6

individuals are unable to realise their rights under the prevailing conditions, such as natural disasters. Finally, the third prong of the obligation to fulfil, the obligation to promote, encompasses research, training and dissemination activities.

The tripartite typology recognises that the obligations to respect, to protect and to fulfil are necessary for the enjoyment of human rights, whether civil and political rights or economic, social and cultural rights. By eschewing the emphasis on the nature of human rights the typology jettisons the simplistic dichotomies of negative right/immediate obligation and positive right/progressive obligation. The typology favours analysis on the basis of the proposition, first advanced by Shue, that each human right imposes a number of different but interdependent obligations. Thus, in the last analysis, the tripartite typology uncovers three perspectives to the legal character of human security, namely to respect, protect and fulfil the human rights of human beings. Human security, by extension, is *preventive, protective and empowering/enabling*.

UN human rights law enunciates numerous human rights. The International Covenants alone set forth 32 human rights. The question is thus raised as to whether human security distinguishes between human rights or, put more simply, which human rights provide the content of human security. There are two ways, found in the academic literature, in which human security may potentially distinguish between human rights and thereby delineate the content of human security. First human rights have been distinguished on the basis of the nature of the human rights - civil and political rights or economic, social or cultural rights - and, second on the basis that, following the argument of van Boven, certain human rights are 'fundamental'.<sup>90</sup> The idea of generations of rights and, more particularly, the superiority of civil and political rights has been questioned.<sup>91</sup> The indivisibility of human rights is now well settled as a principle of UN human rights law as is the interdependence and interrelatedness of human rights. In 1993 the UN Vienna Declaration and Programme for Action proclaimed that: '[a]ll human rights are universal, indivisible and interdependent and interrelated.'<sup>92</sup> The GA had previously articulated the principle of the interdependence

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<sup>90</sup> Van Boven, 'Distinguishing Criteria of Human Rights' (n 61) 43.

<sup>91</sup> Javaid Rehman, *International Human Rights Law: A practical approach* (Longman Harlow 2003) 105.

<sup>92</sup> UN GA, 'Vienna Declaration and Programme of Action' (12 July 1993) UN Doc A/CONF.157/23, para. 5.

and interrelatedness of human rights in 1950<sup>93</sup> which was subsequently mirrored in the Preambles of the International Covenant.<sup>94</sup> Nonetheless the onset of the Cold War ensured the perpetuation of the distinction between civil and political rights and economic, social and cultural rights, notwithstanding the assertion of the principle of interdependence and interrelatedness of civil and political rights and economic, social and cultural rights in the International Covenants. The Vienna Declaration is a welcome restatement and reaffirmation of the principles of indivisibility and interdependence and interrelatedness of human rights. Indeed a further two principles of UN human rights law may be distilled from the Vienna Declaration, that of equality and non-discrimination and the universality and inalienability of human rights.<sup>95</sup> These four principles of UN human rights law are the normative underpinnings of UN human rights law. As such they provide a benchmark against which to assess van Boven's argument for distinguishing between human rights and, in turn, to determine which human rights provide the content of human security.

Van Boven advances an argument for a hierarchy of human rights based on a distinction between 'fundamental' human rights and 'other' human rights.<sup>96</sup> He readily acknowledges that 'the fundamental nature of certain rights has been a matter of different appreciation and evaluation',<sup>97</sup> but nevertheless continues to make a persuasive case for distinguishing between human rights which rests on two pillars. The first pillar is the existence of what van Boven calls 'supra-positive rights'. These are described as 'rights whose validity is not dependent on their acceptance by the subjects of law but which are at foundation of the international community'.<sup>98</sup> This invokes the idea of peremptory norms, which are defined by the Vienna Convention on the Law of Treaties as norms that are 'accepted and recognised by the international community of states as a whole as a norm from which no derogation is permitted'.<sup>99</sup> The allusion is particularly strong as van Boven refers to apartheid as achieving a 'prominent position' within the scheme of supra-positive rights before proceeding to discuss non-derogable rights.<sup>100</sup>

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<sup>93</sup> UN GA Res 421 (V) (E), 'Draft International Covenant on Human Rights and measures of implementation: future work of the commission on human rights' (4 December 1950).

<sup>94</sup> ICCPR and ICESCR, preambular para. 3.

<sup>95</sup> UN GA, 'Vienna Declaration' (n 92) para 1 (universality and inalienability) and para 15 (equality and non-discrimination)

<sup>96</sup> van Boven, 'Distinguishing Criteria of Human Rights' (n 61) 43 - 59.

<sup>97</sup> Ibid 43.

<sup>98</sup> Ibid.

<sup>99</sup> Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT) Article 53.

<sup>100</sup> van Boven, 'Distinguishing Criteria of Human Rights' (n 61) 44.

The second pillar upon which van Boven's argument rests is the existence of non-derogable rights as evidenced in treaties such as common Article 3 of the Geneva Conventions and Article 4 of the ICCPR. The former stipulates a minimum standard in times of non-international conflict, and the latter lists rights from which no derogation is permitted even when an emergency situation prevails. Such rights include the right to life and freedom from torture or cruel, inhuman or degrading treatment or punishment. The existence of non-derogation clauses prompts van Boven to conclude that 'there is at least a minimum catalogue of fundamental or elementary human rights'.<sup>101</sup> In support of this hierarchy of human rights van Boven refers to, *inter alia*, the procedures instituted under ECOSOC Resolutions 1235 and 1503 as innovations in UN practice to examine violations of human rights and fundamental freedoms which are premised on 'the fundamental nature of the human rights norms involved'.<sup>102</sup>

In this way van Boven distinguishes between 'fundamental' human rights and 'other' human rights, where fundamental rights are binding on states, irrespective of consent by way of treaty and are valid at all times as no derogation is permitted. However in introducing another dichotomy of 'fundamental' human rights and 'other' human rights, van Boven transgresses at least two of the principles providing the normative underpinnings of UN human rights law. Indeed, van Boven appreciates that he is resisting the pull of the mainstream thinking on the indivisibility of human rights in advocating a hierarchy of human rights and thereby dividing the 'single package'.<sup>103</sup> Further the pillars upon which van Boven founds his hierarchy of human rights impinges on the principle of interdependence and interrelatedness of all human rights regardless of whether civil and political rights or economic, social and cultural rights. By emphasising non-derogable rights in his scheme, as these are civil and political rights, van Boven rejuvenates the argument on the superiority of civil and political rights.

Magdalena Sepúlveda holds that 'useful distinctions are not to be made between rights but, rather, between different kinds of duties'.<sup>104</sup> While this statement is directed towards distinguishing between rights on the basis of whether the rights are civil and

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<sup>101</sup> Ibid 46.

<sup>102</sup> Ibid 48.

<sup>103</sup> Ibid 43.

<sup>104</sup> Sepúlveda (n 25) 157.

political or economic, social and cultural in nature and thus marks a rejection of the idea of generations of human rights, it is equally valid for van Boven's argument regarding the 'fundamental' nature of human rights. More importantly, it indicates the path forward as attention is reoriented towards the legal obligations created by UN human rights law. In particular it brings into sharp relief the tripartite typology of the obligation to respect, the obligation to protect and the obligation to fulfil. Indeed Sepúlveda argues that 'it is easier to assess what specific state behaviours are necessary or compulsory for the implementation of a right, thereby increasing the understanding of its content'.<sup>105</sup> Thus the focus on the legal obligation not only serves to determine the content of human security as the human rights found in the entire corpus of UN human rights law, it also helps to alleviate the indeterminateness of UN human rights provisions that was seen as a fundamental weakness by Donoho. The focus on the *typology* of human rights obligations, however rudimentary, with the focus on the legal obligation produces, serves to further delineate human security. Hence, a template of human security thresholds is produced by the tripartite typology of the obligations to respect, to protect, and to fulfil. In this regard it will be recalled that Chapter One emphasised the importance of a human security threshold in order to harness the analytical and practical value of human security.

This assessment of UN human rights law provides further specification of 'human security'. Human security is human centred, preventive, protective and empowering, the content of which is defined by way of reference to UN human rights law as underpinned by the principles of equality, non-discrimination, and the universality and inalienability of human rights. In other words, the cumulative effect of these observations is to support the proposition advanced in Chapter Three that UN human rights law provides the *legal* and *normative* basis for achieving human security. However, while the prospects of achieving human security on the basis provided by UN human rights law would appear assured, the foregoing exposition of UN legal regime for the promotion and protection of human rights reveals that the logics of the state are perhaps inimical to human rights protection. This is unsurprising given the 'revolutionary' precept of UN human rights law, against which states employ indeterminate language and weak supervisory mechanisms to retain control over their human rights obligations at the international level. As such the tension between the logics of 'state' and 'individual',

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<sup>105</sup> Ibid 12.

born from situating human rights protection in international law, are manifested in provisions of UN human rights treaty law, which raises the question of the effectiveness of UN human rights law as the legal and normative basis for achieving human security. Before embarking on such an assessment of UN human rights law, it is necessary to return to the countervailing logics of ‘human rights protection’ and ‘sovereignty’.

### III. OF ‘HUMAN RIGHTS PROTECTION’ AND ‘SOVEREIGNTY’

It will be recalled that Chapter Three charted the penetrating effect of human rights on sovereignty. This penetrating effect has helped to produce what one commentator has described as a ‘simple binary opposition’ comprised of the proposition that, on the one hand, the ‘erosion of sovereignty is a bell-wether of progress for human rights’ and, on the other, sovereignty vitiates human rights protection.<sup>106</sup> In the latter respect, it is clear from the preceding Part that sovereignty does effect human rights protection as states have employed a number of tools, such as indeterminate language and weak supervisory mechanisms, by which to retain control over their UN human rights obligations. This Part briefly returns to re-examine sovereignty in order to begin to illuminate the converse relationship with human rights protection from that charted in Chapter Three. In order to do so the Part draws a distinction between sovereignty as a *political* and *legal* construct.

The UN is founded on the principle of the sovereign equality of all states (Article 2 (1) which ‘embraces two logically distinct notions’ namely sovereignty and legal equality.<sup>107</sup> The latter is conventionally understood as entailing that all states are equal in law.<sup>108</sup> While this is not intended to countenance the factual disparities between states born of economic or political considerations, a potential disjuncture appears upon closer inspection of the UN Security Council in which special powers and functions are bequeathed to the five permanent members of the US, the UK, Russia, China and France.<sup>109</sup> However, ‘sovereignty’, as the other notion embraced by the principle of sovereign equality, epitomises political realities as it speaks to the capacity or the power

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<sup>106</sup> Karima Bennoune, ‘Sovereignty Vs Suffering’? Re-examining Sovereignty and Human Rights through the Lens of Iraq’ (2002) 13 *European Journal of International Law* 241, 244.

<sup>107</sup> Cassese, *International Law* (n 10) 48.

<sup>108</sup> Henkin sees the legal conception of the equality of states as entailing that states are ‘equal in status, person-hood, legal capacity, rights, duties, and responsibilities’. Louis Henkin, *International Law: Politics and Values* (Kluwer Law International Boston/The Hague/London 1995) 10.

<sup>109</sup> The special powers and functions of the permanent five arguably do not breach the principle of legal equality as they originate in the exercise of sovereignty. Nevertheless, it is a clear legal expression of the unequal status of some states. *Ibid* 11.

of states over a people and territory. The anatomy of sovereignty is such that it possesses an *internal* aspect and an *external* aspect, which are generally accepted as the defining characteristics of sovereignty.<sup>110</sup> Hedley Bull described the internal aspect of sovereignty as meaning ‘supremacy over all other authorities within that territory and jurisdiction’ and the external aspect as ‘independence of outside authority’,<sup>111</sup> to which Martti Koskenniemi imparted a legal aura when he equated internal sovereignty to self-determination and read external sovereignty as independence which he then explained in terms of jurisdiction over a territory.<sup>112</sup> Indeed there are a number of principles that support sovereignty including self-determination, jurisdiction over a territory and population, the prohibition on the use of force, and the duty of non-interference.<sup>113</sup> Thus the principle of sovereignty is ‘supported by a whole range of corollary principles and rules’<sup>114</sup> and in this way a distinction between sovereignty as a political and legal construct may be drawn, the contours of which are revealed in part.

In addition sovereignty is regulated by law, such as those obligations arising under treaty law and indeed those stemming from customary international law.<sup>115</sup> For instance, the law on state immunity exists precisely to delineate the exercise of sovereignty.<sup>116</sup> In this light, Brownlie’s observation that ‘the whole of law could be expressed in terms of the co-existence of sovereignties’ resonates strongly.<sup>117</sup> Nonetheless, it clear that law supports *and* restricts sovereignty. Thus drawing a distinction between sovereignty as a political and legal construct offers a departure point from which to penetrate beyond the simple binary opposition of sovereignty as bad for human rights protection, the erosion of which is good for human rights protection.

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<sup>110</sup> Cynthia Weber, *Simulating Sovereignty: Intervention, the State, and Symbolic Exchange* (CUP Cambridge 1995) 1.

<sup>111</sup> Hedley Bull, *The Anarchical Society: A Study of order in world politics* (Palgrave Basingstoke 2002) 8.

<sup>112</sup> Martti Koskenniemi, *From Apology to Utopia: The structure of international legal argument* (Finnish Lawyer’s Publishing Company Helsinki 1989) 207.

<sup>113</sup> See for example, Brownlie (n 12) 287.

<sup>114</sup> Max Plank Institute for Comparative Public Law and International Law, *Encyclopedia of Public International Law* (North-Holland Amsterdam/New York/Oxford/Tokyo 1987) 410.

<sup>115</sup> Cassese, *International Law* (n 10) 98; Brownlie (n 12) 288.

<sup>116</sup> See Hazel Fox, ‘International Law and Restraints on the Exercise of Jurisdiction by National Courts of States’ in Malcolm D. Evans (ed), *International Law* (2<sup>nd</sup> edn OUP Oxford 2006) 361

<sup>117</sup> Brownlie (n 12) 287.

#### IV. THE EFFECTIVENESS OF UN HUMAN RIGHTS LAW: CHALLENGES FOR ACHIEVING HUMAN SECURITY

This Part examines the *effectiveness* of UN human rights law as the legal and normative basis for achieving human security, and places particular emphasis on identifying and assessing obstacles or challenges to the achievement of human security which stem from UN human rights law. As intimated in the preceding Part, the logics of the sovereignty do not necessarily coalesce with those of human rights protection. Hence, this Part advances the specific argument that the exercise of sovereignty by states hampers the effectiveness of UN human rights law for achieving human security. This is illustrated by examining reservations to UN human rights treaties in terms of the countervailing logics of ‘human rights protection’ and ‘sovereignty’ to determine the effectiveness of UN human rights law as the legal and normative basis for achieving human security. The reason for the focus on reservations to UN human rights treaties is twofold, firstly as evidenced above, UN human rights law is predominantly treaty-based and secondly, UN human rights treaties are subject to a disproportionately high number of reservations in comparison to other multilateral treaties. This is significant for present purposes as the effect of a reservation is to ‘exclude or modify the legal effect’ of the provision of the UN human rights treaty in question.

##### *A. Reservations to UN Human Rights Treaties*

The issue of reservations to UN human rights treaties and human rights treaties in general<sup>118</sup> is as complex as it is perplexing.<sup>119</sup> Indeed academic scholarship remains divided on the key issue of the effect of reservations, detrimental or beneficial, on human rights treaties.<sup>120</sup> This is often reduced to the basic dichotomous proposition that treaty integrity is undermined by reservations<sup>121</sup> while on the other hand reservations ensure widespread participation by states and thereby contribute to the universality of

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<sup>118</sup> The three regional human rights treaties provide for reservations. On reservations to regional human rights treaties see Susan Marks, ‘Three Regional Human Rights Treaties and their Experience of Reservations’ in J. P. Gardner (ed), *Human Rights as General Norms and a State's Right to Opt Out: Reservations and objections to human rights conventions* (British Institute of International and Comparative Law London 1997) 64.

<sup>119</sup> Rosalyn Higgins, ‘Introduction’ in Gardner (ed.) (n 118) xv; Liesbeth Lijnzaad, *Reservations to UN Human Rights Treaties: Ratify and ruin?* (Martinus Nijhoff Publishers Dordrecht 1995) 3.

<sup>120</sup> See for example Belinda Clerk, ‘The Vienna Convention Reservations Regime and the Convention on Discrimination against Women’ (1991) 85 *American Journal of International Law* 281. Cf. Edward T. Swaine, ‘Reserving’ (2006) 31 *Yale Journal of International Law* 307.

<sup>121</sup> Treaty integrity for present purposes refers to ‘protection of the treaty as a coherent whole, self-sufficient by virtue of its own terms’ *per* Rosalyn Higgins, ‘The United Nations: Still a force for peace’ (1989) 52 *Modern Law Review* 1, 1.

the given treaty regime.<sup>122</sup> The International Law Commission (ILC), the body charged with the codification and progressive development of international law,<sup>123</sup> is content to affirm the status quo by offering clarification of the existing legal rules as found in the Vienna Convention on the Law of Treaties 1969 (VCLT).<sup>124</sup> The ILC has also resisted calls to reform the relevant provisions of the VCLT regardless of whether wholesale reform or modification of the current reservations regime is suggested. This section provides an account of the motivations prompting states to enter reservations to UN human rights treaties before turning to detail the applicable law on reservations under the VCLT.

### (i) Why States Enter Reservations to UN Human Rights Treaties

According to Ryan Goodman when states consent to be bound by human rights treaties they do so in order to, first, 'promote human rights standards (whether domestically or internationally or both)' and second, 'to minimise the treaty's infringement on aspects of domestic sovereignty that the state does not want to relinquish'.<sup>125</sup> By entering reservations, Goodman asserts states are able to accomplish both goals. The International Court of Justice (ICJ) in the *Genocide Convention Case* framed these goals in terms of a dichotomous tension between human rights protection and national sovereignty which the Court resolved by finding that the object and purpose of a treaty limits the freedom of states to make reservations to the treaty in question, that is restricts the exercise of sovereignty by the state concerned.<sup>126</sup> Yet, Jeremy McBride argues, on the basis of state practice, that states do not necessarily enter reservations in furtherance of national sovereignty.<sup>127</sup> Rather, McBride asserts that the motivation prompting the formulation of a reservation by a state is multifaceted and may in fact include human rights concerns. In this respect, he refers to the capacity of a state to safeguard the human rights obligations enunciated in the given treaty as factor in the

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<sup>122</sup> The ICJ attempted to chart a mid-way course between these considerations. *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* (Advisory Opinion) 1951 <<http://www.icj-cij.org/docket/files/12/4283.pdf>> accessed 28 August 2007. A similar rationale also underpins the relevant provisions of the VCLT. International Law Commission (ILC), 'Report on the Draft Articles of the Vienna Convention on the Law of Treaties with commentaries 1966' <[http://untreaty.un.org/ilc/texts/instruments/english/commentaries/1\\_1\\_1966.pdf](http://untreaty.un.org/ilc/texts/instruments/english/commentaries/1_1_1966.pdf)> accessed 28 August 2007. This is discussed more fully below.

<sup>123</sup> UN GA Res 174 (II), 'Establishment of an International Law Commission' (21 November 1947).

<sup>124</sup> See for example, ILC, 'Report of the International Law Commission on the Work of its 58<sup>th</sup> Session (1 May - 9 June and 3 July - 11 August 2006) UN Doc A/61/10, Chapter VII para. 95.

<sup>125</sup> Ryan Goodman, 'Human Rights Treaties, Invalid Reservations, and State Consent' (2002) 96 *American Journal of International Law* 531, 536.

<sup>126</sup> *Genocide Convention Case* (n 122) 24.

<sup>127</sup> Jeremy McBride, 'Reservations and the Capacity to Implement Human Rights Treaties' in Gardner (ed) (n 118) 121 - 122.

decision to enter a reservation and notes financial, personnel and institutional considerations as capacity issues that may prompt a reservation. While McBride ultimately concludes that reservations ‘actually promote, rather than hinder, the cause of human rights’,<sup>128</sup> this account does explain the sheer volume of reservations to UN human rights treaties. In contrast, Goodman attributes the high incidence of reservations to the existence of ‘accessory’ reservations, that is reservations that are not essential to the state’s consent to be bound by the provisions of the human rights treaty in question,<sup>129</sup> and as such may be properly seen as an excessive exercise of sovereignty.

The rationale underpinning the reservation entered by Australia to Article 10 of the ICCPR resonates with McBride’s analysis. Upon ratifying the ICCPR Australia made a number of reservations, including to Article 10 which provides for, amongst others, the segregation of accused persons and convicted persons along with the segregation of accused juvenile persons from adults, on the basis that ‘the principle of segregation is accepted as an objective to be achieved progressively’.<sup>130</sup> Catherine Redgwell points to this reservation as an example of a reservation that is more palatable or at least less objectionable to the UN Human Rights Committee (HRC), the treaty monitoring body of the ICCPR. Indeed General Comment 24, which details the position of the Committee in respect of reservations to the ICCPR, specifically contemplates a scenario such as the Australian reservation when the Committee states therein:

The possibility of entering reservations may encourage states which consider that they have difficulties in guaranteeing all the rights in the Covenant none the less to accept the generality of obligations in that instrument. Reservations may serve a useful function to enable states to adapt specific elements in their laws to the inherent rights of each person as articulated in the Covenant.<sup>131</sup>

The HRC distinguished between three types of reservations to the ICCPR in General Comment 24, with reservations that ‘exclude the duty to provide and guarantee particular rights in the Covenant’ falling under the first category. The second category of reservations are ‘couched in more general terms’ and are ‘often directed to ensuring the continued paramountcy of certain domestic legal provisions’ while the third category covers reservations which are ‘directed at the competence of the

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<sup>128</sup> Ibid 122.

<sup>129</sup> Ibid.

<sup>130</sup> [1980] Australian Treaty Series 23.

<sup>131</sup> UN HRC, ‘General Comment 24’ (4 November 1994) UN Doc. CCPR/C/21/Rev.1/Add.6, para. 4.

Committee'.<sup>132</sup> According to the Committee such reservations, regardless of the good intentions underpinning them, 'undermine the effective implementation of the Covenant and tend to weaken respect for the obligations of States parties'.<sup>133</sup> Hence the effect of reservations on human rights treaties may, as was succinctly expressed by Rosalyn Higgins, 'place strain upon the integrity of the treaty system'<sup>134</sup> in a *legal* and *normative* sense and thereby undermine the effectiveness of UN human rights law. Indeed, the Australian reservation to Article 10 of the ICCPR may be seen as an accessory reservation as it remains in place, notwithstanding the withdrawal of the majority of reservations made upon ratification, with the unfortunate inference that the objective of segregation articulated in Article 10 (2)(b) has not been progressively achieved.

Thus, the high incidence of reservations to UN human rights treaties, when seen in this light, not only adversely impacts on the legal and normative integrity of a treaty regime, but also do not advance the reputed goal of states in ratifying a human rights treaty, that of promoting human rights standards<sup>135</sup> and indeed weakens respect for the human rights obligations therein. While, the influence of sovereignty is apparent in the formulation of reservations, the motivations of states for entering reservations are not a consideration in the reservations regime provided for by the VCLT. Furthermore, the above account of the motivations prompting states to enter reservations to UN human rights raises the spectre of the fundamental question of whether to permit or prohibit reservations to UN human rights treaties which is resolved below in the guise of an examination of the applicable law under the VCLT.

## (ii) The Applicable Law: The Vienna Convention on the Law of Treaties

Few UN human rights treaties contain a reservations clause beyond a provision to the effect that reservations that are 'incompatible with the object and purpose' of the treaty are not permitted.<sup>136</sup> Of the seven core UN human rights treaties for example, the ICCPR and the ICESCR are silent on the question of states entering reservations to the provisions therein. The CEDAW, the CRC and the ICPRMW all contain a provision

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<sup>132</sup> Ibid para. 1. Rosalyn Higgins asserts that all reservations operate to 'exclude the performance of that treaty body whether in monitoring compliance through an examination of state reports, or in pronouncing upon legal claims brought for determination in the case law) in respect of the subject matter reserved'. Higgins, 'The United Nations' (n 121) 12.

<sup>133</sup> Ibid.

<sup>134</sup> Higgins, 'The United Nations' (n 121) 11.

<sup>135</sup> Goodman (n 125) 536.

<sup>136</sup> This was the standard adopted by the ICJ in the *Genocide Convention Case. Genocide Convention case* (n 122) 15 – 16. There are a limited number of examples of human rights treaties, before the VCLT, that prohibit reservations one of which is the Convention against Discrimination in Education 1962.

stipulating that reservations which are ‘incompatible with the object and purpose’ of the treaty in question are impermissible.<sup>137</sup> The CERD, which also considers reservations which are incompatible with its object and purpose as impermissible, is notable in bestowing a mathematical tenor to the standard. According to Article 20 a reservation is incompatible when two thirds of the state parties to the Convention object to the reservation.<sup>138</sup> In contrast, the CAT only *permits* reservations that pertain to the competence of the Committee against Torture.<sup>139</sup> The dearth of guidance from UN human rights treaties on the issue of reservations does not mean that reservations to UN human rights treaties exist in a legal vacuum. Indeed the ICJ was emphatic that ‘it could certainly not be inferred from the absence of an article providing for reservations in a multilateral convention that the contracting States are prohibited from making certain reservations’,<sup>140</sup> a position that was subsequently endorsed by the ILC.<sup>141</sup> Thus, as Catherine Redgwell has noted, the silence of the two Covenants on the issue of reservations means that the VCLT applies as a matter of general international law.<sup>142</sup> Furthermore, for example, the Committee on the Rights of the Child has explicitly stated that the reservation regime provided for in the VCLT applies to reservations made to the CRC,<sup>143</sup> while the Committee on the Elimination of Discrimination against Women has made statements to similar effect.<sup>144</sup> In short, the residual or default position for assessing reservations to UN human rights treaties is that contained in the VCLT, more particularly in Articles 19 – 23 of the VCLT.<sup>145</sup> Hence, as a matter of legal interpretation, human rights protection by way of UN human rights treaty is subject to the contractual dynamics reflected in the VCLT.

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<sup>137</sup> CEDAW, Article 28; CRC, Article 51 and ICPRMW, Article 91.

<sup>138</sup> CERD, Article 20. David Harris states that this is a requirement that is unlikely to be met. David Harris, *Cases and Materials on International Law* (6th edn Sweet and Maxwell London 2004) 813, footnote 80.

<sup>139</sup> CAT, Article 28.

<sup>140</sup> *Genocide Convention Case* (n 122) 22.

<sup>141</sup> ILC (n 122) 204.

<sup>142</sup> Catherine Redgwell, ‘Reservations to Treaties and Human Rights Committee General Comment No. 24 (52)’ (1997) 46 *International and Comparative Law Quarterly* 390, 394.

<sup>143</sup> UN Committee on the Rights of the Child, ‘General Comment No. 5’ (27 November 2003) UN CRC/GC/2003/5, paras. 13 – 16.

<sup>144</sup> UN Committee on the Elimination of Discrimination against Women, ‘General Recommendation No. 20’ (1992), para. 2 (c)

<<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom20>> accessed 28 August 2007. The website of the Committee also refers to the VCLT in respect of reservations to the CEDAW, <<http://www.un.org/womenwatch/daw/cedaw/reservations.htm>> accessed 28 August 2007.

<sup>145</sup> Catherine Redgwell, ‘The Law of Reservations in Respect of Multilateral Conventions’ in Gardner (ed) (n 118) 4.

Under the VCLT regime a reservation is a unilateral statement by a state which ‘purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State’.<sup>146</sup> Such a statement may be made by a state when signing, ratifying, accepting, approving or acceding to a multilateral treaty and must be made in writing and communicated to the state parties to the convention and other states entitled to become parties to the treaty.<sup>147</sup> However, the regime established by the VCLT places a number of conditions on the ability of states to enter reservations to multilateral treaties. For instance, a reservation cannot be made if the treaty expressly prohibits the reservation in question or provides that only specific reservations can be made and finally the VCLT stipulates that reservations that are incompatible with the object and purpose of the treaty are not permitted.<sup>148</sup> The ILC, in the commentary to the Draft Articles on the Law of Treaties which provided the basis for the VCLT, acknowledged that whether a reservation fell to be considered under the latter category was ‘very much a matter of the appreciation of the acceptability of the reservation by the other contracting States’.<sup>149</sup>

The VCLT does not require all the states which are party to the treaty to accept a reservation. This position, as encapsulated in Article 20 of the VCLT, is a marked departure from the position of the League of Nations which advocated the principle of unanimity on the grounds of upholding treaty integrity.<sup>150</sup> The ILC explained the abandonment of the principle of unanimity in favour of the doctrine of the ‘universality of treaties’ in terms of the increased membership of the international community, which brought economically, politically and culturally diverse states to the negotiating table. In order to attain ‘a more general acceptance of multilateral treaties’ the ILC contended that it was necessary to adopt a ‘universality’ approach to the law on reservations, particularly as the greatest obstacle to the development of international law was the failure of negotiating states to become parties to conventions.<sup>151</sup> In short, the ILC saw participation by the greatest number of states accepting the majority of the treaty provisions as ‘essential to ensure both the effectiveness and the integrity of the

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<sup>146</sup> VCLT, Article 2.

<sup>147</sup> VCLT, Article 19 and 23. In practice the UN SG acts as the depository for treaties and the reservations thereto.

<sup>148</sup> VCLT, Article 19.

<sup>149</sup> ILC (n 122) 207.

<sup>150</sup> David Harris asserts that the Vienna Convention follows the Pan-American Union in contrast to the League of Nation which held ‘to the classical doctrine’ that acceptance by all the parties was required thereby maintaining treaty integrity. Harris (n 138) 811 – 812.

<sup>151</sup> ILC (n 122) 206.

treaty'.<sup>152</sup> As a result the VCLT adopts a rather nuanced approach to the acceptance of and objection to reservations which is designed to enhance participation and ultimately secure universality of the treaty regime in question. For instance acceptance of a reservation is *not* required where the reservation in question is expressly authorised by the treaty unless otherwise provided for by the treaty, while acceptance *is* required by all the parties to a convention which is the constituent instrument of an international organisation and when the application of a treaty in its entirety is an essential condition of the consent to be bound amongst a limited number of state parties.<sup>153</sup>

Article 20 (4) is the 'catch-all' clause which stipulates that a treaty will enter into force between a state that accepts a reservation and the state making such a reservation, and will also enter into force between a state which objects to a reservation and the reserving state unless the objecting state otherwise expressly states.<sup>154</sup> The rules set down in Article 20 (4) were designed to ensure that an objection was not in effect a veto as was the result in practice under the principle of unanimity.<sup>155</sup> By encouraging increased participation these rules were considered by the ILC as the embodiment of the flexible approach demanded by the embrace of the doctrine of universality.<sup>156</sup> Article 20 (4) assumes added significance as the legal effect of a reservation, as set out in Article 21 of the VCLT, depends on whether it is accepted or rejected. Moreover, given that a state may base the decision to accept or reject a reservation on a determination of the compatibility or otherwise of a reservation with the object and purpose of the treaty in question means that Article 19 (c) is a pivotal provision in the VCLT reservations regime. According to Article 21 where a state has entered a reservation to a treaty, the provisions of the treaty to which the reservation relates are modified to the extent of the reservation as between the reserving state and any non-objecting or accepting state. The treaty provision which is the subject of the reservation remains unaltered as between other parties to the treaty. Where a state has objected to a reservation, for example on the grounds that it is incompatible with the object and purpose of the treaty, and the state has not opposed the entry into force of the treaty, the treaty provisions to which the reservation relates do not apply as between the reserving state and the objecting state.

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<sup>152</sup> Ibid 205.

<sup>153</sup> VCLT, Article 20 (1), (2), and (3).

<sup>154</sup> The draft article originally provided that a treaty would not enter in force between an objecting state and a reserving state, unless the objecting state expressed a 'contrary intention'.

<sup>155</sup> Cassese, *International Law* (n 10) 173.

<sup>156</sup> ILC (n 122) 208.

The VCLT regime governing reservations to multilateral treaties is derived from the 1951 Advisory Opinion of the ICJ in the *Genocide Convention Case*.<sup>157</sup> The GA, prompted by the number and nature of reservations to the Genocide Convention and objections thereto, requested an advisory opinion from the ICJ.<sup>158</sup> The first of three questions which formed the basis of the advisory opinion was whether a reserving state can be a party to the Convention while maintaining the reservation and notwithstanding that other parties have objected to the reservation. The second and third questions related to the legal effect of reservations in the first instance between the reserving state and the objecting states and between the reserving state and the accepting states, while the third question queried the legal effect of a reservation made by a signatory state which had not yet ratified the treaty and one made by a state which although entitled to become a party had yet to sign or accede to the Convention. The essence of the position adopted by the ICJ is encapsulated in the following statement of the Court:

A state which has made and maintained a reservation which has been objected to by one or more of the parties to the Convention but not by others, can be regarded as being a party to the Convention if the reservation is compatible with the object and purpose of the Convention; otherwise, that State cannot be regarded as being a party to the Convention.<sup>159</sup>

The Court continued:

If a party to the Convention objects to a reservation which it considers to be incompatible with the object and purpose of the Convention, it can in fact consider that the reserving State is not a party to the Convention . . . on the other hand, a party accepts the reservation as being compatible with the object and purpose of the Convention, it can in fact consider that the reserving State is a party to the Convention.<sup>160</sup>

In brief the VCLT provisions on reservations create a default regime whereby a state may enter a reservation to a multilateral treaty such as a UN human rights treaty provided that it is not incompatible with the object and purpose of the treaty in question. Other state parties to the treaty can respond to the reservation in four ways namely, object to the reservation which does not preclude the treaty coming into force, object

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<sup>157</sup> *Genocide Convention Case* (n 122); ILC (n 122) 203; Harris (n 138) 812. The ICJ explicitly limited the Advisory Opinion to the specific case of the Genocide Convention which was acknowledged by the ILC. Nevertheless the essential features of the Advisory Opinion were incorporated into the Draft Articles on the Law of Treaties and ultimately the VCLT. As such the reservation regime in the VCLT resembles the Advisory Opinion in the *Genocide Convention Case* in broad strokes.

<sup>158</sup> UN GA Res 478 (V), 'Reservations to Multilateral Conventions' (16 November 1950) para 1. Under the terms of this resolution the ILC was invited to consider the question of reservations to multilateral treaties in the context of the codification of the law of treaties. *Ibid* para. 2.

<sup>159</sup> *Ibid* 29.

<sup>160</sup> *Ibid*.

with an express stipulation that the treaty does not come into force as between the reserving and objecting state, and explicit or tacit acceptance of the reservation. The legal effect of a reservation is determined by the response of the other state parties. Thus, the provision to which the reservation relates is modified between a reserving state and an accepting state to the extent provided for by the reservation, but does not apply between a reserving state and an objecting state.

### ***B. The VCLT and Reservations to UN Human Rights Treaties***

The simplicity of the above overview of the reservations regime governed by the VCLT masks several ambiguities inherent in the provisions of the VCLT. Indeed the problematic nature of the law on reservations is readily acknowledged.<sup>161</sup> While these issues are a 'general treaty law problem',<sup>162</sup> they are amplified upon application of the VCLT reservations regime to human rights treaties. There are two issues of particular concern in respect of human rights treaties namely, the validity of reservations and the effect of invalid reservations, which centre on Articles 19, 20 and 21 of the VCLT.

#### **(i) The Validity of Reservations to UN Human Rights Treaties**

Under the VCLT the validity of a reservation is determined by way of reference to the 'object and purpose' test, which was promulgated by the ICJ as a means by which to balance the imperatives of human rights protection and state sovereignty in the formulation of reservations. While the VCLT is silent on the matter of evidencing the object and purpose of a treaty, some guidance is forthcoming in the ICJ Advisory Opinion on reservations to the Genocide Convention. Although the ICJ was at pains to stress that the Advisory Opinion only related to the Genocide Convention,<sup>163</sup> it saw the validity and effect of reservations to a multilateral treaty as being affected by factors such as the character of the treaty in question, 'its purpose, provisions, mode of preparation and adoption'. The ICJ looked to the origin and character of the Genocide Convention and found that the purpose or object of the GA in sponsoring the Convention and the contracting parties in drafting and signing the Convention was to condemn and punish genocide as a 'crime under international law'. The ICJ continued to note the universal character of the condemnation of genocide and the cooperation

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<sup>161</sup> The ILC observed: 'Divergent views have been expressed in the Court, the Commission and the General Assembly'. ILC (n 122) 203.

<sup>162</sup> Redgwell, 'The Law of Reservations' (n 145) 3.

<sup>163</sup> The ICJ stated: 'All three questions are expressly limited by the terms of the resolution of the General Assembly to the Convention on the Prevention and Punishment of the Crime of Genocide . . . The questions thus having a clearly defined object, the replies which the Court is called upon to give to them are necessarily and strictly limited to that Convention'. *Genocide Convention Case* (n 122) 20.

required to give effect to the provisions of the Convention and as such concluded that the Genocide Convention was intended to be universal in scope. The ICJ also concluded that the Genocide Convention was clearly ‘adopted for a purely humanitarian and civilising purpose’.<sup>164</sup>

Nonetheless, Liesbeth Lijnzaad warns that it is not always straightforward to determine the object and purpose of a treaty, and cautions that ‘there are few treaties with an object and purpose as obvious as the Genocide Convention’.<sup>165</sup> The special nature of the Genocide Convention prompted the ICJ to remark that

[i]n such a convention the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d'être* of the convention.<sup>166</sup>

This has a particular resonance with UN human rights treaties more generally as such treaties are drafted and signed in furtherance of a particular ideal. For example, the specific wrongs of torture and racial discrimination are clearly the reason d'être of the CAT and the CERD, while the protection of particular categories of people is the evident rationale behind the CEDAW, CRC and ICRMW. However, the ICCPR and the ICESCR, as the two comprehensive UN human rights covenants, do not fit easily into this understanding as they purport to protect a comprehensive range of human rights. Indeed, Markus G. Schmidt has argued that reservations to the ICCPR and the ICESCR must be seen differently than reservations to other UN human rights treaties, in particular the Genocide Convention and the CERD ‘which basically safeguard one single right’ and warns against ‘overestimating the effect of reservations’ on the integrity of the International Covenants.<sup>167</sup>

Schmidt's position has a certain attraction, particularly upon consideration of the nature and number of reservations to the ICCPR,<sup>168</sup> but it runs counter to the logic of the ICJ in proposing the object and purpose test which was not contingent on the number and type of rights protected by the treaty in question. Rather, the rationale was to strike a balance

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<sup>164</sup> Ibid 23

<sup>165</sup> Lijnzaad (n 119) 40.

<sup>166</sup> *Genocide Convention Case* (n 122) 23.

<sup>167</sup> Markus G. Schmidt, ‘Reservations to United Nations Human Rights Treaties – the case of the two covenants’ in Gardner (ed) (n 118) 20.

<sup>168</sup> On reservations to the ICCPR see generally William A. Schabas, ‘Invalid Reservations to the International Covenant on Civil and Political Rights: Is the United States still a party?’ (1995) 21 *Brooklyn Journal of International Law* 277; Joseph et al (n 66) 601 - 621.

between the imperatives of human rights protection and the demands of sovereignty which was underpinned by the acknowledgement of the special nature of human rights treaties. This is not to suggest that the application of the object and purpose test is straightforward. Indeed, Lijnzaad warns that the application of a rule developed in respect of a single purpose treaty is 'extremely simplistic'.<sup>169</sup> In other words, the object and purpose test as developed by the ICJ in the *Genocide Convention Case* and advocated by the ILC for inclusion in the VCLT while necessitating a distinction between core obligations and non-core obligations does not provide guidance as to how to draw such a distinction thereby determining the object and purpose of a multilateral treaty.

The argument that differentiating between derogable and non-derogable rights as the litmus for the object and purpose test under Article 19 has been repeatedly advanced.<sup>170</sup> In essence reservations to non-derogable human rights such as the right to life and freedom from torture as protected under Articles 6 and 7 respectively of the ICCPR are automatically incompatible with the object and the purpose of the ICCPR. In this way, classifying a human right as non-derogable provides a guide for states in making and entering reservations to treaties which appeared to be adopted by the Inter-American Court of Human Rights, the judicial body of the OAS, as providing the content of the object and purpose test in considering reservations to the ACHR in the *Restrictions to the Death Penalty* case, a 1983 Advisory Opinion.<sup>171</sup> The Court had found in a previous Advisory Opinion that the object and purpose test found in Article 19 of the VCLT applies to reservations made to the ACHR<sup>172</sup> and upon considering a reservation to the right to life under Article 4 of the ACHR by Guatemala in the instant case the Court declared that:

the first question which arises when interpreting a reservation is whether it is compatible with the object and purpose of the treaty. Article 27 of the Convention allows the States Parties to suspend, in time of war, public danger, or other emergency that threatens their independence or security, the obligations they assumed by ratifying the Convention, provided that in doing so they do not suspend or derogate from certain basic or essential rights, among them the right to life guaranteed by Article 4. It would follow therefrom that a reservation

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<sup>169</sup> Lijnzaad (n 119) 81.

<sup>170</sup> See for example the discussion by Rosalyn Higgins which appears as a precursor to the proposals of the UN HRC in 'General Comment 24'. Higgins, 'Introduction' (n 120) 14 – 17.

<sup>171</sup> *Restrictions to the Death Penalty*, Advisory Opinion OC-3/83, Inter-American Court of Human Rights Series A No. 3 (8 September 1983) para. 61.

<sup>172</sup> *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights*, Advisory Opinion OC-2/82, Inter-American Court of Human Rights Series A No. 2 (24 September 1982), para. 25.

which was designed to enable a State to suspend any of the non-derogable fundamental rights must be deemed to be incompatible with the object and purpose of the Convention and, consequently, not permitted by it.<sup>173</sup>

Yet, the Court continued:

The situation would be different if the reservation sought merely to restrict certain aspects of a non-derogable right without depriving the right as a whole of its basic purpose. Since the reservation referred to by the Commission in its submission does not appear to be of a type that is designed to deny the right to life as such, the Court concludes that to that extent it can be considered, in principle, as not being incompatible with the object and purpose of the Convention.<sup>174</sup>

This suggests the application of a two-step object and purpose test, the first step being whether the reservation relates to a non-derogable right. Even if the reservation purports to modify a non-derogable right, on the judgment of the American Court, this does not necessarily preclude compatibility as the object and purpose test must be applied again to determine whether the reservation purports to deprive the right in question of its 'basic purpose'.

Higgins is unconvinced that derogability can be 'the exclusive touchstone' in determining the 'object and purpose' test and questions, for example, how a reservation to the derogable human right to fair trial protected under Article 14 of the ICCPR which permits secret trials can be 'regarded as compatible with the purpose and object of the Covenant'.<sup>175</sup> The HRC similarly emphasised reservations to non-derogable rights, noting that not all important human rights, such as the right to liberty and security of the person (Article 9) and minority rights (Article 27) of the ICCPR, are non-derogable. Indeed, the Committee remarked that there are various reasons for designating certain rights as non-derogable, such as the fact that derogation from the right in question is impossible or irrelevant in respect of the public emergency, or the right in question is fundamental to the rule of law. Further, the Committee observed that certain non-derogable rights, for example freedom from torture, also have the status of peremptory norms and thus concluded that there is no correlation between reservations to non-derogable provisions and reservations which offend the object and purpose of the ICCPR.<sup>176</sup> Thus, in the words of Redgwell, 'the Committee rejects the automatic

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<sup>173</sup> *Restrictions to the Death Penalty* (n 171) para. 61.

<sup>174</sup> *Ibid.*

<sup>175</sup> Higgins, 'Introduction' (n 120) 15.

<sup>176</sup> *Ibid.*

correlation of non-derogable rights and incompatibility'.<sup>177</sup> Moreover, these limitations of the derogability argument are further exacerbated upon consideration that of the seven core UN human rights treaties it is only the ICCPR that designates certain rights therein as non-derogable. Thus, only seven civil and political rights are removed from the ambit of reservation under the derogability criterion of the object and purpose test.<sup>178</sup>

Yet, the notion of derogability is advanced as a mechanism which tempers the inherent subjectivity of the 'object and purpose' test under Article 19. Indeed the ICJ explicitly envisaged that states would decide whether the reservation was incompatible with the object and purpose when it stated that in making and entering reservations states will not go against the object and purpose of the treaty in question. This, as the position adopted in the VCLT, has proven to be an inadequate and insufficient safeguard against incompatible reservations which is amply demonstrated by the number of reservations that have been made to UN human rights treaties. Moreover, Goodman's distinction between essential and accessory reservations further compounds the difficulty of the subjectivity inherent in the object and purpose test under Article 19 of the VCLT, particularly his conclusion that 'the package of reservations a state submits reflects the ideal relationship it wishes to have to the treaty, not the essential one it requires so as to be bound'.<sup>179</sup> This does little to prevent the conclusion that Article 19 is weighted towards sovereignty and the state to the detriment of human rights protection. That Article 19 has failed to strike the balance between human rights protection and sovereignty in this way runs counter to the rationale underpinning the development of the object and purpose test. Thus, it is unsurprising that there is considerable concern as to the efficacy the object and purpose test under Article 19 which, to paraphrase Redgwell, leaves to 'the arbitrary appreciation of individual states' the decision to make and enter a reservation that is incompatible with the object and purpose of UN human rights treaties.<sup>180</sup>

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<sup>177</sup> Redgwell (n 142) 402.

<sup>178</sup> Other benchmarks have been proposed such as *jus cogens* norms and rules of customary international law. See for example UN HRC 'General Comment 24' (n 131) para. 8. Lijnzaad also refers to the suggestion that reservations to rules that are international crimes as based on the work of the I.L.C on State Responsibility would be incompatible with the 'object and purpose' test along with reservations contrary to the provisions of the UN Charter. Lijnzaad (n 119) 82 - 95.

<sup>179</sup> Goodman (n 125) 536.

<sup>180</sup> Redgwell (n 142) 404.

Notwithstanding the difficulties associated with the indeterminacy and subjectivity inherent in Article 19 of the VCLT, the object and purpose test as it is formulated therein bears another innate flaw. Simply put, the test relates to a single reservation. Article 19 does not countenance the possibility of ‘surgical reservations’ or ‘package reservations’. According to Redgwell the practice of surgical reservations occurs when states enter separate reservations to discrete paragraphs of an article in order to maintain flexibility. The potential effect of such reservations on a treaty ranges from occasionally affecting treaty obligations to undermining treaty integrity and the acceptance of the treaty by the reserving state.<sup>181</sup> In a similar vein the HRC has cautioned states to consider the ‘overall effect of a group of reservations’ on treaty integrity, and in particular urged states to ensure that they are not limiting their acceptance of the ICCPR to a number of rights.<sup>182</sup> Belinda Clerk examined the phenomena of ‘package reservations’ in relation to reservations to CEDAW and argued that the object and purpose should not be merely applied to each separate reservation as:

[a] large number of limited, specific reservations (that singly do not create major conflict with the provisions of the Convention) might produce so many derogations from the treaty that, taken as a whole, they would be incompatible with its object and purpose.<sup>183</sup>

In short, and notwithstanding the existence of the ‘object and purpose’ test, Article 19 of the VCLT enables states to reconcile the countervailing logics of human rights protection and sovereignty as they deem appropriate. This is readily illustrated by the existence of what Goodman terms ‘double-standard’ states and ‘consistent standard’ states. Double standard states are those states which sign and ratify multilateral human rights treaties with a view to promoting human rights at the international level, in particular ‘imposing international human rights standards on others’ while simultaneously resisting the imposition of the same standards on its own on domestic sovereignty.<sup>184</sup> The UK and the US fall to be considered under this category and Goodman’s analysis of state practice in this regard clearly shows a predilection towards sovereignty, which at least, weakens the respect of the human rights obligations of the treaty in question. In contrast, Goodman classifies states such as the Netherlands and Belgium as ‘consistent standard’ states as the state practice evidences ‘a deep

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<sup>181</sup> Ibid 401 - 402.

<sup>182</sup> UN HRC, ‘General Comment 24’ (n 131) para. 19.

<sup>183</sup> Clerk (n 120) 314.

<sup>184</sup> Ibid 545.

commitment to incorporating human rights treaties in their domestic law and to promoting international human rights abroad'.<sup>185</sup>

Against this background, Article 20 whereby states parties to a multilateral treaty can object to a reservation entered under Article 19 and thereby preclude the entry into force of the treaty in question between the reserving state and objecting state, assumes added significance for the protection of human rights. Yet, reservations to multilateral treaties have a low objection rate and this is a particularly marked phenomenon in respect of UN human rights treaties.<sup>186</sup> As the effect of not objecting to a reservation is to give effect to the reservation between the non-objecting state and the reserving state, the acknowledged low objection rate to reservations to UN human rights treaties in combination with the high incidence of reservations is a particular cause for concern for human rights protection. Moreover, states have a vested interest in maintaining the status quo for as Edward T. Swaine observed 'states care more about preserving their right to make reservations than they do about their right to object'.<sup>187</sup> In a similar vein Higgins attributed the absence of objections to the reservations to the ICCPR to collusion on the part of state parties, forcefully stating: 'one might almost say that there is a collusion to allow penetrating and disturbing reservations to go unchallenged'.<sup>188</sup>

The explanation traditionally offered for the low objection rate is that the VCLT regime offers little incentive for states to enter objections to reservations. In addition to the minimal legal effect of an objection under Article 21 of the VCLT, the notion of reciprocity, which is intended to prompt states to object to unpalatable reservations, is of particular significance in this regard. As Higgins remarks:

[h]uman rights treaties are not just an exchange of obligations between states where they can agree at will, in a web of bilateral relationships within a multilateral treaty, what bargains they find acceptable.<sup>189</sup>

However, as Goodman found in respect of state practice of entering reservations to human rights treaties, states do view human rights treaties as general multilateral treaties with comparable contractual dynamics, such as reciprocity, in that the reservations which are entered reflect the ideal position desired by the state party

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<sup>185</sup> Ibid 546.

<sup>186</sup> See generally, Clerk (n 120).

<sup>187</sup> Swaine (n 120) 327.

<sup>188</sup> Higgins (n 121) 12.

<sup>189</sup> Ibid 11.

concerned in respect of the human rights treaty in question and not necessarily the one required to secure their consent to be bound.<sup>190</sup> Thus, as Article 21 modifies the treaty relations between the reserving state and the non-objecting state is a perfectly logical expression of reciprocity as a multilateral treaty creates obligations between the state parties. However, it does not resonate with UN human rights treaties as they create obligations between states parties and individuals. Thus the saliency of Article 21 as providing a limitation to reservations by way of objection is particularly diluted in respect of human rights treaties. Moreover, the incentive to object to a reservation, which is already stymied in respect of general multilateral treaties, is further incapacitated with UN human rights treaties as Article 21 ensures that the unfortunate position arises that 'there is little difference between accepting a reservation and objecting to it'<sup>191</sup> with the result is that the reserving state's obligations remain unchanged. In the words of Elena Baylis, '[c]ontractual principles are not a useful guide for enforcement if contractual dynamics are not at work'.<sup>192</sup>

Yet, Swaine argues for a broader understanding of reciprocity.<sup>193</sup> The understanding preferred by Swaine is that while reservations give the reserving state discretion as to future compliance with the treaty, the VCLT accords a similar discretion or flexibility to the non-objecting state as it modifies the treaty relations inter se. Swaine is at pains to stress that this broader understanding requires a concomitant nuanced understanding of the motivations prompting states to not object to reservations, including repercussions from the reserving state. Thus on this account, the flexibility of the VCLT produces 'insurance benefits' for non-objecting states whereby they are better placed to 'manage the risk that the reservations themselves seek to control'.<sup>194</sup> Indeed Swaine concludes that non-objecting states:

benefit from the reservation regime and its ambiguities to an unexpected degree, and that state practices under the Convention [VCLT] are closer to an equilibrium solution than has been supposed.<sup>195</sup>

While, Swaine's assessment was not confined to UN human rights treaties, and extended to 'economic, environmental, military, human rights' treaties, it betrays little

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<sup>190</sup> Goodman (n 125) 356.

<sup>191</sup> Elena A. Baylis, 'General Comment 24: Confronting the Problem of Reservations to Human Rights Treaties', (1999) 17 *Berkeley Journal of International Law* 277, 294.

<sup>192</sup> *Ibid* 294.

<sup>193</sup> Swaine (n 120) 342.

<sup>194</sup> *Ibid* 345.

<sup>195</sup> *Ibid* 345.

to no concern on the part of states parties for the basic purpose of a treaty, such as human rights protection, in deciding whether to object or non-object to a reservation. This is clearly seen when Swaine specifically references human rights treaties as an apt illustration of the informational value disclose by entering a reservation, but does not refer to the extent of human rights protection as a beneficial aspect of the information disclosed. This is rather seen in terms of bolstering the reputation of the reserving state. That Swaine aims to demonstrate that the VCLT regime for reservations is not weighted in favour of the reserving state to the detriment of the non-objecting state helps to explain this and indeed, more generally, the pervading concern with state consent.

Thus on Swaine's account of state practice pertaining to objections to reservations under the VCLT, Article 20 strikes a balance between the consent of the reserving state and the consent of the non-objecting state thereby achieving a state of 'equilibrium'. Nonetheless, Swaine's analysis amply shows that Article 20 of the VCLT oscillates in favour of the state as the decision to object or not object under Article 20 is a conscious exercise of sovereignty in furtherance of an aspect of sovereignty, that of state consent. This operates to the detriment of human rights protection as Article 21 not only provides that the legal effect of an objection is negligible thereby offering little incentive to states to object, but state practice shows that Article 20 operates to *enhance* the ability of states to make reservations by striking a balance between the consent to be bound of reserving and objecting states. Thus it is acutely apparent in the state practice on objections to reservations that the VCLT 'creates a strong presumption in favour of ratification and acceptance of a reservation'.<sup>196</sup>

The ICJ in the *Genocide Case* recognised that human rights treaties are not bound by contractual dynamics when the Court recognised the special nature of human rights treaties. Indeed, this formed the basis for the promulgation of the object and purpose test as performing a dual role, that of providing the criterion upon which to make a reservation and 'for the appraisal by a State in objecting to the reservation'.<sup>197</sup> Yet, the object and purpose test is conspicuous in its absence under Article 20 of the VCLT, and the delicate balancing of the ICJ in the *Genocide Case* is skewed in favour of sovereignty. This in combination with the absence of contractual dynamics to temper the effect of objections to reservations to UN human rights treaties ensures that Article

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<sup>196</sup> Baylis (n 191) 293.

<sup>197</sup> *Genocide Convention Case* (n 122) 24.

20 exhibits, in word and deed, a predilection towards sovereignty and ‘has a deleterious effect on treaty integrity’.<sup>198</sup>

This underscores the existence of additional difficulties surrounding the combined effect of Articles 19 and 20 whereby Article 19 (c) relates to the ‘acceptability’ or ‘permissibility’ of reservations, and Article 20 (4) pertains to the ‘opposability’ of reservations by way of objections. It is unclear whether these provisions create a two-tier test by which reservations must be permitted under Article 19 (c) *and* not opposed or objected to under Article 20 (4), or that permissibility determined by way of reference to the object and purpose test is sufficient for a reservation to be considered valid. Redgwell has described the partnership of Articles 19 and 20 in the VCLT as the result of ‘an unhappy, and perhaps even unsuccessful, reconciliation of two competing trends in State practice’.<sup>199</sup> This is clearly seen in the *travaux préparatoires* of the VCLT which offer little guidance for resolving the matter, merely stating:

The admissibility or otherwise of a reservation under paragraph (c) . . . is in every case very much a matter of the appreciation of the acceptability of the reservation by the other contracting States; and this paragraph has, therefore, to be read in close conjunction with the provisions of [article 20] regarding acceptance of and objection to reservations.<sup>200</sup>

It is unsurprising, in light of Redgwell’s observation, that state practice does not resolve the issue either. This is readily illustrated by Goodman’s distinction between double-standard states and consistent-standard states. The latter grouping of states, which includes the Nordic states, are at pains to enter reservations that are compatible to the object and purpose of the UN human rights treaty in question. Goodman observes that as part of this commitment states such as the Netherlands, have ‘begun to systematically review other states’ ratifications with a view to opposing invalid reservations’.<sup>201</sup> Swaine similarly references a discernible movement amongst Nordic states such as the Netherlands to attribute a greater significance to, along with adopting a more nuanced approach to, objections to reservations.<sup>202</sup> Nonetheless in the last analysis, the high reservation rate and concomitant low objection rate in respect of UN human rights treaties renders Article 19 and the ‘object and purpose’ test enunciated therein a

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<sup>198</sup> Baylis (n 186) 294.

<sup>199</sup> Redgwell, ‘The Law of Reservations’ (n 145) 8.

<sup>200</sup> ILC (n 122) 207.

<sup>201</sup> Goodman (n 125) 547.

<sup>202</sup> Swaine (n 120) 320-1.

'phantom provision on practical grounds',<sup>203</sup> while the minimal legal effect of an objection in accordance with Article 21 ensures that Article 20 is an ineffective barrier against invalid reservations. Ultimately these provisions of the VCLT shift the balance of reservations in favour of sovereignty, rendering the delicate balance envisaged by the ICJ between human rights protection and sovereignty obsolete.

## (ii) The Effect of Invalid Reservations to UN Human Rights Treaties

A particularly controversial aspect of the reservation regime of the VCLT is the seemingly perennial question of the *legal effect of invalid reservations*. While Article 21 of the VCLT sets out the legal effect of a reservation to a multilateral treaty entered under Article 19 of the VCLT, the VCLT and in particular Article 21, remains curiously silent on the legal effect of invalid reservations.<sup>204</sup> This is a glaring omission particularly in light of the above conclusion as to the adverse impact on human rights protection of the rules for determining the validity of reservations to UN human rights treaties. Simply put controversy revolves around whether an invalid reservation remains in place or not and, at the heart of the controversy are questions of state consent and, ultimately, sovereignty.

The regional systems for the protection of human rights, in particular the Council of Europe (CoE) and to a lesser extent the OAS, have grappled with the question of the legal effect of invalid reservations to their constitutive documents, the European Convention on Human Rights (ECHR) and the American Convention on Human Rights (ACHR) respectively. The European Court of Human Rights (ECtHR) first pronounced on the validity of a reservation to the ECHR in *Belilos v Switzerland*,<sup>205</sup> the European Commission having previously found the Strasbourg organs competent to deal with reservations.<sup>206</sup> The *Belilos* case concerned an 'interpretative declaration' made by Switzerland upon ratifying the ECHR to Article 6 (1) of the ECHR which

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<sup>203</sup> Lijnzaad (n 119) 41.

<sup>204</sup> In contrast it is not curious that the ICJ did not delineate the legal effect of invalid reservations, as the ICJ did not countenance the possibility (or probability) that states would enter reservations that were incompatible with the object and purpose of the human rights treaty in question. Further, as a procedural point, the ICJ was not asked to pronounce on the effect of an invalid reservation in this sense.

<sup>205</sup> *Belilos v. Switzerland* (1988) 10 EHRR 466.

<sup>206</sup> *Temeltasch v. Switzerland* (1983) D&R 120. As regards this aspect of the decision, the Commission referred to the essential characteristics of the ECHR, in essence the nature of the ECHR as a human rights treaty. For a critique of this see Pierre-Henri Imbert, 'Reservations to the European Convention on Human Rights before the Strasbourg Commission: The *Temeltasch* case' (1984) 33 *International and Comparative Legal Quarterly* 558. Nonetheless, this echoes the sentiments of the ICJ in the Genocide Convention Case as noted above and similar comments by the Inter-American Court of Human Rights. In the latter regard see *The Effect of Reservations* (n 172) para. 46.

protects/guarantees the right to fair trial. Having decided that the interpretative declaration entered by Switzerland was in fact a reservation,<sup>207</sup> the Court considered whether the reservation was permitted by the terms of Article 64 of the ECHR. Article 64 provides that a state may make a reservation to any provision of the ECHR at the time of signing or ratifying the Convention 'to the extent that any law then in force in its territory is not in conformity with the provision',<sup>208</sup> and prohibits reservations of a 'general character'. Furthermore, any reservation must contain a 'brief statement of the law concerned'. The Swiss reservation fell foul of the two requirements, the reservation in question being of a general character and unaccompanied by the requisite 'brief statement of law concerned' and thus the reservation was invalid.<sup>209</sup> The Court continued:

At the same time, it is beyond doubt that Switzerland is, and regards itself so, bound by the Convention, irrespective of the validity of the declaration. Moreover the Swiss government recognised the court's competence to determine the latter issue, which they argued before it.<sup>210</sup>

Thus, in a very compact paragraph the European Court simultaneously declared the interpretative declaration by Switzerland an invalid reservation and found that Switzerland, irrespective of the invalidity of the reservation, was still bound by the ECHR. The ECtHR has subsequently pronounced on the validity or otherwise of reservations, notably in *Loizidou v Turkey* where the Court scrutinised the declaration accompanying Turkey's acceptance of the jurisdiction of the European Court.<sup>211</sup> The Court found aspects of the declaration which restricted its jurisdiction invalid<sup>212</sup> and hence removed or separated the offending parts from the declaration 'leaving intact the

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<sup>207</sup> In doing so the Court referred to the VCLT and the definition of a reservation found in Article 2 and stated that it is necessary to look to the original intention of the drafters. More importantly for present purposes, the Court stated that in order to establish the legal character of Switzerland's interpretative declaration it is necessary 'to look behind the title given to it and seek to determine the substantive content'. *Belilos v. Switzerland* para. 48 and 49.

<sup>208</sup> The stipulation that the reservation must relate to existing laws was stressed in the Separate Opinions of Judges Reina and Piza Esclante in the *Restrictions to the Death Penalty* case. See *Restrictions to the Death Penalty* (n 171).

<sup>209</sup> On the requirements of 'general character' (paras. 52-55) and 'brief statement as to the law' (paras. 56-59)

<sup>210</sup> *Belilos v. Switzerland* para. 60.

<sup>211</sup> *Loizidou v. Turkey* (Preliminary Objections) (1995) 20 EHRR 99.

<sup>212</sup> In doing so the Court referred to the 'special character of the Convention as an instrument of European public order (order public) for the protection of individual human beings' and to the mission of the Court to 'ensure the observance of the engagements undertaken by the High Contracting Parties', along with the decision in *Belilos*. *Ibid* paras. 93 and 94.

acceptance' by Turkey of its jurisdiction.<sup>213</sup> The jurisprudence of the European Court in this regard has prompted one commentator to declare the existence of a 'Strasbourg approach' to the legal effect of invalid reservations.<sup>214</sup>

While the Inter-American Court of Human Rights has not yet had the opportunity to definitively pronounce on the issue of the legal effect of invalid reservations, the jurisprudence of the Court suggests that competency or jurisdiction to determine the legal effect of an invalid reservation would reside in the Court. For instance the Inter-American Court stated in its Advisory Opinion, *The Effect of Reservations on the entry into force of the American Convention on Human Rights*, that state parties to the ACHR can assert their legitimate interest in barring incompatible reservations 'through the adjudicatory and advisory machinery established by the Convention'.<sup>215</sup> In the 1983 Advisory Opinion concerning reservations to Article 4 of the ACHR which provides for the prohibition of the death penalty, the Court engaged in an active assessment of the reservation made by Guatemala to Article 4.<sup>216</sup> In brief, the supervisory or adjudicatory bodies of the European and American regional human rights systems possess the jurisdiction and the competency to decide the validity of reservations and, in the case of the CoE, have explicitly determined the legal effect of an invalid reservation according to the 'severability' approach to invalid reservations.

The severability approach was succinctly described by Goodman in the following terms:

An invalid reservation can be severed from the instrument of ratification such that the state remains bound to the treaty including the provision(s) to which the reservation related.<sup>217</sup>

On the face of it, this approach to the legal effect of invalid reservations offends state consent. The consent to be bound is a foundational principle of international law and an expression of the sovereign equality of states. The notion of state consent is the predominant theory of treaty making in the international law<sup>218</sup> and as such it is

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<sup>213</sup> Ibid para. 97. It is interesting that in deciding to sever the invalid parts of Turkey's declaration the Court paid cognisance to the response of other CoE member states, along with the special character of the Convention regime and its mission thereunder. Ibid paras. 95 – 96.

<sup>214</sup> Bruno Simma, 'Reservations to Human Rights Treaties - some recent developments' in Gerhard Hafner et al (eds), *Liber Amicorum: Professor Ignaz Seidl-Hohenveldern in Honour of his 80<sup>th</sup> birthday* (Kluwer International Law: The Hague 1998) 30.

<sup>215</sup> *The Effect of Reservation* (n 172) para. 38.

<sup>216</sup> *Restrictions to the Death Penalty* (n 171) 67 – 75.

<sup>217</sup> Goodman (n 125) 531.

<sup>218</sup> Malcolm D. Shaw, *International Law* (5<sup>th</sup> edn CUP Cambridge 2003) 9 - 10.

unsurprising that Goodman observes that ‘the issue of state consent dominates the severability debate’.<sup>219</sup> However, by drawing a distinction between accessory and essential reservations, Goodman ably demonstrates the simplicity of this position whereby human rights protection through UN human rights treaties is set in opposition to state consent. Indeed, it is on the basis of this distinction that Goodman argues persuasively for a presumption in favour of severing reservations to UN human rights treaties which are accessory or not essential to securing the consent of the state to be bound by the treaty in question. In this way Goodman claims normative appeal for the presumption of severability as explicated as it is ‘grounded in its *protection of state consent*’.<sup>220</sup> Thus Goodman’s presumption of severability brings an element of parity to bear on the countervailing and opposing logics of ‘human rights protection’ and ‘sovereignty’ prevailing within the VCLT.

Nonetheless, a second aspect of the Strasbourg approach which is also evident in the Advisory Opinions of the ACtHR referred to above, receives little attention from Goodman. This is the question, which is inextricably tangled with the issue of whether an invalid reservation can be severed without offending foundational principles of international law, of *who* determines the validity of reservations and ultimately the legal effect of an invalid reservation. It is clear from the foregoing that the ECtHR and the ACtHR both regard themselves as competent to adjudicate on the validity or otherwise of reservations to the constitutive treaties of the ECHR and the ACHR, and indeed the ECtHR is competent to determine the legal effect of a reservation found to be invalid. Goodman favours this position remarking in an introductory comment that ‘severability should be an option for a third-party institution’, such as the ICJ and the UN human rights treaty monitoring bodies such as the HRC, to exercise upon a determination of the invalidity of a reservation.<sup>221</sup> Elena Baylis correctly points out that Goodman is notably silent on developing this necessary aspect of his ‘presumption of severability’ and concludes that this ignores the ‘broader problems of state consent to adjudication of reservations and to enforcement of human rights treaties generally’.<sup>222</sup> By situating the issue of state consent to adjudication of reservations within the wider context of enforcement of human rights treaties, Baylis emphasises the potentially important, if not pivotal, role of UN human rights treaty monitoring bodies in addressing the perennial

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<sup>219</sup> Goodman (n 125) 533.

<sup>220</sup> Ibid 535. (Emphasis added).

<sup>221</sup> Ibid 531-532.

<sup>222</sup> Baylis (n 191) 107.

issue of the legal effect of invalid reservations. Yet it is necessary to recall, as was noted above, that these supervisory mechanisms by which to protect human rights bear the detrimental footprints of sovereignty. More importantly for present purposes Baylis' comment highlights the importance of ascertaining the basis upon which a third party determination in respect of reservations to UN human rights treaties may be made.

In *Loizidou* the ECtHR referred to the 'special character of the Convention as an instrument of European public order (*ordre public*) for the protection of individual human beings' and to the mission of the Court to 'ensure the observance of the engagements undertaken by the High Contracting Parties' and the judgment in *Belilos* as the basis for its competency in respect of the declaration made by Turkey.<sup>223</sup> Indeed Judge de Meyer in delivering his concurring opinion in the *Belilos* case stressed these aspects and stated that a reservation under Article 64 of the ECHR at most allows a reserving state to bring into line any domestic laws 'which do not yet sufficiently respect and protect the fundamental rights recognised in the Convention'.<sup>224</sup> Similar reasoning is apparent in the Advisory Opinion of the ICJ in the *Genocide Convention Case*<sup>225</sup> and indeed, Redgwell states that the avenue of third party determination 'evidently found favour with the ICJ'.<sup>226</sup> Daniel Hylton lists the advantages of a third party determining the validity of reservations as depoliticising the process of the determination, as increasing the consistency of determinations and as preserving the integrity of the agreement.<sup>227</sup> In this latter respect, Redgwell cautions against viewing a supervisory body as reducing the number of reservations and, in support of this caution, refers to the suggestion by Pierre-Henri Imbert<sup>228</sup> that the existence of the ECtHR

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<sup>223</sup> *Loizidou v. Turkey* (n 211) paras. 93 and 94.

<sup>224</sup> *Belilos v Switzerland* (n 205) concurring opinion of Judge de Meyer. The HRC employed similar reasoning when placing reservations to the ICCPR into categories in General Comment 24. UN HRC, 'General Comment 24' (n 131) para. 1

<sup>225</sup> It will be recalled that the ICJ referred to the special nature of the Genocide Convention and human rights treaties in general in formulating the 'object and purpose' test against which the validity of reservations would be measured by states.

<sup>226</sup> Redgwell, 'The Law of Reservations' (n 145) 13. It is submitted that this is perhaps reading too much into the ICJ's Advisory Opinion as the ICJ did explicitly see states as the final arbiter of compatibility with the object and purpose of a given treaty. *Genocide Convention Case* (n 122) 26.

<sup>227</sup> Daniel N. Hylton, 'Default Breakdown: The Vienna Convention on the Law of Treaties' Inadequate Framework on Reservations' (1994) 27 *Vanderbilt Journal of Transnational Law* 419, 448.

<sup>228</sup> Redgwell refers to the seminal article Pierre-Henri Imbert, 'Reservations and Human Rights Conventions' (1981) *The Human Rights Review* 28, but see also his views on the *Temeltasch* decision where he revisits the issue of reservations to the ECHR. Imbert, 'Reservations to the European Convention on Human Rights' (n 206).

actually prompted states to enter reservations as a means by which to guard against possible unfavourable interpretations of treaty obligations by the ECtHR.<sup>229</sup>

The debate surrounding the legal effect of invalid reservations is framed in terms of an absolute dichotomy between ‘human rights protection’ and ‘sovereignty’ as expressed through state consent. However, Goodman’s analysis illustrates that it is possible to strike a balance between these apparently irreconcilable absolutes, while the experience of the CoE and to a lesser extent the OAS demonstrates the possibilities for effective human rights protection by accepting the competency and jurisdiction of monitoring or supervisory bodies to determine issues such as the validity of reservations and the legal effect of invalid reservations. It thus remains to assess the prospects of the severability approach being embraced at the UN level by, in particular, UN human rights treaty monitoring bodies such as the HRC.

The possibility of transposing the Strasbourg approach to the legal effect of invalid reservations to the UN level has been strongly resisted by commentators and states alike. Notwithstanding that the existence of the ‘Strasbourg approach’ has been questioned,<sup>230</sup> the twin features of severability as predicated upon a third party determination of invalidity are seen as deeply problematic. This is amply illustrated by the responses to General Comment 24 of the HRC by states and members of academia.

The HRC adopted General Comment 24 on the 2 November 1994 out of a concern that the number of reservations, along with the content and scope of reservations, was undermining the effective implementation of the ICCPR and weakening the respect for the obligations undertaken by states parties.<sup>231</sup> The General Comment was shaped by the motivation to address this concern and thus identified the relevant law to be applied to reservations to the ICCPR, detailed the role of states parties in making and objecting to reservations, delineated the role of the Committee in respect of reservations to the ICCPR, and recommended a course of action to be undertaken by state parties including a review of reservations. Amongst the 20 densely constructed paragraphs in which the

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<sup>229</sup> Redgwell, ‘The Law of Reservations’ (n 145) 15.

<sup>230</sup> Roberto Baratta, ‘Should Invalid Reservations to Human Rights Treaties be Disregarded?’ (2000) 11 *European Journal of International Law* 413. Baratta questions the existence of the ‘Strasbourg approach’ to invalid reservations on the basis of an analysis of state practice, including the response of Switzerland to the judgment in *Belilos* and Turkey in respect of the decision regarding the preliminary objections in *Loizidou*. He states that a ‘deeper consideration of practice suggests that it is hard to find clear evidence’ of acceptance of this approach, particularly as it relates to the emergence of a customary norm. *Ibid* 416.

<sup>231</sup> UN HRC, ‘General Comment 24’ (n 131) para. 1.

HRC explains its position regarding reservations to the ICCPR, paragraph 18 is of particular note as it is here that the HRC ascribes to itself the competency to determine the validity of reservations and ultimately to sever invalid reservations so that the ICCPR remains 'operative for the reserving party without the benefit of the reservation'.<sup>232</sup>

The HRC based this competency on the special character of human rights treaties along with its own function under Article 40 of the ICCPR in respect of monitoring state compliance by way of state reports. While this clearly resonates with the reasoning advanced by the ECtHR in *Loizidou* noted above, the HRC also recorded its dissatisfaction with the VCLT reservation regime in respect of role of state objections as wholly inappropriate 'to address the problem of reservations to human rights treaties'.<sup>233</sup> The Committee argued that the pattern of objection is so unclear as to be unsafe to assume that the reservation is accepted as compatible by a non-objecting state, and thus, in conjunction with the special characteristics of human rights treaties, the effect of objections is questionable. In this latter respect the ACtHR in the *Effects of Reservations Case* considered that states parties had no role to play in objecting to reservations to human rights treaties and objections were of no effect as reciprocity is absent in human rights treaties. The ACtHR concluded that states wishing to bar or object to an incompatible reservation could apply to the ACtHR for resolution.<sup>234</sup>

Redgwell describes the General Comment as 'the equivalent of a big stick brandished by the Committee'.<sup>235</sup> As such it is unsurprising that it produced an explosive response from states such as France, the UK and the US.<sup>236</sup> The US saw the HRC as going 'much too far' and, in particular, expressed 'considerable concern' as to the role which the HRC carved out for itself in relation to reservations, especially in respect of the effect of invalid reservations.<sup>237</sup> The concern voiced by the UK stands somewhat in contrast as the UK was willing to countenance the possibility of a role for the HRC in respect of reservations, yet, according to the UK, a 'determinative' role such as that

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<sup>232</sup> Ibid para. 18.

<sup>233</sup> Ibid para. 17.

<sup>234</sup> *The Effects of Reservations* (n 172) para. 38.

<sup>235</sup> Redgwell, 'Reservations to Treaties' (n 142) 392.

<sup>236</sup> Higgins summarises their concerns about the General Comment as falling within the following categories: (1) the establishment of a different regime; (2) the role of the HRC; (3) the effect of an invalid reservation and (4) other matters such as the object and purpose test which the General Comment had attempted to instil an element of objectivity. Higgins, 'Introduction' (n. 119) xvii.

<sup>237</sup> Gardner (n 118) 199 – 204, citing Observations by the US on General Comment 24.

detailed in the General Comment would necessarily entail an amendment of the ICCPR.<sup>238</sup> The US had summarily dismissed a role for the HRC in the following terms: '[t]he drafters of the Covenant could have given the Committee this role but deliberately choose not to'.<sup>239</sup> Nonetheless each rallied against what was perceived as an illegitimate extension of the competency of the HRC in respect of determining the validity of reservations and the legal effect of invalid reservations. Higgins observes that this is to confuse 'competence to do something with the binding effect of that which is done' and asserts that it is clear that the HRC is not merely the passive receptacle of information via state reports, but rather 'is bound to offer its opinion on questions of compliance, which in turn entails the exercise of the interpretative function'.<sup>240</sup> This appears to be in line with the ILC which sees treaty-monitoring bodies as having the competence to determine the compatibility of reservations. However, as Redgwell comments the existence of a competent supervisory body is 'the *sine qua non* of any system for severance of incompatible reservations', and recommends urgent reassessment of the competence of supervisory bodies along with treaty amendment if necessary.<sup>241</sup>

### ***C. Of 'Human Rights Protection' and 'Sovereignty': Some observations for achieving human security through UN human rights law***

Reservations to UN human rights treaties clearly illustrate the countervailing and opposing logics of 'human rights protection' and 'sovereignty'. Indeed the precarious position of human rights protection within international law is reinforced by the application of the reservations regime under the VCLT to UN human rights treaties. The reservations regime under the VCLT is weighted in favour of the exercise of sovereignty from entering a reservation to determining the validity and the legal effect of an invalid reservation, to the detriment of human rights protection. Indeed the rationale underlying the VCLT, that of contractual dynamics, do not operate in respect of UN human rights treaties and as such the inherent safeguard against the excessive exercise of sovereignty is absent. Moreover, as Swaine persuasively argues states, both reserving and non-reserving, have a vested interest in maintaining the status quo. For not only does the current reservations regime under the VCLT protect state consent, but

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<sup>238</sup> Ibid 193 – 199, citing Observations by the UK on General Comment 24.

<sup>239</sup> Ibid 199 – 204, citing Observations by the US on General Comment 24.

<sup>240</sup> Higgins, 'Introduction' (n 119) xxii.

<sup>241</sup> Redgwell, 'Reservations to Treaties' (n 142) 409. She also urges amendment of the ICCPR to provide for severance of invalid reservations, along with amendment ensuring the competency of the HRC to make determinations, stating that such amendments would bring 'welcome certainty'.

it also increases the breadth of treaty participation and facilitates agreement on deeper commitments. Swaine continues:

Reservations further help establish an *information-forcing mechanism* that communicates significant information about the risks and benefits of contracting with reserving states. The regime's eccentricities, finally, allow non-reserving states to 'reserve' their own judgment regarding the acceptability of reservations, and thus to recapture some of the *insurance benefits* that reserving states capture in exempting their future conduct<sup>242</sup>

Thus as the effect of a reservation is to exclude or modify the legal effect of the provision in question and given the high rate of 'accessory' reservations to UN human rights treaties, UN human rights law as the legal and normative basis for achieving human security is undermined. Yet, while it is clear that the VCLT supports the exercise the sovereignty by way of upholding state consent, by the same token the unbridled exercise of sovereignty is restricted by the adoption of severability of invalid reservations.

As noted above the ECtHR and ACtHR have jurisdiction and competency to decide on the validity of a reservation to the ECHR and the ACHR as the constituent human rights treaty. Further, the ECtHR has severed an invalid reservation whereby the state in question remains bound by the provision in question, a position advocated by the HRC in respect of the ICCPR. Goodman advances a persuasive argument, based on his distinction between accessory and essential reservations, that such a position does not offend state consent and by implication, sovereignty. Moreover, such an analysis resonates strongly with the more nuanced understanding of sovereignty as a legal and political construct which is supported and restricted by law. Thus the adverse impact of the application of the reservations regime under the VCLT on UN human rights law as the legal and normative basis for achieving human security is somewhat ameliorated by the adoption of such a nuanced understanding of sovereignty. For under the nuanced understanding of sovereignty, it is possible to reconcile the imperatives of human rights protection and sovereignty whereby a third party determination of the validity of a reservation and ultimately, the severance of an invalid reservation, is provided for.

## V. CONCLUDING REMARKS

The *capacity* of UN human rights law as providing the legal and normative basis for the achievement of human security is assured. Indeed, it is from UN human rights law that

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<sup>242</sup> Swaine (n 120) 311. (Emphasis added).

the foundation for the UN human security framework is derived, namely, that human security is about the protection, respect and fulfilment of all human rights of all human beings as underpinned and informed by the principles of the universality and indivisibility of human rights. Nevertheless legal tools employed by states in furtherance of sovereignty, such as indeterminate language, weak supervisory mechanisms and reservations, serve to undermine the *effectiveness* of UN human rights law as the legal and normative basis for achieving human security. Thus the ‘simple binary opposition’ of human rights protection and sovereignty born of situating human rights protection within international law underscores any assessment of the effectiveness of UN human rights law. Indeed, commentators have consistently queried the effectiveness of the protection afforded to human rights under international law.<sup>243</sup> Thus, Christian Tomuschat is resigned to the ‘basic fact’ that ‘human rights protection is a process, which cannot be finalised once and for all at some point in time’. Moreover, it is an ‘open question’ as to whether the existing human rights framework is effective at *any* point in time.<sup>244</sup>

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<sup>243</sup> Costas Douzinas declared the end of human rights citing the loss of the emancipatory promise of human rights to ‘ever more declarations, treaties and diplomatic lunches’ as the reason for the unfortunate demise, while David Kennedy acknowledged the ‘enormous achievement’ of the human rights movement he charged the human rights movement with being, on balance, ‘part of the problem’ pervading effective human rights protection. Costas Douzinas, *The End of Human Rights* (Hart Publishing Oxford 2000) 380, and David Kennedy, ‘The International Human Rights Movement: Part of the Problem?’ (2001) 3 *European Human Rights Law Review* 245, 245. See also David Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (Princeton University Press Princeton 2004).

<sup>244</sup> Christian Tomuschat, *Human Rights: Between Idealism and Realism* (OUP Oxford 2003) 319. (Emphasis added)

## PART TWO

### THE PURSUIT OF HUMAN SECURITY BY THE UNITED NATIONS

This Part explores the role and contribution of the United Nations (UN) in achieving human security. As intimated in Chapter Four, producing a definitive prognosis as to the achievement of human security is primarily concerned with temporally constrained determinations of effectiveness.<sup>1</sup> This Part focuses on *how* the UN pursues human security, i.e. the *capacity* of the UN to achieve human security, and, in doing so seeks to move beyond the decisive dichotomy of ‘success’ and ‘failure’. In particular the Chapter seeks to identify and assess the roles of specific organs and bodies of the UN and to examine the efficacy of the mechanisms and tools at their disposal in the pursuit of human security. In other words the task at hand is to critically evaluate the *operational* and *institutional* capacity of the UN to achieve human security. This evaluation is undertaken against the human security framework developed in Part One for, while human security is the ‘goal value’ which the UN pursues, it is also the benchmark against which to assess UN activity undertaken in pursuit of human security.<sup>2</sup> Moreover, the Part has a second function of providing further elucidation and elaboration of human security by way of reference to UN policy and practice carried out in pursuit of human security.<sup>3</sup>

The first Chapter in this Part, **Chapter Five**, focuses on the role of the UN Charter human rights bodies, in particular the newly created UN Human Rights Council (HR Council), and the mechanisms and tools at the disposal of the HR Council in furtherance of human security. The focus of the Part relocates to the fields of security and development in **Chapter Six** which concentrates on delineating the roles of the Security

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<sup>1</sup> Christian Tomuschat characterised human rights protection as a process, a continual struggle ‘which cannot be finalised once and for all at some point in time’, but nevertheless declared that it ‘constitutes a grand design for a peaceful society where everyone enjoys everything that permits a life in dignity’. Christian Tomuschat, *Human Rights: Between Idealism and Realism* (Oxford: OUP, 2003) 319. The pursuit of human security by the UN may be similarly classified and thus to pronounce definitively on the achievement or otherwise of human security by the UN would produce a temporally discrete snapshot that would be fallacious and unrepresentative of UN activity in pursuit of human security.

<sup>2</sup> This is adopted from Nigel D. White's observation in respect of core values of the UN system whereby he stated that such values ‘provide the goals to which the system aspires, as well as a the benchmarks against which the success and failure of the system can be measured’. Nigel D. White, *The United Nations System: Towards International Justice* (Lynne Rienner Publishers: Boulder/London, 2002) 47. The idea of human security as a ‘goal value’ of the UN system was developed in Chapter Three.

<sup>3</sup> This is also adopted from an observation made by Nigel D. White to the effect that UN practice has further elaborated the core values of the UN system. Ibid 47.

Council (SC) and the United Nations Development Programme (UNDP) and evaluating the mechanisms and tools employed by these bodies to pursue human security. Underlying these complementary Chapters is a concern as to the capacity of the UN to achieve human security and thus the Chapters undertake an assessment of the institutional and operational capacity of the HR Council, the SC and the UNDP by way of reference to the emerging UN human security framework. As such, insofar as a deficit is revealed in the operational and/or institutional capacity of these UN bodies, the current effort to reform the UN provides a wider policy context within which the assessment of UN capacity to achieve human security is situated.

## CHAPTER FIVE

# IN PURSUIT OF HUMAN SECURITY: THE ROLE OF THE UN HUMAN RIGHTS COUNCIL

### I. INTRODUCTION

This Chapter examines the role of the UN Charter human rights bodies, in particular the newly created UN Human Rights Council (HR Council), in the pursuit of human security. More specifically, the Chapter aims to determine the operational and institutional *capacity* of the HR Council to contribute to the achievement of human security by the UN. As such, the examination is necessarily situated within the wider policy context of UN reform as the UN human rights machinery is currently undergoing major renovations, of which the HR Council is a product. As such, the Chapter is also concerned to assess the extent to which, if any, the reform of the UN human rights machinery and the HR Council in particular is motivated by human security concerns and, more importantly, is directed towards the achievement of human security.

The Chapter has four Parts the first of which details the establishment of the HR Council and, as such, includes an overview of the mandate, functions and composition of the nascent UN organ (Part II). The subsequent Parts assess the operational and institutional capacity of the HR Council to contribute to the achievement of human security, which is conducted against the backdrop of the dual motivations prompting the creation of the HR Council – the effectiveness and credibility of the Commission on Human Rights (CHR) (Parts III and IV). In this regard, a number of challenges and obstacles to the operational and institutional capacity of the HR Council in achieving human security are identified. Hence, the final Part of the Chapter considers the potential role of democracy in addressing the operational and institutional challenges faced by the HR Council in the pursuit of human security, along with exploring the intrinsic role of democracy in achieving human security (Part V).

## II. THE ESTABLISHMENT OF THE UN HUMAN RIGHTS COUNCIL

The UN HR Council was established on 15 March 2006,<sup>1</sup> according to the UN Secretary-General (SG), Kofi Annan, to give effect to ‘the increasing importance being placed on human rights in our collective rhetoric’ and to raise ‘human rights to the priority accorded’ in the UN Charter on a par to the Security Council (SC) and the Economic and Social Council (ECOSOC).<sup>2</sup> More importantly for present purposes, as a key UN reform measure, the HR Council was established to address the deficiencies in the UN machinery for the promotion and protection of human rights, specifically the ‘growing problems – of perception and in substance – associated with the Commission’, and to permit a thorough review of the effectiveness of the CHR.<sup>3</sup>

The ‘growing problems’ afflicting the CHR were diagnosed by the SG in his 2005 Report, *In Larger Freedom*, in terms of the ‘declining credibility and professionalism’ of the CHR which undermine its capacity to perform its functions in respect of the promotion and protection of human rights and ‘casts a shadow on the reputation of the United Nations system as a whole’.<sup>4</sup> The High-Level Panel on Threats, Challenges and Change (HLP) issued a similar indictment stating that the capacity of the CHR ‘has been undermined by eroding credibility and professionalism’ due to states seeking membership in order to ‘protect themselves against criticism or to criticise others’<sup>5</sup> and concluded that reform of the CHR is necessary for the effective functioning of the UN human rights system.<sup>6</sup> Nonetheless, while agreeing on the diagnosis as to the ills of the CHR, the SG and the HLP arrive at disparate prescriptions. For the HLP the answer was found primarily in extending membership of the CHR to the entire UN membership.<sup>7</sup> In addition to advocating universal membership as a remedy for the ills of the CHR, the HLP also saw the stipulation that the heads of all delegations to the CHR to be ‘prominent and experienced human

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<sup>1</sup> UN GA Res 60/251, ‘The Human Rights Council’ (15 March 2006) UN Doc A/RES/60/251. The first meeting of the HR Council was held on 19 June 2006 which was described as ‘a disappointing, low-key event’. International Service for Human Rights, Human Rights Monitor No. 64/2006, <[http://www.ishr.ch/hrm/hrm\\_documents/hrm\\_2006\\_complete1.pdf](http://www.ishr.ch/hrm/hrm_documents/hrm_2006_complete1.pdf)> accessed 28 August 2007, 9.

<sup>2</sup> UN SG, ‘Human Rights Council: Explanatory Note by the Secretary-General’ in UN SG, *In Larger Freedom: Towards Security, Development and Human Rights for All* (UN Dept of Public Information New York 2005), Appendix 1, para. 1.

<sup>3</sup> *Ibid* para. 2.

<sup>4</sup> UN SG, *In Larger Freedom* (n 2) para. 182.

<sup>5</sup> HLP, *A More Secure World: Our shared responsibility* (United Nations New York 2004) para. 283.

<sup>6</sup> *Ibid* para. 284.

<sup>7</sup> *Ibid* para. 285.

rights figures' as important and similarly, the existence of an advisory council or panel to support the CHR in its work, along with considering the possibility of 'upgrading' the CHR to a 'Human Rights Council' were emphasised as crucial aspects of the reform of the CHR.<sup>8</sup> The SG, on the other hand, proposed the establishment of a 'Human Rights Council' to replace the embattled CHR with a smaller membership than the 53 strong membership of its predecessor. Furthermore, the SG envisioned members of the HR Council as elected by two-thirds majority vote of the General Assembly (GA) instead of the ECOSOC, which would befit the status of the new organ reflecting the place of human rights as one of the three great purposes of the UN, and would ensure greater accountability to the 'full membership' of the UN.<sup>9</sup> A particularly innovative feature of the HR Council proposed by the SG was that of periodic peer review.<sup>10</sup> This, the SG explained, 'would evaluate the fulfilment by all States of all their human rights obligations' which would complement but not replace the existing treaty monitoring systems in place under various UN human rights treaties.<sup>11</sup>

Both the SG and the HLP recognised the accomplishments of the CHR, especially in the sphere of standard-setting, and yet, reform of the CHR was presented as a fait accompli. Indeed, considered analysis of the ills and shortcomings of the CHR are absent from the reports, a tendency somewhat mirrored in the academic commentary.<sup>12</sup> As Philip Alston remarks the impetus for this reform effort was the election of the Sudan in 2001 to the CHR much to the dismay of the US, which had also sought election but was ultimately unsuccessful.<sup>13</sup> Hence, the US adopted the cause of reforming the 'politicalised' CHR and was instrumental in the negotiations leading up to the adoption of GA Resolution 60/251, which established and sets out

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<sup>8</sup> Ibid para. 286 – 287 and 291.

<sup>9</sup> UN SG, 'Explanatory Note' (n 2) para. 4 and 12.

<sup>10</sup> Ibid paras. 6 –8.

<sup>11</sup> Ibid para. 6.

<sup>12</sup> Nazila Ghanea observed that almost every reference to the CHR 'came to be prefaced by the term 'discredited'. Nazila Ghanea, 'From the UN Commission on Human Rights to UN Human Rights Council: One step forwards or two steps sideways?' (2006) 55 *International and Comparative Law Quarterly* 695, 695.

<sup>13</sup> Philip Alston, 'Promoting Accountability of Members of the New UN Human Rights Council' (2005) 15 *Journal of Transnational Law and Policy* 49, 59. See also Lawrence C. Moss, 'Will the Human Rights Council have better Membership than the Commission on Human Rights?' (2006) 13 *Human Rights Brief* 5, 5.

the mandate, functions and composition of the HR Council.<sup>14</sup> However, the US refused to endorse the fledgling body, citing ‘insufficient safeguards to prevent countries with poor human rights records from being elected’, which did not reflect ‘key US objectives’,<sup>15</sup> prompting commentators to speak of ‘the political self-interest of the United States’.<sup>16</sup> In combination, the absence of considered analysis of the strengths and weaknesses of the CHR and the political machinations surrounding the reform effort, add potency to Françoise J. Hampson’s forceful assertion that ‘the reason why the process was embarked upon had nothing to do with improving the human rights machinery’.<sup>17</sup> As such, the restraint demonstrated by one NGO, which agreed that the CHR was in need of reform, but cautioned to wait ‘until the wheel of political and public opinion turns once again in favour of human rights’ may prove to be prophetic,<sup>18</sup> while at least one commentator remained anxious as to ‘whether such wholesale reform would result in the establishment of a stronger or a weaker instrument for the promotion and protection of human rights’.<sup>19</sup>

Nevertheless, GA Resolution 60/251, after much ‘protracted and difficult negotiations’<sup>20</sup> was adopted by 170 votes in favour to four against, including the US, the Marshall Islands, Israel and Palau.<sup>21</sup> Under the terms of GA Resolution 60/251 the HR Council has a broad mandate to promote ‘universal respect for the protection of all human rights and fundamental freedoms for all’<sup>22</sup> and is endowed with the

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<sup>14</sup> According to Morton H. Halperin and Diane F. Orentlicher, John Bolton as the US Ambassador to the UN ‘thwarted the effort . . . to arrive at a consensus position on reform issues by insisting on direct negotiations between countries’ with the effect of scaling back ‘the ambition of UN reform’ including the HR Council. See Morton H. Halperin and Diane F. Orentlicher, ‘The New UN Human Rights Council’ (2006) 13 *Human Rights Brief* 1, 2.

<sup>15</sup> John R. Crook, ‘United States Votes Against New UN Human Rights Council’ (2006) 100 *American Journal of International Law* 697, 697.

<sup>16</sup> Hadar Harris, ‘The Politics of Depoliticalisation: International Perspectives on the Human Rights Council’ (2006) 13 *Human Rights Brief* 8, 8.

<sup>17</sup> Françoise J. Hampson, ‘An Overview of the Reform of the UN Human Rights Machinery’ (2007) 7 *Human Rights Law Review* 7, 10.

<sup>18</sup> Rights and Democracy, ‘Backgrounder on the Reform of the UN Commission on Human Rights’ (International Centre for Human Rights and Democratic Development 2005) <<http://www.dd-rd.ca/site/PDF/publications/intHRadvocacy/UNHCRreform.pdf>> accessed 28 August 2007, 47.

<sup>19</sup> Peter N. Prove, ‘Re-commissioning the Commission on Human Rights: UN Reform and the UN Human Rights Architecture’ <[http://www.lutheranworld.org/What\\_We\\_Do/OIahr/issues\\_Events/UN\\_Reform-Human\\_Rights.pdf](http://www.lutheranworld.org/What_We_Do/OIahr/issues_Events/UN_Reform-Human_Rights.pdf)> accessed 12 June 2007.

<sup>20</sup> Helen Upton, ‘The Human Rights Council: First Impressions and Future Challenges’ (2007) 7 *Human Rights Law Review* 29, 30.

<sup>21</sup> Belarus, Iran and Venezuela abstained.

<sup>22</sup> UN GA Res 60/251 (n 1) para. 2.

specific responsibility to ‘address situations of violations of human rights, including gross and systematic violations’, along with promoting the ‘effective coordination and the mainstreaming of human rights within the United Nations system’.<sup>23</sup> In order to fulfil this broad mandate the HR Council retains the advisory role etched out by the CHR in respect of technical assistance and capacity building, along with human rights education,<sup>24</sup> in addition to the standard setting function performed by the CHR<sup>25</sup> and finally, assumes responsibility for the special procedures and the complaint procedure devised by the CHR by way of addressing gross and systematic violations of human rights. Nevertheless, in the latter regard, the HR Council is charged with reviewing and, where necessary, improving and rationalising ‘all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of special procedures, expert advice and a complaint procedure’.<sup>26</sup> Such retention of the key functions of the CHR signals the recognition, as expressed in the GA Resolution, of ‘the need to preserve and build on its achievements and to redress its shortcomings’.<sup>27</sup> Yet a key innovative function of the HR Council, as a ‘forum for dialogue’<sup>28</sup> that contributes through dialogue and cooperation to ‘the prevention of human rights violations’ and to the prompt response to human rights emergencies,<sup>29</sup> is the provision for universal periodic review (UPR) whereby ‘the fulfilment by each State of its human rights obligations and commitments’ is assessed as proposed by the SG in *In Larger Freedom*.<sup>30</sup>

It is unsurprising, given the impetus of CHR reform, that one of the principal issues during the negotiation of GA Resolution 60/215 was that of membership.<sup>31</sup> As such,

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<sup>23</sup> Ibid para. 3.

<sup>24</sup> Ibid para. 5 (a).

<sup>25</sup> Ibid para. 5 (c) and (d).

<sup>26</sup> Ibid para. 6.

<sup>27</sup> Ibid preambular para. 8.

<sup>28</sup> Ibid para. 5 (b).

<sup>29</sup> Ibid para. 5 (f).

<sup>30</sup> Ibid para. 5 (e). Egon Schwelb and Philip Alston note that ECOSOC had made provision for state reporting on economic and social matters, which included human rights, in 1950. The initiative came to end a mere two years later in 1952 in light of the ‘great burden this scheme placed on both Governments and the Secretariat’. Egon Schwelb and Philip Alston, ‘The Principal Institutions’ in Karel Vasak and Philip Alston (eds), *The International dimensions of Human Rights Vol 1* (Greenwood Press Westport Connecticut 1982) 278.

<sup>31</sup> Halperin and Orentlicher (n 14) 2. Halperin and Orentlicher identified a further two issues, that of how often the HR Council would meet and how the HR Council would address country-specific matters. They note that these latter two were easily resolved with meetings set at no fewer than three

it is useful to briefly outline the membership requirements in respect of the CHR. The CHR, which originally consisted of nine members appointed in their individual capacity and which grew to a membership of 53 states elected on a regional basis by ECOSOC,<sup>32</sup> met annually for a period of six weeks in Geneva and could convene emergency sessions. States were elected to the Commission for a period of three years with the possibility of re-election. Elections were staggered in order to replenish approximately a third of the membership at a time and an informal practice arose whereby states were elected according to geographical region.<sup>33</sup> The HR Council, on the other hand, consists of 47 members elected by majority vote of the GA at three year intervals on the basis of equitable geographical distribution with the possibility of re-election, although a state that has served two consecutive terms is precluded from seeking immediate re-election.<sup>34</sup> Of note, however, is the introduction of qualifications for membership of the HR Council. GA Resolution 60/251 stipulates that when electing states to the HR Council, member states should take account of 'the contribution of candidates to the promotion and protection of human rights'.<sup>35</sup> To this end, states seeking election make 'voluntary pledges',<sup>36</sup> although Hampson observes that it is unfortunate that 'specific undertakings' were not sought during the recent election process.<sup>37</sup> However, members of the HR Council are entreated to 'uphold the highest standards in the promotion and protection of human rights' and to facilitate this, states are reviewed under the fledging UPR during their tenure.<sup>38</sup>

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sessions a year and the new mechanism of Universal Periodic Review (UPR) introduced in response to the latter.

<sup>32</sup> The CHR originally consisted of 18 members which 'was increased to 22 in 1961, to 32 in 1966 and to 43 in 1979'. Schwelb and Alston (n 30) 244.

<sup>33</sup> Under this informal practice, African states were allotted 15 seats, 12 seats were allocated to Asian states with a further five seats earmarked for Eastern European states, while 11 seats were apportioned to Latin American and Caribbean states, the grouping of Western European and other which included the US, Australia and New Zealand had a total of 10 seats on the Commission. Data on distribution of seats amongst these geographical regions is available on the website of the Office of the UN High Commissioner for Human Rights, <<http://www.ohchr.org/english/bodies/chr/membership.htm>> accessed 11 November 2006.

<sup>34</sup> The formula for the distribution of seats in the HR Council is as follows: Group of African States, thirteen; Group of Asian States, thirteen; Group of Eastern European States, six; Group of Latin American and Caribbean States, eight; and Group of Western European and other States, seven. UN GA Res 60/251 (n 1) para. 7.

<sup>35</sup> Ibid para. 8.

<sup>36</sup> Ibid.

<sup>37</sup> Hampson (n 17) 14.

<sup>38</sup> UN GA Res 60/251 (n 1) para. 9.

Finally, provision is made for the suspension of member states that commit ‘gross and systematic violations of human rights’.<sup>39</sup>

In this way, GA Resolution 60/215 provides, on paper, ‘a sound basis for a better principal UN human rights political body than its predecessor’.<sup>40</sup> Indeed, the HR Council purports to address the charge of ineffectiveness levelled at the CHR by way of conducting a review of the special procedures and complaint procedure, in addition to instituting a new monitoring mechanism, that of UPR. Moreover, the GA Resolution by stipulating requirements for election and membership, and ultimately providing for the suspension of member states, attempts to deal with the ‘credibility deficit’ faced by the CHR, which is buttressed by the provision for UPR. In short, notwithstanding the origins of the reform, ‘the establishment of this new body represents an important opportunity for a new start in dealing with human rights within the UN machinery’.<sup>41</sup> Indeed, the HR Council as founded on the recognition of the interdependence of the ‘three great purposes of the UN’ – security, development and human rights - is a step in the right direction. Nevertheless, it remains to be seen whether the HR Council is one step forward and two steps back for the promotion and protection of human rights and ultimately the achievement of human security. To this end, the Chapter turns to exploring whether the measures adopted to address the operational and institutional challenges plaguing the CHR - effectiveness and credibility - do in fact contribute to the achievement of human security.

### **III. THE MONITORING MECHANISMS: POSSIBILITIES AND OBSTACLES FOR ACHIEVING HUMAN SECURITY**

From its inception in 1946 to its demise in 2006, the CHR underwent a ‘profound transformation’.<sup>42</sup> The historical record, as intimated in Chapter Three, charts an innovative evolutionary track in terms of the roles and functions assumed by the CHR in furtherance of its mandate in respect of the promotion and protection of human

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<sup>39</sup> Ibid para. 8.

<sup>40</sup> Patrizia Scannella and Peter Splinter, ‘The United Nations Human Rights Council: A Promise to be Fulfilled’ (2007) 7 *Human Rights Law Review* 41, 49.

<sup>41</sup> Upton (n 20) 31.

<sup>42</sup> Philip Alston, ‘The Commission on Human Rights’ in Philip Alston (ed), *The United Nations and Human Rights: A Critical Appraisal* (Clarendon Press Oxford 1992) 126.

rights.<sup>43</sup> Indeed the CHR gradually moved from a largely promotional role to embrace a complementary protective role and, in doing so, etched out corresponding functions spanning the spectrum of standard-setting which produced, amongst others, the International Covenants,<sup>44</sup> promotional activities including technical assistance,<sup>45</sup> and monitoring which included the special procedures developed on the basis of ECOSOC Resolution 1235 (1967) and the complaint procedure instituted by ECOSOC Resolution 1503 (1970).<sup>46</sup> Nonetheless the effectiveness of these procedures in responding to violations of human rights has been, perhaps inevitably given the ‘broader historical context’<sup>47</sup> within which the CHR functioned, ‘the sole criterion’<sup>48</sup> against which to measure the effectiveness of the CHR as the most important UN organ in the field of human rights.<sup>49</sup> Thus, by examining the effectiveness of the special procedures and the complaint procedure as monitoring mechanisms at the disposal of the CHR in order to respond to human rights violations, this Part aims to determine the contribution to the achievement of human security by the special procedures and the complaint procedure. This assessment in turn provides the basis for the assessment of the operational capacity of the embryonic HR Council in pursuing human security.

### *A. The Special Procedures*

By the terms of ECOSOC Resolution 1235 (1967) the CHR was authorised to ‘examine information relevant to gross violations of human rights and fundamental freedoms’ and, when appropriate, to ‘make a thorough study of situations which

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<sup>43</sup> ECOSOC Res 5 (I) (16 February 1946) as amended by ECOSOC Res 9 (II) (21 June 1946).

<sup>44</sup> For an assessment of the CHR in this area see Schwelb and Alston (n 30) 243 - 250.

<sup>45</sup> Sir Samuel Hoare record that this was route of human rights protection was preferred by the US. See Sir Samuel Hoare, ‘The Commission on Human Rights’ in Evan Luard, *The International Protection of Human Rights* (Thames and Hudson London 1967) 79-84. This also provides the foundation for cooperation with UN development organs such as the UNDP.

<sup>46</sup> On the evolution of the functions of the CHR see Alston, ‘The Commission on Human Rights’ (n 42) 131- 181; for a more specific account of the evolution of the special procedures and the complaint procedure, see Christian Tomuschat, *Human Rights: Between Idealism and Realism* (OUP Oxford 2003) 115 – 128.

<sup>47</sup> Alston, ‘The Commission on Human Rights’ (n 42) 126.

<sup>48</sup> *Ibid* 138.

<sup>49</sup> The achievements of the CHR has led many a commentator to declare that the CHR is the most important UN human rights organ. Jeroen Gutter, ‘Special Procedures and the Human Rights Council: Achievements and Challenges Ahead’ (2007) 7 *Human Rights Law Review* 93, 93; Alston, ‘The Commission on Human Rights’ (n 42) 126.

reveal a consistent pattern of violations of human rights'.<sup>50</sup> ECOSOC Resolution 1235 also welcomed the decision of the CHR to hold an annual public debate in respect of human rights violations.<sup>51</sup> The annual public debate and the study and investigation of gross human rights violations form the two key components of the procedure laid down in ECOSOC Resolution 1235, more commonly referred to as the '1235 procedure', to respond to gross violations of human rights. On the basis of the ECOSOC Resolution, the CHR gradually developed a number of procedures by which to study and investigate gross violations of human rights, the product of which informed the annual public debate on the question of human rights violations.<sup>52</sup> Yet, the development of these procedures falling under the rubric of the 'special procedures' prompted one commentator to observe that the practice of the CHR in responding to human rights violations 'bears only a passing resemblance to the actual procedure formally authorised by that resolution',<sup>53</sup> and thus, the special procedures provide a clear example of the innovative evolution in the promotion and protection of human rights by the CHR.<sup>54</sup>

Although established by the CHR in March 1967,<sup>55</sup> a mere three months before ECOSOC Resolution 1235, the ad hoc Working Group of experts on southern Africa (WGSA) is often counted as the first step in the fledging practice of the CHR under ECOSOC Resolution 1235.<sup>56</sup> The WGSA, composed of 'eminent jurists and prison officials' acting in a personal capacity,<sup>57</sup> was originally mandated to investigate allegations of the torture and ill-treatment of prisoners, detainees and persons in police custody in South Africa and to make recommendations for action in concrete

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<sup>50</sup> ECOSOC Res 1235 (XLII) 'Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid in all countries, with particular reference to colonial and other dependent countries and territories' (6 June 1967) UN Doc. E/4393, paras. 2 and 3 respectively.

<sup>51</sup> *Ibid* para. 1.

<sup>52</sup> During the drafting process of ECOSOC Resolution 1235 the authority to 'investigate' disappeared. Jakob Th. Möller has remarked that the difference between a 'thorough study' and 'investigation' 'may in the end be rather academic'. See Jakob Th. Möller, 'Petitioning the United Nations' (1979) 1 *Human Rights Quarterly* 57, 61-62.

<sup>53</sup> Alston, 'The Commission on Human Rights' (n 42) 155.

<sup>54</sup> Ingrid Nifosi points to the increased membership of the CHR along with the entry into force of the ICERD which provided for a petition procedure as engendering the political climate and the consensus necessary to facilitate the development of the special procedures. Ingrid Nifosi, *The UN Special Procedures in the Field of Human Rights* (Intersentia Antwerpen and Oxford 2005) 14.

<sup>55</sup> CHR Res 2 (XXIII) (6 March 1967).

<sup>56</sup> Alston, 'The Commission on Human Rights' (n 42) 157; Nifosi, (n 54) at 15.

<sup>57</sup> CHR Res 2 (XXIII) para. 3

situations, along with reporting to the CHR.<sup>58</sup> In order to fulfil this mandate the WGSA was authorised to receive communications and hear witnesses in accordance with ‘such modalities of procedure as it may deem appropriate’<sup>59</sup> and it is apparent in early practice of the WGSA that the primary source of information regarding allegations of torture and ill-treatment was from witnesses rather than written communications.<sup>60</sup> Moreover, the WGSA established guidelines based on international human rights law against which to assess the allegations of torture and ill-treatment.<sup>61</sup> Although this original mandate was expanded a number of times before the WGSA was discontinued in 1995,<sup>62</sup> it firstly underwent geographical expansion in 1968 to include South West Africa, Southern Rhodesia, Mozambique, Angola and all other Portuguese territories in Africa, and was subsequently expanded in 1969 to include the question of capital punishment, the treatment of political prisoners and the conditions in ‘Transit Camps’ and ‘Native Reserves’ specifically in South Africa, Namibia and Southern Rhodesia, and to investigate further ‘grave manifestations of apartheid’ in South Africa and ‘grave manifestations of colonialism and racial discrimination’ in Namibia, Southern Rhodesia, Angola, Mozambique and Guinea Bissau.<sup>63</sup>

When the issue of human rights violations in the Arab territories occupied by Israel as a result of the Six Day War in 1967 was raised in the CHR, a further extension of the existing mandate of the WGSA was rejected and a new Working Group, comprised of five of the members of the WGSA acting in an independent capacity, was created.<sup>64</sup> The Working Group of experts on Arab Territories occupied by Israel (WGAT) was mandated to investigate allegations of breaches of international humanitarian law by Israel in the territory occupied by it and, to this end, was to receive communications and hear witnesses pursuant to procedures deemed appropriate by the WGAT.<sup>65</sup> While, the establishing resolution also strongly condemned human rights violations by Israel in the occupied territories, Israel, like South Africa before it, refused to

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<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Ton J. M. Zuijdwijk, *Petitioning the United Nations: A Study in Human Rights* (Gower Aldershot 1982) 254.

<sup>61</sup> Ibid 249 - 254.

<sup>62</sup> For an overview until 1982 see generally, *ibid* 246 - 249.

<sup>63</sup> On the practice of the WGSA, *ibid* 254 - 263.

<sup>64</sup> See Nifosi (n 54) 68 - 39.

<sup>65</sup> Ibid.

cooperate with the WGAT, citing, amongst others, lack of impartiality as the WGAT was not mandated to consider violations of the human rights of Jewish people in Arab territories.<sup>66</sup> With the establishment of a 'Special Committee to Investigate Israeli practices affecting the human rights of the population of the occupied territories' under the auspices of the GA in 1969,<sup>67</sup> the WGAT was disbanded in 1970, although the CHR continued to receive and debate the annual report of the Special Committee.<sup>68</sup> In contrast, the next Working Group established by the CHR, the Working Group on Chile (WGC) in 1975, was on foot of an invitation by the Chilean government.<sup>69</sup>

The WGC, comprised of five members operating in an individual capacity,<sup>70</sup> was charged with investigating the human rights situation in Chile 'on the basis of a visit to Chile and of oral and written evidence to be gathered from all relevant sources'.<sup>71</sup> As with the WGSA international human rights law such as the UDHR and the ICCPR and standards, such as the 1975 Declaration on the Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, provided the standard or guideline against which to assess the human rights situation in Chile along with elements of international humanitarian law.<sup>72</sup> The WGC initially adopted rules of procedure for the visit to Chile and the gathering of relevant information based on the model rules issued by the then UN SG in 1970, which included acceptance of anonymous communications and provided for the protection of the identity of the communicant.<sup>73</sup> Nonetheless, the working methods of the WGC were subsequently guided by rules of procedure developed in conjunction with the Chilean government found in the 1978 memorandum of understanding which

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<sup>66</sup> Along with questionable impartiality, Israel saw the WGAT as the product of a resolution adopted 'by an anti-Israel coalition of States'. Ibid 69.

<sup>67</sup> UN GA Res 2443 (XXIII), 'Respect for and Implementation of Human Rights in Occupied Territories' (19 December 1968).

<sup>68</sup> Alston, 'The Commission on Human Rights' (n 42) 156. A special rapporteur was appointed in 1993.

<sup>69</sup> For a brief historical overview of this see Zuijdwijk (n 60) 304 -305.

<sup>70</sup> Zuijdwijk questions whether this stipulation of independence was possible in reality. Zuijdwijk (n 60) 245 - 246.

<sup>71</sup> CHR Res 8 (XXXI) para. 1.

<sup>72</sup> See Nifosi (n 54) 69-70.

<sup>73</sup> See Zuijdwijk (n 60) 306.

according to Henry J. Steiner and Philip Alston ‘remains an important benchmark’ for UN human rights fact-finding and monitoring.<sup>74</sup>

Most commentators see this initial phase in the development of the special procedures as constrained to issues of racism and colonialism.<sup>75</sup> However, it is clear that the establishment of the WGC marked a broadening of the subject matter beyond the confines of apartheid and the issues besetting colonialism and saw the CHR embrace its wide mandate to examine and investigate *any* human rights violations under ECOSOC Resolution 1235. Furthermore, key facets of CHR practice under the rubric of the 1235 procedure were established during this period, such as the reliance on international human rights law and international humanitarian law to provide the standard against which to assess allegations of human rights violations; the discretion given to the Working Groups to determine rules of procedure in respect of information received; and, the requirement of the impartiality and independence of members of the Working Groups. Nonetheless cracks were evident in the fledgling edifice of the special procedures, particularly in terms of the impartiality and the independence of the members of the Working Groups. For instance Ton J.M. Zuijdwijk has observed that the members of the WGC, while required to act in their individual capacity by the CHR resolution establishing the Working Group, were also representatives of their countries.<sup>76</sup> This underscores the question of politicalisation which permeated the practice of the CHR in general<sup>77</sup> and, more specifically for present purposes, manifested in the operation of the 1235 procedure. For example, as noted above, South Africa and Israel refused to cooperate with their respective Working Groups, and Chile, notwithstanding the extension of an invitation to the

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<sup>74</sup> Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals* (OUP Oxford 2000) 603. Steiner and Alston assert that despite attempts, UN has never agreed on a set of model rules. For more recent attempt, see UN GA, ‘Declaration on Fact-finding by the UN in the Field of the Maintenance of International Peace and Security’ (9 December 1991) UN Doc. A/RES/46/59, Annex. For a concise synthesis of the practice of special procedures which is distilled into principles in respect of fact finding see OHCHR, ‘Manual of the United Nations Human Rights Special Procedures’ (draft June 2006)

<[http://www.ohchr.org/english/bodies/chr/special/docs/Manual\\_English.pdf](http://www.ohchr.org/english/bodies/chr/special/docs/Manual_English.pdf)> accessed 18 June 2007.

<sup>75</sup> Alston, ‘The Commission on Human Rights’ (n 42) 158. This is similar to the evolution of the meaning of ‘threat to the peace’ to include human rights issues by the SC, which is discussed in depth in Chapter Six.

<sup>76</sup> Zuijdwijk (n 60) 306.

<sup>77</sup> On this issue see, for example, David P. Forsythe, ‘The United Nations and Human Rights, 1945 – 1985’ (1985) 100 *Political Science Quarterly* 249, 251, 255 – 257.

CHR, also resisted the operation of the Working Group established on foot of their invitation.<sup>78</sup>

Philip Alston declared 1978 as the year which saw the 1235 procedure begin to open up with a number of tentative steps taken by the CHR including for example, requesting the government of the Democratic Kampuchea to respond to allegations of human rights violations and the condemnation of the Somoza regime in Nicaragua. According to Alston, developments such as these, in combination with the ongoing debate within UN human rights organs to find a way to respond to the disappearances of people in Argentina, led to the establishment of the Working Group on Enforced or Involuntary Disappearances (WGEID) in 1980.<sup>79</sup> The five member WGEID was mandated under CHR Resolution 20 (XXXVI) to 'examine questions relevant to enforced or involuntary disappearances'. To this end the WGEID was authorised to seek and receive information from 'reliable sources' and was instructed to 'respond effectively to information that comes before it' and to 'work with discretion'.<sup>80</sup> The mandate of the WGEID, responsibility for which has been assumed by the HR Council, has been modified since its inception in 1980. For example, the WGEID was reminded in 1981 to 'work with discretion' not only to 'limit the dissemination of information provided by Governments' but also to 'protect the persons providing the information'.<sup>81</sup>

Nonetheless, the WGEID has interpreted the mandate, the basis for which is found in the original CHR Resolution 20 (XXXVI), in a particularly innovative manner which is clearly seen in and consolidated by the practice of the WGEID. For instance, the WGEID broadly interpreted the power to 'examine questions' as going beyond 'an academic study of the issue'<sup>82</sup> of enforced or involuntary disappearances by developing methods of work, such as rules on admissibility of communications. The WGEID has stipulated three fold admissibility criteria, namely, the information

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<sup>78</sup> See Zuijdwick (n 60) 312 – 313.

<sup>79</sup> Alston, 'The Commission on Human Rights' (n 42) 159 - 160.

<sup>80</sup> CHR Resolution 20 (XXXVI) (1980).

<sup>81</sup> CHR Resolution 10 (XXXVII) (1981).

<sup>82</sup> David Weissbrodt, 'The Three 'Theme' Special Rapporteurs of the UN Commission on Human Rights' (1986) 80 *American Journal of International Law* 685, 686.

conveyed must fall within the mandate of the WGEID,<sup>83</sup> contain certain factual information concerning the person, and be communicated by a family member or friends in writing to the WGEID, although this information may be channelled through a NGO or other 'reliable source'.<sup>84</sup> Upon meeting the criteria for admissibility the WGEID transmits the reported incident of disappearance to the state in question with 'a request to carry out investigations and to inform the Working Group of the results'.<sup>85</sup> The WGEID sends the reply of the government to the communicant upon receipt, the response to which determines any further action taken by the WGEID in respect of the particular incident and, in this way, the WGEID acts as a constructive conduit of communication between the families and friends of the disappeared and the government concerned.

The WGEID has innovatively and expansively interpreted the original mandate under CHR Resolution 20 (XXXVI) in two further significant respects. Firstly, as is evident from the rules on admissibility, the WGEID has made appropriate use of the broad mandate in the establishing CHR Resolution in terms of sources of information from 'reliable sources'.<sup>86</sup> Secondly, the WGEID has developed procedures in order to 'respond effectively' to information gathered regarding enforced or involuntary disappearances. These include the annual report of the WGEID to the CHR as required by the establishing CHR Resolution and, as noted above, requests for information from governments in relation to specific individual cases. However, through practice the WGEID incrementally built three further procedures by which to respond to information regarding disappeared persons, that of urgent action requests, prompt intervention for reprisals and country visits, which were not provided for under the relevant establishing CHR Resolution.<sup>87</sup> In short, while the practice of the WGEID is informed by relevant international human rights standards such as the right

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<sup>83</sup> Ingrid Nifosi states that this requirement means that the communication must fall within the definition of disappeared person as defined by the WGEID. See Nifosi (n 54) 83. In March 2007, the WGEID adopted a new definition. See <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/B9661660AB105C52C12572A400466F2E?openDocument> accessed 18 June 2007.

<sup>84</sup> See WGEID, 'Fact Sheet No. 6 Enforced or Involuntary Disappearances (Rev. 2)' <http://www.ohchr.org/english/about/publications/docs/fs6.htm> accessed 18 June 2007.

<sup>85</sup> Ibid.

<sup>86</sup> See Nifosi (n 54)82; Alston, 'The Commission on Human Rights' (n 42) 176 – 177.

<sup>87</sup> For a description of these procedures see the WGEID website <http://www.ohchr.org/english/issues/disappear/procedures.htm#1> accessed 18 June 2007. See also Alston, 'The Commission on Human Rights' (n 42) 177 - 180.

to life, prohibition on torture, the right to liberty and security of the person and recognition before the law,<sup>88</sup> and it also works to promote the Declaration on the Protection of All Persons from Enforced Disappearances 1992,<sup>89</sup> the WGEID has developed 'into an effective human rights implementation mechanism on no broader a consensual basis than a consensus of the Commission on Human Rights and without the authority of any human rights treaty beyond the United Nations Charter'.<sup>90</sup>

The WGEID was the first of five thematic procedures established by the CHR during the 1980's.<sup>91</sup> In addition to the WGEID the HR Council has assumed responsibility for the Special Rapporteur on extrajudicial, summary or arbitrary executions (1982), the Special Rapporteur on Torture (1985), and the Special Rapporteur on the right to freedom of religion and belief (1986). The Special Rapportuer on the use of mercenaries as a means of impeding the exercise of the right to peoples to self-determination, established in 1987, was replaced in 2005 with a Working Group (WGM). The practice of the WGEID greatly influenced the operation of the thematic Special Rapporteurs<sup>92</sup> and, more generally, had a profound impact on the development of the special procedures of the CHR. Indeed, as David Weissbrodt has stated, the concept of a thematic special rapporteur 'grew out of the practice of the Working Group on Enforced or Involuntary Disappearances'.<sup>93</sup> Furthermore, many of the facets of the practice of the WGEID described above are clearly discernible in the mandates and practices of the CHR thematic special procedures, such as the discretion to determine working methods, including rules on admissibility, a degree of flexibility as to the sources of information to be considered, and finally, perhaps the most apparent facet, the procedures employed to fulfil the pertinent thematic mandates are comparable to those used and developed by the WGEID, including country visits, annual reports and urgent appeals or urgent action requests.<sup>94</sup> They are also firmly

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<sup>88</sup> WGEID, 'Fact Sheet No. 6' (n 84).

<sup>89</sup> Ibid.

<sup>90</sup> Weissbrodt (n 82) 687. The WGEID has described itself in the following terms: 'The Working Group deals with the numerous individual cases of human rights violations on a purely humanitarian basis, irrespective of whether the Government concerned has ratified any of the existing legal instruments which provide for an individual complaints procedure'. WGEID, 'Fact Sheet No. 6' (n 84).

<sup>91</sup> List of Special Procedures of the Commission on Human Rights  
<<http://www1.umn.edu/humanrts/commission/Thematiccountrymandates2004.html>> accessed 16 June 2007.

<sup>92</sup> Nifosi (n 54) 90; Alston, 'The Commission on Human Rights' (n 42) 174..

<sup>93</sup> Weissbrodt (n. 82) 685.

<sup>94</sup> Alston, 'The Commission on Human Rights' (n 42) 177-180.

situated, with the possible exception of the WGM, within an international human rights law framework.<sup>95</sup>

The emergence of thematic procedures in the 1980's was accompanied by 'a steady stream of resolutions under the 1235 procedure calling for a variety of 'special procedures' to be undertaken'.<sup>96</sup> Thus the 1980's saw the appointment of an Independent Expert on Afghanistan (1984) and six Special Rapporteurs in respect of the human rights situations in Bolivia (1981), El Salvador (1981), Guatemala (1982), Poland (1982), Iran (1982), and Romania (1989).<sup>97</sup> The Independent Expert on Afghanistan was mandated to 'seek relevant information from specialised agencies, intergovernmental agencies and non-governmental agencies' in order to formulate proposals that would ensure 'full protection of the human rights of all residents of the country' and to this end, submit a comprehensive report to the CHR.<sup>98</sup> The Special Rapporteur on the human rights situation in Guatemala was similarly authorised to study the question of human rights and to report to the CHR.<sup>99</sup> Indeed the typical mandate of a country procedure is to 'examine', 'study', 'investigate' or 'inquire into' the human rights situation in a given state.<sup>100</sup> Thus, no importance should be accorded to the appellation given to the mandate holder for, as Nigel Rodley observes, 'the nomenclature may be altered to respond to the political nuances important at the

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<sup>95</sup> For example, pursuant to CHR Res 1986/20 the Special Rapporteur on Religion is mandated 'to examine incidents and governmental actions . . . which were inconsistent with the provisions of the Declaration on the Elimination of all Forms of Intolerance and of Discrimination based on Religion or Belief'. <<http://www.ohchr.org/english/issues/religion/index.htm>> accessed 28 August 2007. The Special Rapporteur has developed this mandate by elucidating a framework for communications which is based on relevant international standards including the UDHR, ICCPR the Declaration on the Elimination of all Forms of Intolerance and of Discrimination based on Religion or Belief. The framework also refers to relevant parts of the ICESCR ICRED, CRC, CEDAW and ICRMW, CAT, the Genocide Convention and the Convention relating to the Status of Refugees. <<http://www.ohchr.org/english/issues/religion/standards.htm>> accessed 28 August 2007. The Working Group on Arbitrary Detention similarly expanded upon its original mandate by identifying relevant international human rights standards. <<http://www.unhchr.ch/html/menu6/2/fs26.htm#III>> accessed 28 August 2007.

<sup>96</sup> Alston, 'The Commission on Human Rights' (n 42) 160.

<sup>97</sup> The mandates of the Special Rapporteurs and Independent Expert were discontinued before the establishment of the HR Council.

<sup>98</sup> ECOSOC Res 1984/37 (24 May 1984).

<sup>99</sup> Amnesty International, 'Guatemala: Human Rights Violations and Impunity' <<http://web.amnesty.org/library/Index/ENGAMR340081997?open&of=ENG-2M2>> accessed 19 June 2007.

<sup>100</sup> Alston, 'The Commission on Human Rights' (n 42) 167.

time'.<sup>101</sup> Indeed, the Special Rapporteur to Guatemala was re-named Special Representative in 1986.<sup>102</sup>

Nonetheless, the broad mandate of inquiry or examination bestows a degree of discretion on the mandate holder of a country procedure which, according to Alston, has had a detrimental effect on the quality of reports produced.<sup>103</sup> He asserts that three 'models' of reporting are readily discernible in the practice of the special rapporteurs of country procedures as a direct result of the flexibility inherent in such a broad mandate. These are reports which emphasise fact-finding and documentation, others which adopt a prosecutorial/publicity function, and finally, reports which stress conciliation.<sup>104</sup> As these country reports provide the basis for the annual public debate in the CHR, Alston's concerns as to quality assurance and, further, insulation from the vagaries of politicalisation, assume greater potency. Alston further points to the absence of procedures by which to screen the information gathered in respect of the human rights situation in a given state as cause for concern particularly as regards to ensuring the integrity of the process.<sup>105</sup> This is further underlined by the fact that while the special rapporteurs are typically constrained to *seek* information from pre-designated sources, they 'tend not to consider themselves as restricted in the kinds of information that they may *receive*'.<sup>106</sup> To these concerns it is necessary to add the seemingly intractable issue of country selection. Indeed, the creation of country mandates in respect of human rights situations in the 1980's by the CHR prompted accusations of 'moral hypocrisy' and 'double-standards' from governments and

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<sup>101</sup> Nigel S. Rodley, 'United Nations Non-Treaty Procedures for Dealing with Human Rights Violations' in Hurst Hannum (ed), *Guide to International Human Rights Practice* (3<sup>rd</sup> edn Transnational Publishers New York 1999) 64.

<sup>102</sup> Amnesty has observed that the CHR appointed a Special Rapporteur in 1983 and in 1986 'the Commission changed the designation to that of Special Representative; his mandate was to receive and evaluate information from the government about the implementation of the new legislation intended to protection human rights'. Amnesty continued to note that in 1987 an expert was appointed to 'assist the government in adopting the necessary measures for the subsequent restoration of human rights' and 1990 saw the appointment of an 'Independent Expert to examine the human rights situation and to continue giving assistance to the government in the field of human rights'. Amnesty International, 'Guatemala: Human Rights Violations and Impunity' (n 99).

<sup>103</sup> Alston, 'The Commission on Human Rights' (n 42) 167.

<sup>104</sup> *Ibid* 167 – 169.

<sup>105</sup> *Ibid* 169 – 171.

<sup>106</sup> Rodley, 'UN Non-Treaty Procedures' (n 101) 64.

academics alike.<sup>107</sup> For instance the geographical distribution of the seven country mandates established in the 1980's, noted above, clearly reveals a focus on human rights situations in Latin America.<sup>108</sup> The question of politicalisation that underpins the CHR more generally, once again manifests in the operation of the special procedures.

During the twenty years from the obsolescence of the 'no power to act' doctrine in 1967, the contours of the special procedures were established and consolidated. The basic distinction between country procedures or mandates and thematic mandates was forged and the practice of appointing either an individual or a group of individuals, experts in the field of human rights and acting in a personal capacity, simultaneously evolved. In short, the CHR by virtue of developing the special procedures became, to paraphrase Rodley, the only forum in which human rights violations *anywhere* in the world may be addressed.<sup>109</sup> In doing so the special procedures contributed to the consolidation of the individual right of petition.<sup>110</sup> For, as noted above, the flexible interpretation of the permissible sources of information, particularly in respect of the thematic mandates, endowed the individual with an 'international procedural capacity'<sup>111</sup> to petition the UN in respect of human rights violations, irrespective of whether an international convention is in place. This was clearly seen above in relation to the WGEID which refers to the 1992 Declaration on the Protection of All Persons from Enforced or Involuntary Disappearance. Furthermore, the special procedures apply irrespective of whether a particular state has ratified a pertinent convention and individuals can still exercise their procedural capacity under the special procedures notwithstanding that the state in question is not a UN member state.

The 'international procedural capacity' of individuals under the special procedures was strengthened in subsequent practice by the development of guidelines for

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<sup>107</sup> Alston, 'The Commission on Human Rights' (n 42) 163 – 164, citing US Representative to the UN, Jeanne Kirkpatrick. See also Thomas Franck, 'Of Gnats and Camels: Is there a Double-Standard at the United Nations?' (1984) 78 *American Journal of International Law* 811.

<sup>108</sup> Alston provides a table of country procedures by region. See Alston, 'The Commission on Human Rights' (n 42) 162.

<sup>109</sup> Rodley, 'UN Non-treaty Procedures' (n 101) 80.

<sup>110</sup> Nifosi (n 54) 128 – 131.

<sup>111</sup> Antonio Augusto Cancado Trindade, 'The Consolidation of the Procedural Capacity of the Individual in the Evolution of the International Protection of Human Rights: Present State and Perspectives at the turn of the century' (1998) 30 *Columbia Human Rights Law Review* 1, 7.

mandate-holders as distilled from best practice, particularly in respect of sources of information.<sup>112</sup> For instance, the guidelines reinforce that mandate-holders may take account of ‘all available sources of information that they consider to be credible and relevant’ and further stipulate that a mandate-holder should be guided by the principles of ‘discretion, transparency and even-handedness’.<sup>113</sup> Further, the mandate holder should provide the government of the state concerned with an opportunity to reply to allegations, and for those alleging violations to comment on the government response. Nonetheless, the guidelines do not require the mandate-holder to inform the communicant of subsequent measures taken.<sup>114</sup> While it is clear that the mandate-holders retain a degree of discretion, and indeed the guidelines are hesitant to impose criteria or guidelines for accepting information,<sup>115</sup> the formulation of a generic submission form detailing the minimum amount of information required for a communication helps to supplement the consistency of best practice envisaged in the formulation of the guidelines and to enhance the procedural capacity of an individual to access the special procedures.<sup>116</sup>

The development of a common frame of reference in terms of working methods of the special procedures also produced a consensus as to the principal functions of the special procedures. According to the guidelines a country or thematic mandate has five functions the first of which is to analyse the relevant thematic issue or country situation and, second, to advise the relevant government(s) and other actors as to the measures to be taken. The third function is an ‘early warning’ function whereby the UN is alerted as to the ‘need to address specific situations and issues’.<sup>117</sup> This is a particularly innovative and useful function for as Ingrid Nifosi remarks the Special Rapporteurs in place in Rwanda and Burundi both carried out early warning functions

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<sup>112</sup> OHCHR, ‘Manual of the United Nations Human Rights Special Procedures’ (Draft June 2006) <[http://www.ohchr.org/english/bodies/chr/special/docs/Manual\\_English.pdf](http://www.ohchr.org/english/bodies/chr/special/docs/Manual_English.pdf)> accessed 28 August 2007.

<sup>113</sup> Ibid para. 23.

<sup>114</sup> Ibid para. 25.

<sup>115</sup> The guidelines state that mandate-holders ‘should be guided in their information gathering activities by the principles of discretion, transparency and even-handedness’. Ibid para. 24.

<sup>116</sup> The following minimum information must be supplied: identification of alleged victim(s); identification of alleged perpetrators of the violation; identification of the person(s) or organisation(s) submitting the communication; date and place of incident; and, a detailed description of the incident in which the alleged violations occurred.

<<http://www.ohchr.org/english/bodies/chr/special/communications.htm>> accessed 28 August 2007.

<sup>117</sup> OHCHR, ‘Manual’ (n 112) para. 5.

‘with respect to two of the bloodiest conflicts that occurred in the nineties’.<sup>118</sup> The remaining functions relate to advocacy on behalf of the victims by requesting urgent action by states, including redress of specific allegations of human rights violations, and to publicity by encouraging cooperation among international and national actors.<sup>119</sup>

The guidelines further draw together best practice in respect of country visits. These are seen as ‘an essential means to obtain direct and first-hand information’, allowing for ‘direct observations of the human rights situation’, and as facilitative of ‘an intensive dialogue with all relevant state authorities’ in addition to promoting contact with local NGO’s and other members of civil society.<sup>120</sup> The purpose of a country visit, which occurs on foot of an invitation by the state concerned, is to ‘assess the actual human rights situation’ and to make recommendations thereto.<sup>121</sup> In order to encourage government cooperation with the country visit the guidelines refer to the 1997 CHR document, ‘Terms of Reference for Fact-Finding Missions by Special Rapporteurs/Representatives of the Commission on Human Rights’.<sup>122</sup> These put forward minimum standards that Governments are expected to apply during the country visit and include freedom of movement in the entire state, freedom of inquiry, a guarantee that those providing information are not subjected to retaliation, and the provision of appropriate security arrangements.<sup>123</sup> These documents go some way to temper Alston’s conclusions, drawn in 1992, regarding the discretion afforded to the special procedures and the resultant impact on procedural propriety, the quality of the reports and insulating against the adverse effects of politicalisation.

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<sup>118</sup> Nifosi (n 54) 135.

<sup>119</sup> OHCHR, ‘Manual’ (n 112) para. 5.

<sup>120</sup> Ibid para. 53.

<sup>121</sup> Ibid.

<sup>122</sup> CHR, ‘Terms of Reference for Fact-Finding Missions by Special Rapporteurs/Representatives of the Commission on Human Rights’ (20 November 1997) UN Doc E/CN.4/1998/45; reprinted OHCHR, ‘Manual’ (n 112) Annex III.

<sup>123</sup> The terms of reference further provide that the same guarantees and facilities be extended to UN staff assisting the special rapporteur/representative before, during and after the visit. Further, the terms of reference stipulate that the freedom of inquiry guaranteed to the special rapporteur/representative includes access to all prisons, detention centres and places of interrogation, and to all relevant documentary material along with contact with all branches of government, NGO’s, the media and witness and other private persons, the latter which must be confidential and unsupervised. Ibid para. (b).

Along with the consolidation of working practices through, for instance, the publication of best practice guidelines and the terms of reference for fact-finding, there are two other strands in the subsequent development of the special procedures which are of particular note for present purposes. The first strand of note is the emergence of links with the fields of security and development. This is apparent, for example, in relation to the work of the Special Rapporteur on the Former Yugoslavia which is supported by a human rights field presence which has established working relationships with the peace operation.<sup>124</sup> The creation of an Independent Expert on the Right to Development in 1998 provides a clear example of the connection with the field of development,<sup>125</sup> particularly as the establishing resolution spoke of the promotion, protection and realisation of the right to development as ‘an integral part of the promotion and protection of all human rights’,<sup>126</sup> along with reaffirming the inter-linked and mutually reinforcing relationship between development and human rights.<sup>127</sup> The second notable strand in the subsequent development of the special procedures is the contribution of the special procedures to the development of international human rights law, and international law more generally.<sup>128</sup> For instance, by referring to international human rights law in assessing the human rights situation, whether under a thematic or country mandate, the mandate-holder is essentially undertaking a monitoring role in terms of compliance with the relevant treaty.<sup>129</sup> This is clearly seen in respect of the symbiotic relationship forged between the Special Rapporteur on Torture and the CAT, whereby the Special Rapporteur has issued authoritative statements as to the interpretation of the CAT.<sup>130</sup> It is also seen in

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<sup>124</sup> Anne Gallagher, ‘United Nations Human Rights Field Operations’ in Raija Hanski and Markku Suski (eds), *An Introduction to the International Protection of Human Rights: A Textbook* (2<sup>nd</sup> rev edn Åbo Institute for Human Rights Åbo 1999) 259 - 260.

<sup>125</sup> CHR Res 1998/72, ‘The Right to Development’ (22 April 1998) para. 10 (b).

<sup>126</sup> *Ibid* preambular para. 6.

<sup>127</sup> *Ibid* para. 4.

<sup>128</sup> For instance the WGEID was influential in the drafting of the International Convention for the Protection of All Persons from Enforced Disappearances (opened for signature 6 February 2007). Ingrid Nifosi observes that the WGEID and the Special Rapporteurs on Extra-legal Summary and Arbitrary Executions and Torture have formulated ‘authoritative legal interpretations of international human rights norms’ and have contributed to the ‘development of international law’. Nifosi (n 54) 18.

<sup>129</sup> Weissbrodt (n 82) 685. Jakob Th. Möller also considered that, notwithstanding the absence of a procedure by which to deal with communications prior to 1967, the communications may have operated as a ‘source of inspiration’ for the standard setting activities of the CHR. Möller (n 52) 58.

<sup>130</sup> Nifosi (n 54) 18.

respect of the WGEID which led the development of international human rights standards in the area of enforced or involuntary disappearances.<sup>131</sup>

In short, the special procedures as developed and consolidated from 1967 onwards, have contributed to the development of the individual right of petition to the UN independent of a human rights treaty and to the evolution of international human rights law and international law more generally. It is clear that the special procedures 'bear passing resemblance to the actual procedure formally authorised' in 1967 under EOCSOC Resolution 1235.<sup>132</sup> This is particularly evident in respect of the thematic mandates which were not envisaged under ECOSOC Resolution 1235<sup>133</sup> and indeed provide a clear example of the innovative evolution in the promotion and protection of human rights by the CHR. Indeed, the place of the special procedures in the UN scheme for human rights protection and protection was assured in 1993 when member states at the Vienna Conference on Human Rights stressed the 'importance of preserving and strengthening the system of special procedures'.<sup>134</sup> The UN SG similarly endorsed the special procedures in 2003 stating, '[t]he achievement of these procedures are, in many cases, remarkable, and should be built on'.<sup>135</sup> Nonetheless, it is equally clear that the cracks identified in the fledging edifice of the special procedures, such as the selection of countries for investigation pursuant to a country mandate and state cooperation with country visits whether undertaken under a country or thematic mandate, are magnified upon examination of the subsequent development of the special procedures and indeed, additional fissures are exposed.

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<sup>131</sup> The WGEID was instrumental in the drafting and adoption of the Declaration on the Protection of All Persons from Enforced or Involuntary Disappearances, 1992.

<sup>132</sup> Alston, 'The Commission on Human Rights' (n 42) 155.

<sup>133</sup> Egon Schwelb and Philip Alston consider thematic mechanism separately from the procedure established under ECOSOC Res 1235. Schwelb and Alston (n 30) 291.

<sup>134</sup> UN GA, 'Vienna Declaration and Programme of Action' (12 July 1993) UN Doc A/CONF.157/23, para. 95.

<sup>135</sup> UN SG, 'UN Secretary-General to the Commission on Human Rights: We must hope a new era of Human Rights in Iraq will begin now' (24 April 2003) <<http://www.unhchr.ch/Hurricane/Hurricane.nsf/f161d566b36240f8802566100031b4c0/975e2e36f2593dcac1256d12002dddbf?OpenDocument>> accessed 16 June 2007. The International Commission of Jurists considers the special procedures as 'a major success of the Commission'. International Commission of Jurists, 'Reforming the Human Rights System: A Chance for the United Nations to Fulfil its Promise' (June 2005) <<http://www.icj.org/IMG/pdf/ICJUNreform05.pdf>> accessed 28 August 2007, 4.

The special procedures are acknowledged as being particularly slow.<sup>136</sup> This is especially evident in respect of the country mandates as they are dependent on the annual public debate of the CHR. While, the CHR was empowered since 1990, to hold emergency sessions, they tended to focus on, as Alston prophesied, ‘the most egregious . . . situation’<sup>137</sup> with emergency sessions convened in respect, for instance, the situation in the former Yugoslavia.<sup>138</sup> This in turn raises the question of the effectiveness of the special procedures as mechanisms for the protection and promotion of human rights. It is axiomatic to state that the special procedures are not effective as response mechanisms to gross violations of human rights, especially the country mandates, due in large part to the dependency on the annual public debate by the CHR. Nonetheless, the thematic mandates with the battery of measures by which to apply pressure, such as country visits, urgent appeals, and requests for information from the government in question, fare somewhat better upon analysis. For instance, while notoriously difficult measure,<sup>139</sup> country visits have influenced state behaviour in eight key areas, including the adoption of legislative measures, judicial redress of human rights violations and the development of a national human rights capacity building.<sup>140</sup> For instance the 1999 report of the Special Rapporteur on the Former Yugoslavia stressed the need for the judiciary to be sufficiently resourced both financially and in terms of staff along with reviewing national labour legislation, particularly in light of the commitments under the ICESCR,<sup>141</sup> which the Special Rapporteur found cause to return to in the next report.<sup>142</sup>

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<sup>136</sup> Philip Alston observed that ‘as a measure for dealing with issues on an emergency basis the 1235 procedure is deeply flawed, especially because of the fact that the Commission meets but once a year’. Alston, ‘The Commission on Human Rights’ (n 42) 173.

<sup>137</sup> Ibid.

<sup>138</sup> The CHR, between 1990 and 2006, met five times in special session. The first two special sessions in 1992 concerned the human rights situation in the former Yugoslavia, while the situation in Rwanda was the subject matter of the third special session in 1994. This was followed five years later with a special session convened in respect of the situation in East Timor and the CHR met again in special session in 2000 to discuss the ‘grave and massive violations of the human rights of the Palestinian people by Israel’. <<http://www.ohchr.org/english/bodies/chr/special-sessions.htm>> accessed 28 August 2007.

<sup>139</sup> David Weissbrodt and Maria Luisa Bartolomei recognise that a ‘significant gap’ exists as to the impact of special procedures on actual protection of human rights. David Weissbrodt and Maria Luisa Bartolomei, ‘The Effectiveness of International Human Rights Pressures: The case of Argentina, 1976 – 1983’ (1991) 75 *Minnesota Law Review* 1009, 1009.

<sup>140</sup> Nifosi (n 54) 138 – 141.

<sup>141</sup> Special Rapporteur on the Former Yugoslavia, ‘Situation of human rights in the former Yugoslavia’ (20 January 1999) E/CN.4/199/42 paras 73 and 21.

<sup>142</sup> Special Rapporteur on the Former Yugoslavia, ‘Situation of human rights in the former Yugoslavia’ (28 December 1999) E/CN.4/2000/39 para. 19.

Another area of concern is the potential for overlap and duplication not only within the special procedures, that is between country and thematic mandates, but also between the special procedures and the UN human rights treaty supervisory system. It is noteworthy in this latter respect that ECOSOC Resolution 1235 explicitly provides for a review of the procedure once the ICCPR and ICESCR entered into force.<sup>143</sup> As Rodley intimates the 1235 procedure was originally viewed as temporary and contingent upon the institution of petition mechanisms under the International Covenants.<sup>144</sup> Thus, upon the institution of such mechanisms under the ICCPR, and for example, the CEDAW and CERD, the potential for overlap or duplication would be realised. This is readily exemplified by the Special Rapporteur on Torture which monitors the implementation of an existing international human rights treaty.<sup>145</sup> In this light, the argument made by Françoise J. Hampson for a distinction to be drawn between special procedures that relate to an existing treaty or human rights standard and others, such as the Independent Expert on human rights and extreme poverty which are ‘more reflective’ is particularly attractive.<sup>146</sup> Nonetheless, Rodley asserts that the purpose and working methods of the special procedures and the treaty monitoring system are sufficiently different to prompt the conclusion that ‘any area of potential overlap and duplication of work between the two types of mechanism is largely illusory’.<sup>147</sup>

It is without doubt that the political winds prevailing in the CHR have influenced the development and operation of the special procedures. Thus the changes in the membership of the CHR, brought about by decolonisation, altered the political landscape sufficiently to contribute to the emergence of thematic mandates while, in contrast, the operation of country mandates have been politicalised with accusations of ‘moral hypocrisy’ resonating beyond the 1980’s. Indeed, the geographical distribution of country mandates continued to be skewed with Latin American and

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<sup>143</sup> ECOSOC Res.235 (n 50) para. 4.

<sup>144</sup> Nigel S. Rodley, ‘United Nations Human Rights Treaty Bodies and Special Procedures of the Commission on Human Rights – Complementarity and Competition?’ (2003) 25 *Human Rights Quarterly* 882, 886.

<sup>145</sup> Nifosi (n 54) 18 and 131 – 134.

<sup>146</sup> Hampson (n 17) 20.

<sup>147</sup> Rodley, ‘Treaty Bodies and Special Procedures’ (n 144) 907.

African countries consistently represented.<sup>148</sup> The balance sheet of the special procedures would appear to be weighted in favour of thematic mandates. Indeed some of the current proposals for strengthening the special procedures suggest abandoning country mandates for reasons mentioned above such as duplication, delay and objectivity. However, Hampson unequivocally states this would be a mistake as country reports 'enable a picture to be obtained of the situation as a whole'.<sup>149</sup> Nonetheless, the thematic mandates are not without criticism. As Alston states 'the range of issues that they cover is clearly skewed' in favour of civil and political rights such as arbitrary detention, summary executions, torture. This gives the impression of a 'hierarchy' of human rights whereby economic, social and cultural rights are subservient to civil and political rights and, moreover, within civil and political rights a hierarchy exists with physical integrity at the apex.<sup>150</sup> Indeed during 1990's of the ten thematic mandates established at least six dealt, directly or indirectly, with civil and political rights. This is counter to the affirmation that all human rights are indivisible and interdependent seen in, for example, the 1993 Vienna Declaration and Programme for Action.<sup>151</sup> With the advent of human rights mainstreaming in 1997/8,<sup>152</sup> the special procedures began to better reflect this fundamental principle of human rights with the appointment of an Independent Expert on the question of human rights and extreme poverty and a Special Rapporteur on the Right to Education

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<sup>148</sup> The report of the fifth meeting of the HR Council records nine country mandates currently in place of which five relate to African countries. The country mandates in place are: Independent Expert on the situation of human rights in Liberia; Special Rapporteur on the situation of human rights in Myanmar; Independent Expert appointed by the Secretary-General on the situation of human rights in Somalia; Special Rapporteur on the situation of human rights in the Palestinian territories occupied in 1967; Independent Expert on the situation of human rights in the Democratic Republic of Congo; Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea; Independent Expert appointed by the Secretary-General on the situation of human rights in Haiti; Special Rapporteur on the situation of human rights in the Sudan; and, Special Representative of the Secretary-General for human rights in Cambodia. UN HR Council, 'Report to the General Assembly on the Fifth Session of the Human Rights Council' (Draft, 18 June 2007) UN Doc A/HRC/5/L.11, Annex II.

<sup>149</sup> Hampson (n 17) 18; Weissbrodt (n 82) 697 – 698.

<sup>150</sup> Alston, 'The Commission on Human Rights' (n 42) 181.

<sup>151</sup> UN GA, 'Vienna Declaration' (n 134) para. 5; ICCPR and ICESR, Preamble. The indivisibility and interdependence of human rights has been subsequently re-affirmed in the 2005 Outcome Document of the World Summit. UN GA Res 60/1, '2005 World Summit Outcome' (16 September 2005) UN Doc A/RES/60/1, para. 13..

<sup>152</sup> The mainstreaming of human rights was prompted by the inaugural promise of Kofi Annan 'to ensure that human rights take their rightful place as a central concern of the United Nations and of the international community'. UN SG, 'Renewing the United Nations: A Programme for Reform' (14 July 1994) UN Doc. A/51/950, para. 79.

in 1998.<sup>153</sup> The appointments of a Special Rapporteur on adequate housing and a Special Rapporteur on the Right to Food in 2000 extended the human rights mainstreaming of the special procedures into the following decade.<sup>154</sup>

As of June 2006 the HR Council assumed responsibility for thirteen country mandates<sup>155</sup> and 28 thematic mandates<sup>156</sup> and was charged with the responsibility of reviewing and, where necessary, improving and rationalising 'all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of special procedures'.<sup>157</sup> In furtherance of the mandate to report within one year of holding its first session, the Council adopted a Resolution entitled 'UN Human Rights Council: Institution Building' on the 18 June 2007. This sets out the 'basic structure' of the institutional machinery of the Council, including the special procedures. The document proposes three primary improvements to the

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<sup>153</sup> The Independent Expert on the question of human rights and extreme poverty (1998) was appointed under CHR Res 1998/25. This was extended in 2004 for a further two year term. The mandate of the Special Rapporteur on the Right to Education (1998), originally established under CHR Res. 1998/33, was also extended in 2004 for a further three year period.

<sup>154</sup> The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, to give the full title, was established pursuant to CHR Res. 2000/9 and extended in 2003 for a further three years. The mandate of the Special Rapporteur on Food, CHR Res. 2000/10, was also extended in 2003 for a further three years.

<sup>155</sup> For the list of country mandates in place as of September 2007, see n 148 above.

<sup>156</sup> The thematic mandates in place as of September 2007 are: the Special Rapporteur on violence against women, its causes and consequences; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Working Group on people of African decent; Special Rapporteur on the independence of judges and lawyers; Special Representative of the SG on the situation of human rights defenders; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living; Special Rapporteur on the right to food; Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people; Independent Expert on the question of human rights and extreme poverty; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on freedom of religion or belief; Special Representative on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights; Special Rapporteur on the right to education; Special Rapporteur on the sale of children, child prostitution and child pornography; Representative of the SG on the human rights of internally displaced persons; Special Rapporteur on trafficking in persons, especially in women and children; Independent Expert on the effects of economic reform policies and foreign debt on the full enjoyment of human rights, particularly economic, social and cultural rights; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Independent Expert on human rights and international solidarity; Independent Expert on minority issues; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on the human rights of migrants; Special Representative of the SG on human rights and transnational corporations and other business enterprises; Working Group on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. UN HR Council, 'Report of Fifth Session' (n 148) Annex II.

<sup>157</sup> UN GA Res 60/251 (n 1) para. 6.

special procedures, namely, revised criteria for the appointment of mandate-holders, the formulation of a framework to review mandates, and a proposed code of practice for mandate-holders.

Of particular note is the framework for the review, rationalisation and improvement of mandates for as Hurst Hannum remarks such general criteria are a 'step towards creating a system that is truly more effective and efficient in the future'.<sup>158</sup> Moreover, general principled criteria guards against the vagaries of politicalisation seen in, for example, country selection and the skewed emphasis on civil and political rights. Indeed, under the terms of the Resolution, the review of existing mandates *and* the creation of new thematic or country mandates are guided by five principles - universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation – which are directed towards 'enhancing the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development'.<sup>159</sup> The indivisibility of human rights is further emphasised as the framework for review stipulates that '[e]qual attention shall be paid to all human rights' and as such the thematic mandates should reflect the indivisibility of human rights, including the right to development.<sup>160</sup> Finally, the framework issues assurances to 'avoid unnecessary duplication',<sup>161</sup> and to identify and address 'thematic gaps' along with noting the desirability for a 'uniform nomenclature'.<sup>162</sup>

Nonetheless, it is unsurprising that Amnesty International expressed disappointment with these proposed rationalisations of the special procedures as falling short of the expectation that the review process would 'result in a more coherent and coordinated system of special procedures able to support the Council in fulfilling its mandate'.<sup>163</sup> Indeed, with the exception of the principled framework for the review of existing

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<sup>158</sup> Hurst Hannum, 'Reforming the Special Procedures and Mechanisms of the Commission on Human Rights' (2007) 7 *Human Rights Law Review* 71, 82.

<sup>159</sup> UN HR Council Res 5/1, 'Institution-Building of the United Nations Human Rights Council' (18 June 2007) Annex in UN HR Council, 'Report of Fifth Session' (n 148) 3, para. 54; UN GA Res 60/251 (n 1) para. 4.

<sup>160</sup> UN HR Council Res 5/1 (n 159) Annex, para. 58 (b).

<sup>161</sup> *Ibid* para 58 (c).

<sup>162</sup> *Ibid* para. 59.

<sup>163</sup> Amnesty International, 'Concluding the United Nations Human Rights Council's Institution-Building: has the spirit of General Assembly Resolution 60/251 been honoured?' (20 June 2007) <<http://web.amnesty.org/library/Index/ENGIOR410152007>> accessed 28 August 2007.

mandates which apply in part to the creation of new mandates and are somewhat superficial, the Resolution merely confirms and consolidates existing practice in relation to special procedures. This is unfortunate for various contemporary reform proposals referred to resources, state cooperation and the credibility deficit as requiring attention in order to strengthen the special procedures and these are left unanswered and unresolved by the Resolution. Such concerns were mirrored in previous proposals for reform within the UN. Nonetheless, according to Miko Lempinen efforts to reform the special procedures since the early 1990's have been characterised by a conflict between those who want to review the special procedures because they are 'too effective and thus a threat for governments which still consider human rights to be internal affair of states' and those who wanted to 'make them more effective and enhance their relevance'.<sup>164</sup> A full and effective review of the special procedures would appear to be the casualty in this conflict, which is a particularly potent indictment given that '[t]he review of the special procedures will be a crucial process with considerable implications for the UN system of human rights protection and for the credibility of the Council'.<sup>165</sup> In short the review of the special procedures exemplifies what Michael Ignatieff has called the 'dialectic of instability in human rights work', that is the special procedures are a victim of their own success.<sup>166</sup>

### ***B. The Complaint Procedure***

While special procedures such as the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and the Working Group on Arbitrary Detention provide for an individual complaint mechanism,<sup>167</sup> the primary complaint procedure of the CHR was that instituted pursuant to ECOSOC Resolution 1503 (1970). The '1503 procedure', as this general complaints procedure is more commonly referred to, has been

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<sup>164</sup> Miko Lempinen, *Challenges Facing the System of Special Procedure of the United Nations Commission on Human Rights* (Åbo Institute for Human Rights Åbo 2001) 248 – 259.

<sup>165</sup> International Service for Human Rights and Friedrich Ebert Stiftung, 'A New Chapter for Human Rights: A Handbook on issues of transition from the Commission on Human Rights to the Human Rights Council' (2006) <[http://www.crin.org/docs/ISHR\\_HRC\\_Handbook.pdf](http://www.crin.org/docs/ISHR_HRC_Handbook.pdf)> accessed 28 August 2007, 39.

<sup>166</sup> Gutter (n 49) 99, citing Michael Ignatieff, 'Whose Universal Values? The Crisis in Human Rights' (Praemium Erasmianum Essay 1999) 12.

<sup>167</sup> This is when the mandate holder intervenes directly with a government on specific allegations of human rights violations that come within their mandate. It involves notifying the government in question and requesting information in respect of the allegation. For an overview of see the website of the Office of the High Commissioner for Human Rights <<http://www.unhchr.ch/html/menu2/2/special-complaints.htm>> accessed 3 June 2007.

described as ‘an antiquated relic of a bygone era’.<sup>168</sup> The Resolution of the HR Council, adopted in June 2007, consigns the 1503 procedure to the footnotes of academic texts on the ‘bygone era’ of human rights protection and promotion by the CHR. The Resolution replaces the 1503 procedure with a new complaints procedure as agreed in accordance with GA Resolution 60/251 which charged the Council with reviewing and, ‘where necessary’ improving and rationalising the 1503 procedure.<sup>169</sup> Notwithstanding the demise of the 1503 procedure, it is useful to examine the origins and operation of the procedure under ECOSOC Resolution 1503 as it served ‘as a working basis’ for the new complaint procedure.<sup>170</sup> Furthermore, the sources of dissatisfaction with the 1503 procedure are explored as they reveal the motivations driving the reform efforts, which in turn provide a benchmark against which to assess the new complaints procedure agreed upon by the HR Council. Such an assessment bears additional significance as the reform of the complaint procedure under ECOSOC Resolution 1503 is seen as a crucial aspect, along with remedying the deficiencies in the special procedures, in establishing, asserting and ensuring the credibility of the embryonic HR Council.<sup>171</sup>

A deficit in the fledging 1235 procedure prompted the adoption of ECOSOC Resolution 1503. The need for an effective and objective procedure by which to screen the communications for selection for scrutiny under the 1235 procedure was identified during the first year of operation of the 1235 procedure.<sup>172</sup> Indeed, the initial attempts to fulfil the mandate under ECOSOC Resolution 1235 were met with resistance with members of the CHR citing Article 2 (7) of the Charter and the principle of non-interference and the extension of mandates in support of their opposition.<sup>173</sup> These arguments were bolstered by the fact that it was clear that confidential communications, designated under ECOSOC Resolution 728 F, were

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<sup>168</sup> International Commission of Jurists, ‘Establishing a Complaint Procedure in the Human Rights Council - Moving beyond the ‘1503 procedure’ (November 2006)  
<[http://www.icj.org/IMG/complaint\\_final\\_paper.pdf](http://www.icj.org/IMG/complaint_final_paper.pdf)> accessed 3 June 2007, 3.

<sup>169</sup> UN GA Res 60/251’ (n 1) para. 6.

<sup>170</sup> UN HR Council Res 5/1 (n 159) Annex, para. 81.

<sup>171</sup> See for example, International Commission of Jurists, ‘Establishing a Complaint Procedure’ (n 168) 3.

<sup>172</sup> See Möller (n 52)63.

<sup>173</sup> Zuijdwijk (n 60) 21.

used in pursuit of the mandate under ECOSOC Resolution 1235.<sup>174</sup> In short, a lacunae between ECOSOC Resolution 728 F which, as noted above in Chapter Three, saw the SG channel communications into a confidential and non-confidential list, and the 1235 procedure was exposed from the beginning. It was recognised that a procedure ‘which would inspire confidence, ensure objectivity, and be as effective as possible, and which would at the same time eliminate or minimise the risk of abuse in the submission of complaints’ was required.<sup>175</sup> However, the drafting of the procedure, what would become ECOSOC Resolution 1503, was not without issue. Indeed, members of the CHR and ECOSOC ‘persistently and categorically opposed its adoption’ once again referring to the principle of non-interference as enshrined in Article 2 (7) and asserting that a procedure providing for *individual* petition was contrary to established principles of international law.<sup>176</sup> Nonetheless the CHR attached great importance to instituting such a screening procedure, stating:

Any method designed to take into account, and give appropriate consideration to, communications concerning violations of human rights emanating from *individuals* inevitably rated as one of the most important issues to come before the Commission for, after all, it was the *individual* who was the repository of all human rights and the ultimate beneficiary of their observance.<sup>177</sup>

Indeed Jakob Th. Möller records that the majority of members in the CHR and ECOSOC were not of the opinion that the creation of a procedure by which to consider allegations of human rights violations was inconsistent with international law and, moreover, viewed the creation of such machinery as falling squarely within Articles 55 and 56 of the UN Charter.<sup>178</sup> This is a remarkable development in the protection of human rights which is clearly apparent when viewed in historical context.<sup>179</sup> At the material time, there were no treaty monitoring bodies in existence and, indeed, it would be another six years before the International Covenants would be in force providing for clearly applicable human rights standards.<sup>180</sup> Thus it is

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<sup>174</sup> Howard Tolley, Jr., ‘The Concealed Crack in the Citadel: The United Nations Commission on Human Rights’ Response to Confidential Communications’ (1984) 6 *Human Rights Quarterly* 420, 429.

<sup>175</sup> Möller (n 52) 63.

<sup>176</sup> *Ibid* 64. See also Tolley (n 174) 429.

<sup>177</sup> Cited in Möller (n 52) 63 – 64. (Emphasis added).

<sup>178</sup> *Ibid* 65.

<sup>179</sup> Alston has stated that ‘the historical value of the 1503 procedure cannot be doubted’. Alston, ‘The Commission on Human Rights’ (n 42) 152.

<sup>180</sup> Philip Alston, ‘The UN’s Human Rights Record: From San Francisco to Vienna and Beyond’ (1994) 16 *Human Rights Quarterly* 375, 377 – 8.

unsurprising that ECOSOC Resolution 1503 was heralded as an important victory in UN human rights protection.<sup>181</sup>

Under the terms of ECOSOC Resolution 1503 a three stage procedure was instituted whereby the communications received by the SG under ECOSOC Resolution 728 F were considered with a view to determining whether ‘a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms’, is revealed and if so, to determine the appropriate course of action. This procedure was subjected to a strict confidentiality requirement<sup>182</sup> and as such a clear division, albeit unintended, was made between the 1503 procedure which provided for a ‘confidential procedure for reviewing communications’ and the public 1235 procedure operating independently of the communications received under ECOSOC Resolution 728 F.<sup>183</sup> The existence of two separate procedures for considering allegations of human rights violations underlines the issue of duplication<sup>184</sup> and raises, as Rodley has observed, the practical question of which procedure to use to allege violations of human rights.<sup>185</sup> While the 1503 procedure garnered initial support from commentators and NGO’s, the earlier 1235 procedure developed ‘more rapidly’, particularly as the merits of such a public procedure became evident,<sup>186</sup> and ‘has often been used as a precursor to action under it’.<sup>187</sup> Indeed, Alston counts the ‘graduation’ of the human rights situation in Equatorial Guinea from the 1503 procedure to the 1235 procedure in 1979 as contributing to the ‘opening-up’ or development of the 1235 procedure.<sup>188</sup> This synthesis of the procedures for considering violations of human rights has resulted in a considerable number of human rights situations moving from the confidential procedure under ECOSOC Resolution 1503 to the public 1235

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<sup>181</sup> Manfred Nowak, *Introduction to the International Human Rights Regime* (Martinus Nijhoff Publishers Leiden/Boston 2003) 108.

<sup>182</sup> ECOSOC Res 1503 (XLVIII), ‘Procedure for dealing with communications relating to violations of human rights and fundamental freedoms’ (27 May 1970) para. 8.

<sup>183</sup> Tolley (n 174) 429.

<sup>184</sup> On this aspect see Tomuschat (n 46) 119; Hampson (n 17) 25.

<sup>185</sup> Rodley, ‘Non-Treaty’ (n 101) 67. Hampson adds the lack of a system to register the communications and if same issue raised by two communications one to special and other to 1503. Hampson (n 17) 25.

<sup>186</sup> Steiner and Alston (n 74) 612. See also Tomuschat (n 46) 119.

<sup>187</sup> Steiner and Alston (n 74) 612.

<sup>188</sup> Alston, ‘The Commission on Human Rights’ (n 42) 159.

procedure.<sup>189</sup> Indeed there is some evidence that the desire to avoid the public procedure enhances state cooperation under the 1503 procedure.<sup>190</sup> Manfred Nowak attributed the continued existence of the 1503 procedure to this unintended result of the synthesis of the CHR procedures for considering allegations of human rights violations.<sup>191</sup>

The first stage of the three stage procedure laid down in ECOSOC Resolution 1503 saw the appointment of a Working Group on Communications by the Sub-Commission of the CHR which was authorised to consider all the communications received by the SG under ECOSOC Resolution 728 F, along with the replies of the governments in question, in order to determine whether ‘a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms’ is revealed. The Working Group, which met annually in private at least ten days before the Sub-Commission, brought the communications revealing a consistent pattern of gross human rights violations to the attention of the Sub-Commission at the annual session. The Sub-Commission, in a private session, then decided whether to refer particular situations which appear to reveal a consistent pattern of gross violations to the CHR. Upon consideration of the human rights situations by the Working Group on Situations, ECOSOC Resolution 1503 empowered the CHR to conduct a ‘thorough study’ and to report, with recommendations, the findings to ECOSOC in accordance with the 1235 procedure. ECOSOC Resolution 1503 also authorised the CHR to appoint an ad hoc committee to investigate the human rights situation.<sup>192</sup> In practice the CHR developed a number of other possible avenues ‘short of a ‘thorough study’, such as the appointment of a special rapporteur, requesting the SG to use his good offices to establish communication with the government concerned, requesting additional information from the government in question, and to keep the situation under review.<sup>193</sup>

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<sup>189</sup> For example the human rights situations prevailing in Haiti, Liberia, Afghanistan were all considered under the 1503 procedure before ‘graduating’ to the public 1235 procedure.

<sup>190</sup> Nowak (n 181) 110.

<sup>191</sup> Ibid.

<sup>192</sup> This measure had never been used by the CHR. This is unsurprising given the requirements to be met before an ad hoc committee can be appointed. These include the exhaustion of domestic remedies and the permission of the state in question. Steiner and Alston (n 74) 613 – 614.

<sup>193</sup> Rodley, ‘Non-Treaty’ (n 101) 66.

The description of the ‘carefully and deliberately constrained procedure’<sup>194</sup> set down in ECOSOC Resolution 1503 clearly indicates the sources of dissatisfaction with the 1503 procedure. The procedure is cumbersome, time-consuming and, perhaps most damning, confidential. This latter aspect of the 1503 procedure was strictly enforced until 1978 which saw the publication of the first annual list of the states being considered under the 1503 procedure.<sup>195</sup> Furthermore each body involved in the 1503 procedure, from the Working Group on Communications to the CHR, met in private sessions which reinforced the confidentiality of the procedure and as such it is difficult to assess the progression of a communication in the 1503 procedure. Thus it is difficult to discern the outcome of the 1503 procedure in a given situation.<sup>196</sup> Nonetheless, Alston concluded, upon a brief survey of the available information, that the procedure demonstrated an emphasis on a ‘limited range’ of civil and political rights and, moreover, gross and consistent violations of economic social and cultural rights had never been considered seriously under the 1503 procedure.<sup>197</sup> As with the country mandates under the special procedures, the 1503 procedure is dependent upon the annual meetings of the CHR and the Sub-Commission. Moreover, the design of the 1503 procedure ensured that the procedure in practice was ‘inordinately slow’.<sup>198</sup> As Françoise Hampson observed, if a communication was received in July it would not be considered, at best, until the following year and at worst, two years later pending the receipt and consideration of the replies of the government concerned.

Further, progression from one stage to the next is not assured as, for example, the Working Group on Communications may decide to review the communication in a year and thus not pass the communication on to the Sub-Commission.<sup>199</sup> Nonetheless, Christian Tomuschat asserted that a degree of automaticity is inherent in the 1503 procedure in that the receipt of a certain number of petitions alleging the same gross and consistent violations of human rights should trigger the 1503 procedure and thus ‘in principle no difficult choices are necessary’.<sup>200</sup> However, Hampson points out that

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<sup>194</sup> Alston, ‘The Commission on Human Rights’ (n 42) 144.

<sup>195</sup> As of 2005, the human rights situations in 84 states had been examined under the 1503 procedure.

<sup>196</sup> Tomuschat (n 46).

<sup>197</sup> Alston, ‘The Commission on Human Rights’ (n 42) 151.

<sup>198</sup> Hampson (n 17) 25.

<sup>199</sup> *Ibid* 25 - 26.

<sup>200</sup> Tomuschat (n 46) 118.

the threshold of a consistent pattern of gross violations is particularly high<sup>201</sup> and indeed CHR practice showed a preoccupation with physical integrity and security as expressed in a limited number of civil and political rights.<sup>202</sup> Hurst Hannum has suggested that the 'gross and consistent violations' formula is not sacrosanct and persuasively argues for the need to define gross violations with greater specificity.<sup>203</sup> Perhaps more tellingly, the apparent automaticity of the 1503 procedure does not immunise the procedure from the vagaries of political considerations. Indeed, Tomuschat readily acknowledged, as based on personal experience, that 'political influences certainly are not absent from the proceedings'.<sup>204</sup> Thus, it is '[p]recisely because of its confidential character and its politicalisation, the 1503 procedure is increasingly dismissed as ineffectual and irrelevant'.<sup>205</sup>

In addition, upon a closer analysis of the three stage procedure laid down in ECOSOC Resolution 1503 it is abundantly evident that while the individual provided the inspiration for the creation of the procedure, the actual procedure does little to enhance the procedural capacity of the individual at the international level and indeed, such an analysis exposes the mirage of individual petition under ECOSOC Resolution 1503. For instance, the petitioner does not receive any information regarding the progress, if any, of the communication under the 1503 procedure. Hampson has remarked on the irony 'that a form a remedy within the UN system does not conform to the requirements of human rights law' in this regard.<sup>206</sup> Moreover, the petitioner is given no opportunity to respond to information produced by the government in question upon a request for such information. Hannum suggested that introducing some principles of adversarial dispute settlement into the 1503 procedure, such as providing the petitioner with an opportunity to respond, is warranted to enhance procedural propriety. This is particularly so under the mandate of the HR Council to promote 'dialogue and cooperation'.<sup>207</sup> Finally, the procedural capacity of the individual was further reduced by virtue of the rules of admissibility of

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<sup>201</sup> Hampson acknowledges that this aspect of the mandate is controversial and as such may not be considered in any effort to reform the procedure. Hampson (n 17) 26.

<sup>202</sup> Hannum (n 158) 86.

<sup>203</sup> Ibid.

<sup>204</sup> Tomuschat (n 46) 118.

<sup>205</sup> Markus G. Schmidt, 'Does the United Nations Human Rights Program make a Difference?' (1997) *Proceedings of the ASIL* 462.

<sup>206</sup> Hampson (n 17) 26.

<sup>207</sup> Hannum (n 158) 87.

communications.<sup>208</sup> These required, amongst others, that domestic remedies were exhausted before petitioning the CHR.<sup>209</sup> While in practice this did not require extensive supporting documentation provided that strong evidence of systematic and continuing violations was forthcoming,<sup>210</sup> the International Commission of Jurists argued that applying such legal principles to the decision of a political body is wholly inappropriate. To this end the International Commission of Jurists recommended that any reform of the 1503 procedure should, while reflecting ‘basic fairness and transparency’, not draw from a judicial or quasi-judicial procedure.<sup>211</sup>

The calls to reform the 1503 procedure were successful in 2000 when a revised procedure was adopted under ECOSOC Resolution 2000/3. The changes introduced by ECOSOC Resolution 2000/3 attempted to streamline the highly complicated and time-consuming 1503 procedure. Thus the Working Group on Communications was to meet annually for two weeks before the annual Sub-Commission session, to examine communications that had been transmitted to the relevant governments three months previously in order to obtain a response. Similarly, under the terms of ECOSOC Resolution 2000/3, the Working Group on Situations was to meet annually for one week at least one month before the annual session of the CHR. The Resolution affirmed the ‘established practice’ that had developed under ECOSOC Resolution 1503 in respect of the possible avenues short of a ‘thorough study’, such as the appointment of a special rapporteur, available to the CHR upon consideration of human rights situations in particular states. ECOSOC Resolution 2000/3 also provided for new modalities governing the closed meetings of the CHR held in respect of the human rights situations before it. The CHR was to hold two meetings, the first of which provided the states concerned with the opportunity to make an oral representation to the CHR which was followed by a discussion between the CHR and the states concerned. The CHR discussed and decided upon the appropriate avenue of action at the second closed meeting. In this way, ECOSOC Resolution 2000/3

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<sup>208</sup> Sub-Commission on Prevention of Discrimination and Protection of Minorities Res 1 (XXIV) (1971) UN Doc E/CN.4/1070 <<http://www1.umn.edu/humanrts/demo/1503Resolution1.html>> accessed 28 August 2007, 50-51. (1971).

<sup>209</sup> Ibid para. 4.

<sup>210</sup> Rodley, ‘Non-Treaty’ (n 101) 68.

<sup>211</sup> International Commission of Jurists, ‘Establishing a Complaint Procedure’ (n 168) 4.

‘introduced principles of adversarial dispute settlement’.<sup>212</sup> Yet, the revised procedure did little to alleviate the central problems of politicalisation, confidentiality and delay which plagued the 1503 procedure. Indeed, the Report of the Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights, the recommendations of which provided the basis for ECOSOC Resolution 2000/3, remained ‘convinced of the value of the 1503 procedure as a channel for individuals and groups to bring their concerns about alleged human rights violations directly to attention’ and of the necessity to maintain the confidentiality of the procedure which was seen as an essential characteristic.<sup>213</sup> In short, ECOSOC Resolution 2000/3 was unable to address the ‘anachronistic nature’ of the 1503 procedure<sup>214</sup> and it remained in ‘urgent need of reform’.<sup>215</sup>

Against this backdrop the opportunity afforded by the establishment of the HR Council to review and ‘where necessary’ improve and rationalise the complaint procedure under ECOSOC Resolution 1503 was warmly welcomed.<sup>216</sup> Indeed the HR Council consigned the 1503 procedure to the annals of UN history and replaced it with a new complaints procedure ‘to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances’.<sup>217</sup> At first blush it would appear that the HR Council embraced the challenge of reform and met the promise of review. However, the new complaints procedure departed from the ‘working basis’ provided by the 1503 procedure which was ‘improved where necessary’ in order to ensure impartiality, objectivity and efficiency, along with orienting the procedure towards victims and ensuring that it is conducted in a ‘timely manner’.<sup>218</sup> Yet, the key features of the 1503 procedure which had been the source of dissatisfaction remain intact with, for example, the exhaustion of domestic remedies surviving the review of the admissibility criteria, notwithstanding the scathing remarks from the International

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<sup>212</sup> Tomuschat (n 46) 118.

<sup>213</sup> Report of the inter-sessional open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights, ‘Rationalisation of the Work of the Commission’, UN Doc E/CN.4/2000/112, 16 February 2000, para. 35.

<sup>214</sup> Nowak (n 181) 109.

<sup>215</sup> Hampson (n 17) 25.

<sup>216</sup> Hannum (n 158) 73.

<sup>217</sup> UN HR Council Res 5/1 (n 159) Annex, para. 80.

<sup>218</sup> *Ibid* para. 81.

Commission of Jurists.<sup>219</sup> Similarly, the three-stage procedure remained largely unaltered with the Working Group on Communications initially screening and dealing with communications, which then may be passed on to the Working Group on Situations and ultimately to the HR Council.<sup>220</sup> The only measures in place to address the excessive delay that riddled the 1503 procedure are the requirements that the Working Group on Communications meets twice a year and that the period between the transmission of the complaint to the State concerned and consideration by the HR Council will not exceed 24 months.<sup>221</sup> On this basis, the new complaint procedure is as ill-equipped to respond to gross violations of human rights as the 1503 procedure.

On a more positive note, the position of the individual as a petitioner is slightly improved under the new complaint procedure, in that they will be informed whether the Working Group on Communications considers the communication inadmissible or, if it is taken up by the Working Group on Situations, or if a communication is kept under review by either the Working Group on Communications or the Working Group on Situations.<sup>222</sup> Yet, this does little to temper Hampson's observation that the 1503 complaint procedure as a form of remedy within the UN system 'does not conform to the requirements of human rights law'.<sup>223</sup> While, the new complaint procedure also adopts wholesale the same measures as the 1503 procedure, 'short of a thorough study' as a matter of 'established practice',<sup>224</sup> the confidentiality of the 1503 procedure is also retained. The confidentiality of the 1503 procedure was arguably the most debilitating source of dissatisfaction in terms of the protection of human rights. Yet, the new complaint procedure retains this feature ostensibly to facilitate state cooperation although there is little evidence, beyond a reluctance to 'graduate' to the public special procedures, that confidentiality inspires or produces state cooperation.<sup>225</sup> In short, the 1503 procedure emerged virtually unscathed from the review process by the HR Council in all but name. Thus, the 1982 observation by Eogan Schwelb and Philip Alston in respect of the 1503 procedure resonates strongly today:

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<sup>219</sup> *Ibid* para. 82.

<sup>220</sup> *Ibid* para. 86-94.

<sup>221</sup> *Ibid* para. 95 and 100.

<sup>222</sup> *Ibid* para. 101.

<sup>223</sup> Hampson (n 17) 26.

<sup>224</sup> UN HR Council Res 5/1 (n 159) Annex, para. 104.

<sup>225</sup> *Ibid* para. 81.

The 1503 Procedure has met and will continue to meet with opposition on the part of powerful and influential governments. Only when this opposition is countered by a preponderance of world public opinion and a determined stand by concerned governments will the ability of the UN to respond promptly, effectively and objectively to human rights violations be ensured<sup>226</sup>

### ***C. The Contribution of the Monitoring Mechanisms to the Achievement of Human Security***

It is unsurprising that the monitoring mechanisms of the CHR emerged virtually intact from the review by the HR Council given the origins of the current efforts to reform the UN human rights machinery noted above. Indeed, it is clear that this facet of the current effort to reform the UN ‘has nothing to do with improving human rights machinery’ and thereby potentially undermines the achievement of human security by the HR Council, and may even be considered a factor exacerbating the operational capacity of the HR Council to contribute to the achievement of human security. For instance, under the 1503 procedure it was possible, although this provision was not utilised, to institute an investigatory committee of public record. On the foot of the current reform efforts, the new complaint procedure emerges considerably weakened in this respect, particularly as it merely confirms ‘established practice’. As such, the review by the HR Council of the CHR’s monitoring mechanisms is a missed opportunity to capitalise on the strengths of the special procedures and to banish, or at least remedy the deficiencies of, the complaints procedure under ECOSOC Resolution 1503.

Nonetheless the monitoring mechanisms at the disposal of the HR Council by which to pursue human security offer a firm operational foundation for the achievement of human security. Indeed, the special procedures have been instrumental in consolidating the individual right of petition at the international level, a process that began with the 1503 procedure, which was revolutionary at the time. Furthermore, the special procedures have actively contributed to the development of international human rights law and have, more recently, confirmed through practice the indivisibility of all human rights, civil, cultural, economic, political and social rights in addition to developing new mechanisms of protecting human rights such as country visits and urgent measures. This is also set against an emerging recognition in

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<sup>226</sup> Schwelb and Alston (n 30) 276 - 277.

practice of the interdependence of the three great purposes of the UN, which underpin human security – human rights, development and security. However, the special procedures are plagued with accusations of ‘double standards’ and ‘moral hypocrisy’ which must be overcome in order for the HR Council to harness this operational basis for achieving human security.

In contrast, while the 1503 procedure provides an avenue of individual petition to the UN in respect of human rights violations, the process is cumbersome and bedevilled with issues of confidentiality that ensure that the 1503 procedure as a ‘remedy’ do not meet the requirements of international human rights law. This double-standard permeates the 1503 procedure and was retained as a necessity for guaranteeing state cooperation in the new complaints procedure. As such, states retain control over the process of petition and the individual right of petition thereby instituted is illusory. In combination with the weakened measures in place by which to address allegations of gross or systematic violations of human rights, the new complaint procedure is rendered more effete than its predecessor in providing an operational basis for the achievement of human security by the HR Council. Nonetheless, GA Resolution 60/251 institutes an additional monitoring mechanism, that of UPR, which provides for review of the ‘fulfilment by each State of its human rights obligations and commitments’ as based on ‘objective and reliable information’.<sup>227</sup> Thus as presently envisioned the UPR would operate as a monitoring mechanism akin to the treaty system and while the issue of potential duplication with the monitoring systems in place under UN human rights treaties has been identified, with various commentators calling for the UPR to be ‘a voice not echo’ of the treaty monitoring system,<sup>228</sup> the pivotal issue of measurement is left unresolved by the HR Council. Indeed, as Hampson has forcefully stated:

If universal periodic review is carried out well, it could be a really useful tool for improving the human rights situation world-wide. If it is done badly, it will be even worse than the system that used to exist in the Commission and will do great harm to the idea of genuine accountability.<sup>229</sup>

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<sup>227</sup> UN GA Res 60/251 (n 1) para. 5 (e).

<sup>228</sup> See for example, Felice D. Gaer, ‘A Voice not an Echo: Universal Periodic Review and the UN Treaty Body System’ (2007) 7 *Human Rights Law Review* 109.

<sup>229</sup> Hampson (n 17) 15.

Hence, the contribution of the UPR to the achievement of human security is, at best, uncertain.

#### IV. THE UN HUMAN RIGHTS COUNCIL: REMEDYING THE 'CREDIBILITY DEFICIT'

Throughout its 60 year history the CHR was plagued by accusations of double standards and selectivity. Indeed, as is evident above (Part III), the protection activities of the CHR conducted under the umbrella of the procedures instituted under ECOSOC Resolutions 1235 and 1503 answered to the oft repeated charge of 'politicalisation'. In 2005 the UN SG, Kofi Annan, attributed this 'credibility deficit' to the fact that 'States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others'.<sup>230</sup> This Part examines the provisions of GA Resolution 60/251 concerning membership of the HR Council, in conjunction with the provisions for UPR, in order to assess whether this 'credibility deficit' has been addressed by such provisions. It is this assessment of the institutional capacity of the HR Council which provides the second pillar of the determination of the role and potential contribution of the HR Council to the achievement of human security.

As noted above both the HLP and the SG prescribed membership changes as the medicine for the ills of the CHR, specifically the 'credibility deficit' which undermined the capacity of the CHR to execute its mandate for the promotion and protection of human rights. However, the HLP prescribed universal membership with no criteria as to so would encourage further politicalisation,<sup>231</sup> while the SG preferred a smaller principal human rights body with members undertaking to 'abide by the highest human rights standards'.<sup>232</sup> The diametrically opposed positions adopted by the HLP and the SG characterised the membership debate of the fledging HR Council, with the US, the EU, the American Bar Association, Amnesty International and Human Rights Watch all producing proposals as to the most appropriate method for

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<sup>230</sup> UN SG, *In Larger Freedom* (n 2) para. 182.

<sup>231</sup> HLP, *A More Secure World* (n 5) para. 285.

<sup>232</sup> UN SG, *In Larger Freedom* (n 2) para. 188.

determining membership.<sup>233</sup> This ensured that, in the lead up to the adoption of GA Resolution 60/251, the 'most intensive debate centred on election procedures'.<sup>234</sup>

The US, still 'outraged' at the 2001 election of the Sudan to the CHR,<sup>235</sup> strongly advocated the adoption of formal membership criteria whereby membership of the HR Council would be conditioned upon respect for human rights and democracy. Indeed, the US Task Force on the UN produced the 'Mitchell-Gingrich' formula for membership namely that the HR Council should ideally be 'composed of democracies committed to upholding and promoting the highest standards in human rights'.<sup>236</sup> While, the thrust of proposals for formal membership requirements spoke of ratification of the core human rights treaties and of compliance with reporting obligations, amongst others, as the criteria against which to assess respect for human rights, the US added a further criterion, namely, that a state subject to SC sanctions could not seek election to the HR Council. As Alston observes such a suggestion at first blush appears innocuous, almost warranted.<sup>237</sup> However, a closer analysis reveals the futility in terms of advancing the promotion and protection of human rights. First, only a small number of states are subject to SC sanction at any one time, and such a criterion does not countenance the possibility that a candidate state, for example, Myanmar, may be subject to EU sanctions. Further, and more importantly, sanctions are imposed by the SC for a variety reasons, extending beyond human rights concerns.<sup>238</sup> Finally, as Morton H. Halperin and Diane F. Orentlicher comment, the GA 'would not imaginably approve a provision that . . . ceded the Assembly's authority to the Security Council'.<sup>239</sup> The other proposed criteria for membership, including that a candidate state has not been recently subject to sanction by the CHR, fare equally well upon scrutiny<sup>240</sup> and indeed, it was clear during the negotiations in

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<sup>233</sup> See Ved P. Nanda, 'The Global Challenge of Protecting Human Rights: Promising New Developments' (2006) 34 *Denver Journal of International Law and Policy* 1, 10 - 14; Halperin and Orentlicher (n 14) 3.

<sup>234</sup> Halperin and Orentlicher (n 14) 3.

<sup>235</sup> Alston, 'Promoting the Accountability' (n 13) 59.

<sup>236</sup> US Institute of Peace, 'American Interests and UN Reform' (Report of the Task Force on the United Nations, 2005) (United States Institute of Peace Washington 2005) 8. This was explained in the following terms: 'Human rights are best promoted by states that themselves that respect the human and political rights of their own citizens'. *Ibid* 34.

<sup>237</sup> Alston, 'Promoting the Accountability' (n 13) 66.

<sup>238</sup> *Ibid*.

<sup>239</sup> Halperin and Orentlicher (n 14) 3.

<sup>240</sup> Alston, 'Promoting the Accountability' (n 13) 61 - 67.

respect of this aspect of the HR Council that there was little support for ‘abandoning geographical representation’ as the preferred mode of determining membership.<sup>241</sup> In the last analysis, the effectiveness of formal requirements to remedy the ‘credibility deficit’ remains doubtful for as Moss observes ‘[e]ven the most democratic governments are often reluctant to join in condemnation of other countries when doing so could harm the many other interests and ties’.<sup>242</sup>

The product of the negotiations was the stipulation that when electing members to the HR Council, states shall take account of ‘the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto’.<sup>243</sup> While, this provision echoes the position adopted by Amnesty International and the International Commission of Jurists, which both eschewed formal membership requirements on the basis that they ‘are certainly unlikely to effective’,<sup>244</sup> it ‘falls short of any conditionality attached to membership’ demanded by the US.<sup>245</sup> Yet, the crux of the matter remains unresolved, namely whether the HR Council ‘is willing and able to carry out’ the broad mandate for which it was established,<sup>246</sup> in essence whether the ‘credibility deficit’ is remedied. In this respect the requirements that member states are duty bound to ‘uphold the highest standards in the promotion and protection of human rights’, along with being subject to the review process under the UPR,<sup>247</sup> are notable in the creation of ‘political will to ensure’ that the new HR Council ‘functions effectively as a protector and promoter of human rights for all people in all parts of the world’.<sup>248</sup> Indeed the SG saw the UPR as addressing the ‘politicalisation and selectivity that characterised much of the Commission’s consideration of country situations’.<sup>249</sup>

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<sup>241</sup> Halperin and Orentlicher (n 14) 3.

<sup>242</sup> Moss (n 13) 5.

<sup>243</sup> UN GA Res 60/251 (n 1) para. 8.

<sup>244</sup> Alston, ‘Promoting the Accountability’ (n 13) 67. According to the International Commission of Jurists establishing ‘substantive criteria for membership would be politically unachievable and unworkable’. International Commission of Jurists, ‘Reforming the Human Rights System’ (n 135) 27 – 28.

<sup>245</sup> Upton (n 20) 32.

<sup>246</sup> International Commission of Jurists, ‘Reforming the Human Rights System’ (n 135) 26.

<sup>247</sup> UN GA Res 60/251 (n 1) para. 9.

<sup>248</sup> International Commission of Jurists, ‘Reforming the Human Rights System’ (n 135) 26.

<sup>249</sup> Scannella and Splinter (n 40) 45.

Nonetheless, as noted above, the UPR mechanism is, in large part, performance based and thus is properly considered an additional monitoring mechanism in the arsenal at the disposal of the HR Council, and as such, it is ill-suited as mechanism to illicit accountability and to temper the effects of the 'credibility deficit'. Indeed, an analysis of the first six months of the HR Council in operation reveals that selectivity and politicalisation have remained, at best, unaltered by the new membership requirements.<sup>250</sup> For example, the HR Council paid considerable attention to the situation in Israel, Lebanon and Palestine in 2006 and yet the crisis situation in Darfur was neither discussed nor mentioned. Moreover, commentators have referred to the 'increasingly sharp and intemperate attacks on individual mandate holders by some States' of the HR Council as evidence of the continued existence of politicalisation.<sup>251</sup> In this respect, the proposal for the creation of a Human Rights Accountability Index (HRAI) by Alston is most welcome.<sup>252</sup> Alston sees the success of the HR Council as contingent upon the extent to which the HR Council makes itself and the individual members accountable.<sup>253</sup> The HRAI is a 'feasible option' to evaluate the human rights records of candidate states<sup>254</sup> and is readily measured against the three prongs of 'the normative foundation of accountability', 'respect for procedural obligations' and 'responsiveness to the outcomes of the procedures' as underpinned by the principle of good faith.<sup>255</sup>

Margaret E. Mc Guinness observed in 2006 that '[t]here is currently a consensus that the UN HRC [the Commission] is broken and that a Human Rights Council that would more effectively engage the tools of cooperation and coercion may be needed'.<sup>256</sup> The above challenges the conventional wisdom that wholesale reform of the principal UN human rights organ is required and, more specifically, reveals the fallacy that alterations to the membership of the principal organ dedicated to the promotion and protection of human rights is the panacea by which to remedy the 'credibility deficit'. Moreover, while as Hampson concedes it is too early to reach

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<sup>250</sup> Human Rights Monitor No. 64 2006 (n 2) 10.

<sup>251</sup> Ibid.

<sup>252</sup> Alston, 'Promoting the Accountability' (n 13) 87 - 94.

<sup>253</sup> Ibid 94.

<sup>254</sup> Ibid 95.

<sup>255</sup> Ibid 87 - 94.

<sup>256</sup> Margaret E. McGuinness, 'Exploring the Limits of International Human Rights Law' (2006) *Georgia Journal of International and Comparative Law* 393, 404.

firm conclusions, 'the auguries are not good' for the promotion and protection of human rights by the HR Council and, indeed she continues to assert that to 'maintain the status quo would be a triumph'. In short, the diagnosis was correct in respect of a credibility deficit plaguing the CHR, but the preferred prescription - that of membership changes - placed undue emphasis on the performance of the individual members as opposed to the performance legitimacy of the embattled CHR. As such, the HR Council has inherited a similar emphasis and thus the credibility deficit goes unresolved and indeed, has potentially been further exacerbated by the reform effort as the 'voluntary pledges' upon candidature provide a further shield from which states evade scrutiny. Thus, the institutional capacity of the HR Council to pursue human security remains stymied by accusations of selectivity and politicalisation which, as noted above, it is crucial to address in order to harness the potential of the special procedures in contributing to the achievement of human security. As such, the remainder of the Chapter moves to consider whether democracy, which stresses accountability and legitimacy, provides a way forward by which to overcome the institutional challenges faced by the HR Council in pursuit of human security.

## V. TOWARDS HUMAN SECURITY: A ROLE FOR DEMOCRACY?

During the 1990's the UN began to place increased emphasis on the importance of democracy as a value of the UN system.<sup>257</sup> The mounting salience attached to democracy in UN policy and activity prompted commentators to declare the emergence of a right of democratic entitlement.<sup>258</sup> That this evolution in UN policy and activity heralds the emergence of a right of democratic entitlement is by no means assured or bereft of criticism and, indeed, this Part is not concerned with offering a definitive determination of the legal status of democracy in international law.<sup>259</sup> Nevertheless it is evident from this evolutionary trend in UN policy and activity that

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<sup>257</sup> Thomas M. Franck provides a historical perspective to this development when he charts the emergence of the claim of democratic entitlement which stretches into the annals of UN history. Thomas M. Franck, 'Legitimacy and the Democratic Entitlement' in Gregory H. Fox and Brad R. Roth (ed), *Democratic Governance and International Law* (CUP Cambridge 2000) 25.

<sup>258</sup> The phrase 'right of democratic entitlement' was coined by Thomas M. Franck. Thomas M. Franck, 'The Emerging Right to Democratic Governance' (1992) 86 *American Journal of International Law* 46.

<sup>259</sup> The purpose here rather is to examine the implications of democratisation. See Susan Marks, *The Riddle of all Constitutions: International Law, democracy and the critique of ideology* (OUP Oxford 2000) 1.

the UN has established itself as an ‘international agent of democratisation’.<sup>260</sup> As such, this Part elucidates the key facets of democracy as understood and promoted by the UN in order to determine the role, if any, in the achievement of human security and, more particularly, in addressing the obstacles to the institutional capacity of the HR Council in pursuit of human security.

### *A. Democracy and the UN*

Since the end of the Cold War and the ideological polarities that it engendered,<sup>261</sup> a UN policy with respect to democracy has emerged which has been developed in a series of key documents primarily emanating from the SG, the GA and the UN CHR.<sup>262</sup> The SG’s ‘Agenda’ trilogy, in particular the ‘Agenda for Democratisation’, the constructive dialogue between the GA and the SG within the broader context of the series of world conferences on new or restored democracies which produced a number of GA Resolutions and SG reports most notably in the latter regard, the ‘Agenda for Democratisation’, and the ground-breaking 1999 UN CHR resolution, ‘Promotion of the Right to Democracy’,<sup>263</sup> all significantly contributed to the development and elucidation of UN policy with respect to democracy.<sup>264</sup> The latter

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<sup>260</sup> This phrase is taken from Christopher C. Joyner who notes that the UN ‘has assumed the impressive role of international agent for democratisation’ on the basis of engagement in ‘various activities toward that end in nearly more than seventy-five states and territories over the past decade’. He continues to note the role of other actors, such as the OAS. Christopher C. Joyner, ‘The United Nations and Democracy’ (1999) 5 *Global Governance* 333, 333 - 334. Cf. Eric Stein, ‘International Integration and Democracy: No love first sight’ (2001) 95 *American Journal of International Law* 489. Stein provides an analysis of the experience of four bilateral/regional/international organs, the WHO, WTO, EC and NAFTA, with ‘democracy’.

<sup>261</sup> Gregory H. Fox and Brad R. Roth, ‘Democracy and International Law’ (2001) 27 *Review of International Studies* 327, 327.

<sup>262</sup> See generally, Gregory H. Fox, ‘International Law and the Entitlement to Democracy after War’ (2003) 9 *Global Governance* 179, 181 – 185. There have been other notable contributions from the UN HR Committee in respect of delineating the right to political participation under Article 25 of the ICCPR. In this respect Gregory H. Fox and Brad R. Roth commented that the UN HRC has recently given a ‘more determinate interpretation of the political participation provisions’. Fox and Roth, ‘Democracy and International Law’ (n 261) 345. Indeed the somewhat controversial legacy of the SC resolutions in respect of the situations in Haiti and Sierra Leone must also be noted at least for prompting some hard questions regarding forcible intervention. On this aspect see W. Michael Riesman, ‘Sovereignty and Human Rights in Contemporary International Law’ (1990) 84 *American Journal of International Law* 866; Louis W. Goodman, ‘Democracy, Sovereignty and Intervention’ (1993) 9 *American University Journal of International Law and Policy* 27, 29.

<sup>263</sup> CHR Res 1999/57, ‘Promotion of the right to democracy’ (27 April 1999).

<sup>264</sup> For instance the UN SG. Kofi Annan, found that An Agenda for Development contributed, along with other reports by the former SG, Boutros Boutros Ghali, ‘significantly to the process of providing a solid foundation for the eventual formation of a new and flexible framework for the United Nations system in the fields of democratisation and governance’. UN SG, ‘Support by the United Nations system of the efforts of Governments to promote and consolidate new or restored democracies’ (21 October 1997) A/52/513, para. 6.

document is representative of the parallel developments in UN policy by the SG and GA, and indeed of the importance attached to democratisation within the UN system, in that the key features or characteristics of UN policy are embodied therein and that the Resolution passed with only two abstentions.<sup>265</sup>

Thus the CHR Resolution speaks of democracy, development and human rights as interdependent and mutually reinforcing, an inter-relationship which was explicitly recognised in the UN Vienna Declaration and Programme of Action (1993).<sup>266</sup> The specifics of the relationship between democracy and development were elaborated upon in 'An Agenda for Development' (1994) and included elections and enhancing governance by way of, for instance, instituting administrative and financial reforms and strengthening domestic human rights law as necessary democratic preconditions for development.<sup>267</sup> This complemented a comparable recognition of the relationship between democracy and the prevention and resolution of violent conflicts in 'An Agenda for Peace' (1992) which also emphasised the need to respect fundamental human rights along with 'strong domestic institutions of participation' as conflict prevention measures.<sup>268</sup>

The 1999 CHR Resolution also states that democracy is based on the 'freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives'.<sup>269</sup> The recognition that democracy is based on self-determination and participation is peppered throughout the SG Reports and the GA Resolutions pertaining to democracy during the 1990's. In particular the dialogue between the SG and the GA, spawned by the world conferences on new or restored democracies,<sup>270</sup> emphasise these twin foundations of self-determination and participation with the first three Reports by the

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<sup>265</sup> CHR Res 1999/57 (n 263). China and Cuba abstained from the vote, which is not to say that the resolution was unproblematic. Indeed a number of states registered their 'doubt as to democracy's legal status as a right'. Gregory H. Fox and Brad R. Roth, 'Introduction' in Fox and Roth (ed) (n257) 3.

<sup>266</sup> UN GA, 'Vienna Declaration' (n 134) para. 8. On the relationship between democracy, development and human rights see Jack Donnelly, 'Human Rights, Democracy and Development' (1999) 21 *Human Rights Quarterly* 608

<sup>267</sup> UN SG, 'An Agenda for Development' (6 May 1994) UN DOC A/48/938 paras. 118, 124 – 128.

<sup>268</sup> UN SG, 'An Agenda for Peace: Preventive diplomacy, peacemaking and peacekeeping' (17 June 1992) UN DOC A/47/277-S/2411, para. 81.

<sup>269</sup> CHR Res 1999/57 (n 263) preambular para. 3.

<sup>270</sup> At the second meeting of the movement for new and restored democracies the UN was requested to look at how the UN system could help to promote and consolidate new or restored democracies.

SG in the mid-1990's furnishing the UN with the basic framework for promoting democratisation.<sup>271</sup> In the Reports entitled 'Support by the United Nations system of the Efforts of Governments to Promote and Consolidate New or Restored Democracies',<sup>272</sup> the SG identified political parties and movements, a free and independent media, civic education and electoral assistance as essential elements of the process democratisation and as such constitute 'ways and mechanisms'<sup>273</sup> by which the UN could support governments of new or restored democracies.<sup>274</sup> In a comparable manner, the GA Resolutions on genuine and periodic elections along with those on strengthening the rule of law and the promotion and consolidation of democracy more generally bestowed a further layer of determinacy to UN democratisation policy during the 1990's which has directed UN activity. For example, the GA Resolutions stressed that electoral assistance by the UN is contingent upon a request by a member state, takes numerous forms from observation, verification and training of national observers and must be preceded by a needs-based assessment.<sup>275</sup>

The twin components of self-determination and participation invoke UN human rights treaties which recognise the right of self-determination and the right of political participation, such as the ICCPR.<sup>276</sup> Indeed the CHR Resolution continues to

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<sup>271</sup> The SG Boutros Boutros Ghali delivered the first report on 7 August 1995 and the second on 18 October 1996 which was supplemented by what is now referred to as 'An Agenda for Democratisation.' His successor Kofi Annan, in his first report to the GA, stated: '[t]hese three reports of the former Secretary-General on new or restored democracies contribute significantly to the process of providing a solid foundation for the eventual formation of a new and flexible framework for the United Nations system in the fields of democratisation and governance'. UN SG, 'Support by the United Nations system' (n 264) para. 6.

<sup>272</sup> See for example, UN SG, 'Support by the United Nations system of the efforts of Governments to promote and consolidate new or restored democracies' (7 August 1995) A/50/332 and Corr.1; UN SG, 'Support by the United Nations system of the efforts of Governments to promote and consolidate new or restored democracies' (18 October 1996) A/RES/51/512; UN SG, 'Support by the United Nations system of the efforts of Governments to promote and consolidate new or restored democracies' (21 October 1997) A/52/513.

<sup>273</sup> UN GA Res 49/30, 'Support by the United Nations system for the efforts of Governments to promote and consolidate new or restored democracies' (7 December 1994) UN Doc A/RES/49/30, para. 1

<sup>274</sup> For an overview see Joyner (n 260) 338 – 340.

<sup>275</sup> This is evident as early as 1993 in UN GA Res 48/131, 'Enhancing the effectiveness of the principle of periodic and genuine elections' (20 December 1993) UN Doc A/RES/48/131. This marks a significant development of UN policy, particularly when seen in the light of the fact that the first election monitoring mission conducted by the UN occurred in 1990.

<sup>276</sup> Indeed this serves as one of the plinths upon which proponents of an emerging legal status for democracy such as Thomas M. Franck rest their argument for a right to democracy. For the contours of the argument see generally Fox and Roth (n 265) 1, 10 – 13.

enumerate a non-exhaustive list of ‘rights of democratic governance’, which include the right of political participation, freedom of expression and opinion, freedom of thought, conscience and religion, freedom of assembly and association, the right of universal and equal suffrage and the rule of law.<sup>277</sup> The rule of law is understood in this context as the domestic legal protection of rights, interests and personal security and fairness in the administration of justice and the independence of the judiciary, which finds correlation in UN human rights law, such as article 10 of the UDHR which guarantees an independent and impartial tribunal and article 26 of the ICCPR which provides for equality before the law. The jurisprudence of the UN HRC has made a significant contribution to the development of UN democratisation policy by adding a further layer of content and meaning to UN policy with regard to self-determination and political participation as the basis for democratisation.<sup>278</sup>

While the contours of UN democratisation policy were shaped in the 1990’s, it has been further defined in another series of conversations between the GA and the SG, albeit within the broader context of UN reform, which has served to entrench democracy as a value of the UN system. Indeed the Millennium Report speaks of democracy as ‘now generally seen as the most legitimate and desirable form of government’<sup>279</sup> and places governance centre-stage in proclaiming that ‘we must learn to govern better, and we must learn how better to govern together’.<sup>280</sup> This echoes the statement of the former SG, Boutros Boutros Ghali in ‘An Agenda for Peace’ to the end that respect for democratic principles is crucial ‘within states and within the community of states’.<sup>281</sup> Unsurprisingly governance is understood in the Millennium Report as entailing ‘greater participation coupled with accountability’.<sup>282</sup> The subsequent Millennium Declaration devoted a separate section to the interdependence

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<sup>277</sup> CHR Res (n 263) para. 2.

<sup>278</sup> This is because, according to Gregory H. Fox, that ‘[i]nternational human rights law draws an important connection between participation in politics and the legitimate assertion of governmental power’. Fox, ‘Democracy after War’ (n 262). On the jurisprudence of the UN HRC in the areas of self-determination and political participation see Alex Conte, Scott Davidson, and Richard Burchill (ed), *Defining Civil and Political Rights: The jurisprudence of the United Nations Human Rights Committee* (Ashgate Aldershot 2004) Chapters 3 and 4.

<sup>279</sup> UN SG, *We the Peoples: The role of the United Nations in the 21<sup>st</sup> Century* (UN Dept of Public Information New York 2000) 68. While this is a somewhat controversial claim, Nigel D. White also counts democracy as one of the values of the UN system. Nigel D. White, *The United Nations: Toward International Justice* (Lynne Reiner: Boulder, 2002) 60—63.

<sup>280</sup> UN SG, *We the Peoples* (n 279) 12.

<sup>281</sup> UN SG, ‘An Agenda for Peace’ (n 268) para. 19.

<sup>282</sup> *Ibid* 13.

of democracy, human rights and governance, with UN member states pledging to promote democracy, strengthen the rule of law and to promote and strengthen respect for internationally recognised human rights and fundamental freedoms, including the right to development.<sup>283</sup>

The SG's 2005 Report, *In Larger Freedom*, expanded on these connections by reiterating the claim that democracy is now globally accepted as a universal value the essentials of which are found in the UDHR, entreating member states to fulfil the pledge of the Millennium Declaration, and noting the work of the UN in promoting and strengthening democratic institutions and practices at the domestic level.<sup>284</sup> Ultimately, the Outcome Document of the 2005 World Summit reaffirmed that not only are human rights, the rule of law and democracy interlinked and mutually reinforcing but they also 'belong to the universal and indivisible core values and principles of the United Nations'.<sup>285</sup> Thus UN member states reaffirmed that democracy, as a universal value, is based on the 'freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives' and corresponds to no single model.<sup>286</sup> Yet, the interdependent and mutually reinforcing relationship between democracy, development and human rights was underscored in the Outcome Document which served as a solid basis for the recommitment to support democracy within states and to strengthen the role of the UN in this regard.<sup>287</sup>

In sum, the UN democratisation policy is underpinned by participation which is equated in practice to free and fair elections, with an underlying rationale or justification of the prevention of violent conflict and the promotion of social progress, including development and human rights, and is furnished with a foundation grounded in the UN Charter and the rule of law, human rights and self-determination.<sup>288</sup> Nonetheless, the above documents also bring to the forefront that the UN has adopted

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<sup>283</sup> UN GA Res 55/2, 'Millennium Declaration' (8 September 2000) para. 24.

<sup>284</sup> SG, *In Larger Freedom* (n 2) 148 – 152.

<sup>285</sup> UN GA Res 60/1, '2005 World Summit Outcome' (24 October 2004) para. 119.

<sup>286</sup> *Ibid* para. 135.

<sup>287</sup> *Ibid* para. 136.

<sup>288</sup> Joyner explicitly mentioned the UN Charter, the UDHR and the Declaration on the Granting of Independence to Colonial Countries and Peoples as furnishing 'the normative framework for casting the UN's role in promoting democratisation'. Joyner (n 260) 338. See also Fox and Roth (n 265) 6 – 9.

a more active role in the promotion of democracy and has become, in the words of Christopher C. Joyner, ‘an international agent for democratisation’.<sup>289</sup> This shift is readily discernible in the change in the appellation of the GA Resolutions and SG Reports in relation to the world conferences on new or restored democracies to ‘Strengthening the Role of the United Nations’.<sup>290</sup> It also emphasises the importance of the respect of rule of law *between* states that accompanies the acceptance of democracy as a value of the UN system. The commitment to ‘an international order based on the rule of law and international law’<sup>291</sup> requires the principles and values of the UN Charter, such as democracy, to be applied consistently within ‘the world Organisation itself’.<sup>292</sup>

The role of the UN in promoting democracy,<sup>293</sup> as an ‘international agent for democratisation’, has been augmented by the practice of electoral assistance that blossomed since the first election monitoring mission in 1990.<sup>294</sup> In 1992 the UN provided the burgeoning practice with an institutional home when it established the Electoral Assistance Division (EAD).<sup>295</sup> The EAD is mandated, amongst others, to receive and assess requests for electoral assistance and has dealt with 326 requests between 1992 and 2005 and has recorded a steady increase in requests for ‘observation or observation-type assistance’.<sup>296</sup> These activities are supplemented and indeed complemented by the activities of the UNDP and the UN Department of Peacekeeping Operations (DPKO). Indeed partnerships of best practice exist between the EAD and the UNDP on the one hand and the EAD and the DPKO on the other, with the UNDP, for instance, actively facilitating election assistance in 47 instances of

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<sup>289</sup> Joyner (n 260) 333.

<sup>290</sup> See for example 2005 SG Report and accompanying GA Resolution.

<sup>291</sup> UN GA Res 60/1 (n 285) para. 134.

<sup>292</sup> UN SG, ‘An Agenda for Peace’ (n 268) para. 82.

<sup>293</sup> See generally, Edward Newman and Roland Rich, *The UN Role in Promoting Democracy: Between Ideals and Reality*, (United Nations University Press Tokyo 2004).

<sup>294</sup> Gregory H. Fox, ‘The Right to Political Participation in International Law’ in Fox and Roth (ed) (n 264) 75 – 78.

<sup>295</sup> UN GA Res 46/137, ‘Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections’ (17 December 1991) A/RES/46/137/1992, paras. 9 and 11. See more generally the website of the EAD <<http://www.un.org/Depts/dpa/ead/index.shtml>> accessed 10 May 2007.

<sup>296</sup> UN SG, ‘Strengthening the Role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratisation’ (14 October 2005) UN Doc. A/60/431, para. 22.

technical assistance in 2005.<sup>297</sup> It is unsurprising that the activities of the UN with respect to promoting democracy occur in these ‘two fundamental contexts’,<sup>298</sup> given the explicit recognition in the UN policy documents of the relationships of democracy with development and conflict prevention and resolution. Nevertheless, such activities clarify and elucidate a fundamental underpinning of UN democratisation policy as premised on the *instrumentality* of democracy in achieving international peace and security and ‘social progress and better standards of life in larger freedom’.<sup>299</sup> In the last analysis, the shift towards democratisation within the UN system marks an evolutionary trend in UN policy and activity.

### ***B. The Contribution of Democracy in Achieving Human Security***

Democracy as understood and promoted by the UN bears the potential to contribute to the achievement of human security. In particular, UN democratisation policy and activity exhibits three facets, readily identifiable from the foregoing, that are of notable significance for the achievement of human security. The first of these facets is the clear connection of democracy with human rights while the second is the equally apparent instrumentality of democracy in the fields of security and development. The final facet, albeit somewhat muted in the above account of democracy and the UN, is the impact of democracy as understood and promoted by the UN on sovereignty. These facets of UN democratisation policy and activity warrant further examination in part because the connections are not as self-evident or uncontroversial as the above account would suggest. Indeed the relationship between democracy and human rights, and the role of democracy in development activities and conflict prevention and resolution, along with the question of sovereignty are subject to intense discussion in the discourse which surrounds democracy and the UN and indeed, the related issue of the status of democracy in international law. This section draws upon the wealth of this incisive literature to assess the contribution of

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<sup>297</sup> The DPKO has produced guidance on best practice for electoral assistance in UN peacekeeping missions. DPKO, ‘Handbook on UN Multidimensional Peacekeeping Operations’ (December 2003) <<http://pbpu.unlb.org/pbpu/library/Handbook%20on%20UN%20PKOs.pdf>> accessed 10 May 2007. In addition to providing technical assistance, the UNDP also established the Oslo Governance Centre in 2002 as a depository of information and guidance. See <<http://www.undp.org/olsocentre/>> accessed 10 May 2007. The UNDP has also produced a Practice Note detailing the framework for UNDP activities in the field of electoral assistance. UNDP, ‘Electoral Systems and Processes: Practice Note’ (January 2004) <[http://www.undp.org/governance/docs/ElectionsPN\\_English.pdf](http://www.undp.org/governance/docs/ElectionsPN_English.pdf)> accessed 10 May 2007.

<sup>298</sup> Joyner (n 260) 340.

<sup>299</sup> UN Charter, Preamble.

democracy to achieving human security and ultimately to delineate the nature of the role of democracy in the quest for human security.

UN democratisation policy and activity has been charged with the erosion of sovereignty.<sup>300</sup> The indictment rests on the two-pronged claim that the UN by proposing a particular model of democracy, that of liberal democracy, and by rendering electoral assistance, especially monitoring which bestows legitimacy on the outcome of free and fair elections, is interfering with the political independence of states.<sup>301</sup> However, that UN democratisation policy and activity has this penetrating effect on sovereignty is susceptible to a counter-claim. In particular, it is not obvious that the UN is specifying a model of democracy let alone a liberal-democratic model. For instance, the UN understands democracy as founded on the 'freely expressed will of the people'. The UN Charter and UDHR both speak of 'the will of the people shall be the basis of the authority of government', that is popular sovereignty.<sup>302</sup> Nevertheless it does not necessarily follow, although it is logically entailed, that the basis for popular sovereignty is liberal-democracy. This underpinning is apparent in the writings of proponents of the 'democratic entitlement', such as Thomas Franck, who emphasises the centrality and indeed *primacy* of the right to political participation in his scheme for the emerging right to democratic governance.<sup>303</sup> However, the UN couples the call to popular sovereignty with self-determination and participation which is accompanied by platitudes to the territorial integrity and political independence of states and claims of the universal value of democracy which belongs to no one country or region.<sup>304</sup> Thus UN democratisation policy, while founded on popular sovereignty, does not take the next logical step of endorsing a particular model of democracy.<sup>305</sup> This is attributable in part to the fact that

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<sup>300</sup> W. Michael Reisman forcefully claims: 'International law still protects sovereignty, but – not surprisingly – it is the people's sovereignty rather than the sovereign's sovereignty'. Reisman (n 262) 869; Fox, 'Democracy after War' (n 262) 179.

<sup>301</sup> Ibid 179.

<sup>302</sup> Reisman (n 262); Kofi Annan spoke of 'individual sovereignty' meaning 'the fundamental freedom of each individual . . . [as] . . . enshrined in the Charter of the UN' and reinforced by international human rights law which relates to international human rights law and 'state sovereignty' which pertains to territorial integrity and political independence. Kofi Annan, 'Two Concepts of Sovereignty' *The Economist* (1999) 49 – 50.

<sup>303</sup> Franck, 'Legitimacy' (n 257) 34; Franck (n 258) 52 – 77.

<sup>304</sup> For example UN GA Res 60/1 (n 285) paras 135 – 137.

<sup>305</sup> The consequences of doing so are far-reaching and which include the use of force. See W. Michael Reisman, 'Sovereignty and Human Rights in Contemporary International Law' in Fox and Roth (ed) (n

sovereignty, whether understood as popular sovereignty or state sovereignty, is a legal construct that exists *within* international law.<sup>306</sup> Indeed, the relation of UN democratisation policy to sovereignty is best understood upon considering popular sovereignty as a *political* construct which is supported by the *legal* rules pertaining to self-determination and participation, and constrained by treaty law obligations and customary international law norms such as the principle of non-interference.

The second prong of the indictment on the charge of UN democratisation policy and activity eroding sovereignty concerns electoral assistance. Upon closer inspection of UN practice and activity in this regard, the effect on sovereignty is not as penetrating as would appear at first glance. Indeed electoral assistance, in particular monitoring to ensure that elections are ‘free and fair’, are contingent upon an invitation by the government of the state in question.<sup>307</sup> This serves to temper the penetrating effect on sovereignty. Moreover, as Gregory H. Fox and Brad R. Roth observe, this burgeoning practice must be seen within the broader context of deepening interdependence and interpenetration of the international and national in which international organisations, such as the UN, ‘are now involved in virtually every aspect of national policymaking’.<sup>308</sup> Nevertheless, UN election monitoring validates and legitimises the outcome of an election. As Franck correctly surmises this constitutes a ‘sea-change in international law’ which he predicts will result in the legitimacy of governments ‘measured definitively by international rules and processes’.<sup>309</sup> This is somewhat borne out in practice with an increasing number of requests for electoral assistance and monitoring outside the limited sphere of conflict resolution and across every continent.<sup>310</sup> Indeed a recent survey of state practice with regard to state recognition by Sean D. Murphy found that while democratic legitimacy is not a legal condition of state recognition, it does factor in recognition practice.<sup>311</sup>

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257) 239, Cf. Michael Byers and Simon Chesterman, “‘You, the Peoples’”: Pro-democratic intervention in international law’ in Fox and Roth (ed) (n 257) 259.

<sup>306</sup> Max Plank Institute for Comparative Public Law and International Law, *Encyclopaedia of Public International Law* (North-Holland Amsterdam/New York/Oxford/Tokyo 1987) 408.

<sup>307</sup> See generally EAD website <<http://www.un.org/Depts/dpa/ead/overview.html>> accessed 29 August 2007.

<sup>308</sup> Fox and Roth, ‘Democracy and International Law’ (n 261) 331.

<sup>309</sup> Franck, ‘An Emerging Right’ (n 258) at 50.

<sup>310</sup> UN SG, ‘Strengthening the role of the UN’ (n 296) para. 22 and see <<http://www.un.org/Depts/dpa/ead/overview.html>> accessed 3 September 2007.

<sup>311</sup> Sean D. Murphy, ‘Democratic Legitimacy and the Recognition of States and Governments’ in Fox and Roth (eds) (n 276) 123 – 154.

This underscores the role of the UN in promoting democracy and the importance of the rule of law in UN democratisation policy and activity.

Thus UN democratisation policy and activity in its relation to sovereignty contributes to achieving human security in two key and related respects. First, democracy as understood and promoted by the UN confirms that popular sovereignty or, in the words of Kofi Annan, ‘individual sovereignty’,<sup>312</sup> is protected within and by the UN system. This reinforces the human-centred focus of human security and thereby adds to the normative determinacy of human security. In this sense, UN democratisation policy and activity also goes a considerable way in countering the received conventional wisdom of the ‘simple binary opposition’<sup>313</sup> of ‘sovereignty’ and ‘human rights protection’. As such the confirmation of the place of popular sovereignty in the UN system indicates that UN democratisation policy and activity may offer a way forward by which to reconcile the countervailing and opposing logics of ‘sovereignty’ and ‘human rights protection’, that proved counterproductive to achieving human security. Indeed, democratic institutions and processes that emphasise the effective participation of people in processes and decisions that affect their daily lives, such as periodic and genuine elections, conceivably provide the ways and means by which to reconcile the countervailing logics of ‘sovereignty’ and ‘human rights protection’. The idea of effective participation is the second respect in which UN democratisation policy and activity may make a critical contribution to achieving human security.

In addition to countering the adverse effects of adherence to the ‘binary opposition’ of sovereignty and human rights protection and offering potential mechanisms and tools by which to strike a balance between the imperatives of sovereignty and human rights protection, UN democratisation policy and activity also relies upon an explicit connection with human rights. In particular democracy as understood and promoted by the UN rests on several points of correlation between democracy and human rights. This is evident in the assertion in the 2005 Outcome Document that the UDHR contains all the essentials of democracy and the enumeration of a non-exhaustive list

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<sup>312</sup> Annan (n 302) 49 – 50.

<sup>313</sup> Karima Bennouna, ‘Sovereignty Vs Suffering’? Re-examining Sovereignty and Human Rights through the Lens of Iraq’, (2002) 13 *European Journal of International Law* 241, 244.

of ‘democratic rights’ by the CHR.<sup>314</sup> This is underlined by a discernible tendency in the literature to define democracy in terms of human rights.<sup>315</sup> It is on this basis that democracy and human rights are understood to be, in the words of the Vienna Declaration, ‘interdependent and mutually reinforcing’. This relationship further rests on the implicit assumption in UN democratisation policy and activity and indeed the wider literature on democracy and human rights, that democracy is the best way to guarantee human rights.<sup>316</sup>

However, Jack Donnelly warns of the dangers in accepting unconditionally the ‘comfortable contemporary assumption’ that democracy and human rights are mutually reinforcing and interlinked.<sup>317</sup> He acknowledges that democracy and human rights ‘have important conceptual and practical affinities’<sup>318</sup> but that to conflate the key terms is to ‘place human rights at risk’.<sup>319</sup> This danger is glaringly apparent in UN democratisation policy and further exacerbated by UN activity in the realm of election assistance. Indeed the points of correlation between democracy and human rights upon which UN democratisation policy and activity is based, stem from a specific and somewhat limited understanding of the key terms whereby democracy is virtually synonymous with a particular set of human rights, especially the ‘democratic rights’ enumerated by the CHR. This is reinforced with the exclusionary focus on the procedural and temporally discrete mechanism of elections in UN practice.<sup>320</sup> In

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<sup>314</sup> UN GA Res 60/1 (n 285) para. 135 CHR Res 199/57 (n 263) para. 2. See also CHR Res 2003/36, ‘Interdependence between democracy and human rights’ (23 April 2003).

<sup>315</sup> See for example, Allan Rosas, ‘State Sovereignty and Human Rights: towards a Global Constitutional Project’ (1995) 43 *Political Studies* 61.

<sup>316</sup> Jack Donnelly asserts that: ‘[w]orking for (electoral) democracy, no matter how hard or successful that struggle may be, is at best a partial first step to achieving the rights-protective regime envisioned by international human rights norms’. Donnelly (n 266) 622. Richard Burchill has similarly claimed that ‘[h]uman rights rely heavily upon the existence of democratic systems if they are to be effective’. Richard Burchill, ‘The Role of Democracy in the Protection of Human Rights: Lessons from the European and Inter-American Human Rights Systems’ in David P. Forysthe and Patrice C. McMahon (eds), *Human Rights and Diversity: Areas Studies Revisited* (University of Nebraska Press Lincoln and London 2003) 137. See also David Beetham, ‘Democracy and human rights: contrast and convergence’ (Paper delivered at Seminar on the Interdependence Between Democracy and Human Rights, Office of the High Commissioner for Human Rights, Geneva, 25 – 26 November 2002) <<http://www.unhchr.ch/democracy/D-Beetham.pdf>> accessed 28 August 2007, para. 2. Jorg Paul Muller, ‘Fundamental Rights in Democracy’ (1983) 4 *Human Rights Law Journal* 131.

<sup>317</sup> Donnelly (n 266) 608.

<sup>318</sup> Ibid 609.

<sup>319</sup> Ibid 612.

<sup>320</sup> Joseph Schumpeter advanced a definition of democracy based on elections as empirically verifiable measurement of democracy. For a concise overview of his theory David Held, *Models of democracy* (2nd edn Polity Press Cambridge 1996) 177 – 182.

addition to the effect on human rights as a normative construct and the skewed protection afforded to all human rights under this rubric, equating democracy with certain 'key' human rights reinforces the claims that the UN is advocating the liberal-democratic model of democracy. Thus while the contribution of this facet of UN democratisation policy and activity to achieving human security lies primarily in strengthening the focus on human rights and arguably enhancing effective human rights protection by institutionalising democratic mechanisms and processes, this must be seen as contingent upon the definitions of the key terms of 'democracy' and 'human rights'. In the last analysis, to paraphrase Donnelly, unless democracy is understood and pursued in a way in which it remains distinct from human rights, the protection of human rights may be at risk, and additionally undermine the role of the UN in promoting democracy and ultimately the achievement of human security.<sup>321</sup>

The final facet of UN democratisation policy and activity, the role of democracy in the fields of development and security, appears incontrovertible at least as a matter of practice. Yet, the assumptions upon which UN democratisation policy has etched out a place for democracy in development activities and in conflict prevention and resolution operations are by no means settled and accepted matters. For instance, Donnelly, when issuing a plea for terminological clarity in respect of development, stated that democracy was not 'strictly necessary for development'.<sup>322</sup> Similarly, the democratic peace thesis upon which the role of democracy in conflict prevention and resolution is predicated is not immune to criticism.<sup>323</sup> Indeed as John M. Owen points out whether it is actually the existence of democracy that causes the peace is not without controversy.<sup>324</sup> Moreover, the democratic peace thesis does not, as Roth points out, account for civil conflict.<sup>325</sup> That said, it is clear that empirical assessment of the linkages between democracy and development on the one hand and democracy and peace and security on the other, is urgently required to elucidate the relationships involved and remove the largely intuitive basis for UN action.

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<sup>321</sup> Donnelly (n 266) 612.

<sup>322</sup> Ibid 610.

<sup>323</sup> See generally John M. Owen, IV, 'International Law and the 'liberal peace' in Fox and Roth (eds) (n 276) 343.

<sup>324</sup> Ibid 344.

<sup>325</sup> Brad R. Roth, 'Democratic Intolerance: observations on Fox and Nolte' in Fox and Roth (eds) (n 276) 441.

It is equally apparent that democracy is an integral part of the processes by which conflict prevention and resolution measures and development assistance is delivered. As Christine Bell observes ‘the typical peace blueprint involves central deal on democratic access to power’.<sup>326</sup> The 47 technical assistance missions that the UNDP is in partnership with the EAD in delivering electoral assistance also speak of this incontrovertible presence of democracy. This reality must be viewed as part of a wider phenomenon whereby ‘emerging international norms, unrelated to democratisation, have come to rely upon implementation through democratic processes’.<sup>327</sup> The contribution of this facet of UN democratisation policy and activity to achieving human security may be said to be the provision of a portal through which democratic principles and accompanying systems of participation grounded in the rule of law may be injected into measures and activities undertaken by the UN within the fields of development and security. This in turn strengthens human rights protection as based on the role of democracy in guaranteeing human rights.

## VI. CONCLUDING REMARKS

The HR Council, as the primary organ of the UN dedicated to the promotion and protection of human rights, has a pivotal role to play in the achievement of human security. In particular, as Rodley observes albeit in respect of the CHR, the HR Council is the only forum in which human rights violations anywhere in the world may be addressed,<sup>328</sup> the authority for which, as Weissbrodt points out, rests on no more than a mere consensus within the HR Council and the human rights provisions of the UN Charter.<sup>329</sup> Moreover, the mechanisms available to the HR Council, especially the special procedures, imbue the individual with ‘international procedural capacity’ which stands in stark contrast to the ‘precarious’ position of the right to individual petition<sup>330</sup> under UN human rights treaty law as detailed in Chapter Four. Indeed, the above assessment of the institutional and operational capacity of the HR Council serves to further elucidate the human rights component of the UN human security framework. It is clear that while the human security framework rests on a

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<sup>326</sup> Christine Bell, *Peace Agreements and Human Rights* (OUP Oxford 2000) 1.

<sup>327</sup> Fox and Roth (n 265) 8.

<sup>328</sup> Rodley, ‘UN Non-treaty Procedures’ (n 101) 80.

<sup>329</sup> Weissbrodt (n 82) 687.

<sup>330</sup> Cassese, *International Law* (2<sup>nd</sup> edn OUP Oxford 2005) 149.

normative and legal foundation provided by UN human rights law, more specifically UN human rights treaty law, it is not contingent upon UN human rights treaty law for its force, which goes a considerable way to militate against the questionable effectiveness of UN human rights treaty law detailed in Chapter Four.

Nevertheless, the HR Council faces operational and institutional challenges in pursuing human security which are further compounded by the current efforts to reform the UN human rights machinery, of which it is a product. However, the intrinsic and instrumental role of democracy in the achievement of human security may provide the means by which to address the operational and institutional obstacles. Indeed, by stressing democratic processes grounded in effective participation, UN democratisation policy may provide the means by which to balance the imperatives of human rights protection within a political body comprised of states. Moreover, UN democratisation policy resonates strongly with human security as it rests on several points of correlation with human rights, in addition to forging working relationships in the fields of development and peace and security. In the last analysis, therefore, UN democratisation policy may provide the necessary reference points by which to strengthen the institutional and, by implication, the operational capacity of the HR Council to contribute to the achievement of human security.

## CHAPTER SIX

### OPERATIONALISING HUMAN SECURITY: THE ROLE OF THE UN SECURITY COUNCIL AND THE UNDP

#### I. INTRODUCTION

This Chapter delineates the roles of the United Nations (UN) Security Council (SC) and the United Nations Development Programme (UNDP) in achieving human security. It departs from the position that the SC and the UNDP, as the primary UN organs in the fields of security and development, have a pivotal and mutually reinforcing role to play in the achievement of human security. In short, as was implicitly evident in Chapter Three, the SC and the UNDP are respectively responsible for delivering the freedom from fear and the freedom from want components of the UN human security package also detailed in Chapter Three. As with Chapter Five, particular emphasis is placed on the *capacity* of the SC and the UNDP in delivering the UN security and development agendas in the pursuit of human security. In this regard the Chapter is primarily concerned with *how* the SC and the UNDP pursue human security and more specifically the Chapter identifies and assesses the activities undertaken by the SC and the UNDP in pursuit of human security. The Chapter is also concerned with elucidating the relationships which form human security, namely the relationship between security and human rights on the one hand, and development and human rights on the other, as they provide the bedrock upon which the UN security and development agendas rest and as such necessarily underpin and inform SC and UNDP activity in pursuit of human security.<sup>1</sup> Insofar as the examination reveals operational and institutional challenges facing the SC and the UNDP in the pursuit of human security, reference is made to the relevant proposals for UN reform in the security and development fields.<sup>2</sup>

The Chapter has four substantive Parts the first of which briefly revisits the UN institutional architecture for achieving human security in order to introduce the primary UN bodies in the fields of security and development into the overview previously

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<sup>1</sup> This proposition is considered in more depth below, but suffice to note at this point that it logically follows from the UN human security package detailed in Chapter Three that SC and UNDP activity in the security and development fields would be underpinned and informed by human security.

<sup>2</sup> The UN security and development agendas were detailed in Chapter Three and relevant proposals in the present context include, but are not limited to, the reform measures proposed by the High-Level Panel on Threats, Challenges and Change and the International Commission on Intervention and State Sovereignty.

detailed in Chapter Three (Part II). The analysis is narrowed in the subsequent parts with Part III and Part IV delineating the roles of the SC and the UNDP and evaluating the mechanisms and tools at their disposal to pursue human security. Underlying these complementary Parts is a concern as to the capacity of the UN to achieve human security. Indeed, the operational and institutional challenges facing the SC and the UNDP in the pursuit of human security prompts the consideration of the role, if any, of the UN High Commissioner for Human Rights (HCHR) in building bridges between the disparate UN organs and bodies charged with the pursuit of human security (Part V).

## **II. THE UN INSTITUTIONAL ARCHITECTURE FOR ACHIEVING HUMAN SECURITY – REVISITED**

The recognition that human security is comprised of a series of relationships between human rights and security on the one hand and human rights and development on the other prompts the introduction of the SC and the UNDP into the UN institutional architecture for achieving human security. While all UN organs ‘have a special and indispensable role to play in an integrated approach to human security’,<sup>3</sup> Chapter Three uncovered that the GA, Economic and Social Council (ECOSOC) and particularly the CHR and its recent replacement HR Council, have specific roles and responsibilities under the Charter scheme for achieving human security. Thus the constellation of UN organs forming the UN institutional architecture in respect of human security has expanded under the UN human security package to include the UN bodies with specific roles and responsibilities in the fields of security and development. This Part provides a brief description of the functions, powers and composition of the primary UN bodies in the fields of security and development, the SC and the UNDP.

The UN SC which consists of 15 member states is a principal organ of the UN. The Charter maintains the distinction drawn in the Council of the League of Nations between permanent and non-permanent members, with the US, the UK, Russia, France and China having the ‘special status’ of permanent membership of the SC. While this status reflects the power dynamic prevailing at the time of the establishment of the UN, under the provisions of the Charter the permanent members have considerable powers

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<sup>3</sup> UN SG, ‘An Agenda for Peace: Preventive diplomacy, peacemaking and peacekeeping’ (17 June 1992) UN DOC A/47/277-S/2411 para. 16.

beyond the 'mere right to permanent membership'.<sup>4</sup> Indeed, the special status of the five permanent members is reflected in the voting procedure of the SC, with the five permanent members having the right of veto under Article 27 of the Charter. Other provisions of the Charter that reflect this special status include the Military Staff Committee, amendments to the Charter and procedural voting rights. Article 23 which originally provided for six non-permanent members was amended in 1963 to reflect an increase in the general membership of the UN and SC membership swelled to ten non-permanent members. These are elected for a two year period by the GA on a two-thirds vote on the basis of an informally recognised formula of equitable geographical distribution, although the UN Charter makes explicit reference to the contribution to international peace and security as a criterion for membership.<sup>5</sup> Thus, Africa and Asia have three and two seats respectively on the SC, while Latin America and Western Europe and other states, which refers to New Zealand and Australia, have two seats each, and finally one seat is allocated to Eastern Europe.

The powers and functions of the SC are found in Articles 24 – 26 of the Charter, of which Article 24 (1) confers on the SC the primary responsibility for the maintenance of international peace and security. While UN practice, in particular during the period 1955 - 1960 which saw the role of the SC diminish and that of the GA correspondingly rise as regards the maintenance of international peace and security,<sup>6</sup> has recognised the role of other UN organs in the maintenance of international peace, it remains that the SC is the primary actor in this regard. This is in keeping with the rationale underpinning Article 24, namely ensuring 'prompt and effective action by the United Nations'. In furtherance of its mandate to maintain international peace and security, the Charter stipulates that member states 'agree to accept and carry out the decisions of the Security Council' in addition to bestowing a number of powers on the SC, to this end. Article 24 (2) refers to powers in respect of pacific settlement of disputes (Chapter VI), enforcement action (Chapter VII), regional arrangements (Chapter VII) and the international trusteeship system (Chapter XII). As noted in Chapter Three, SC practice in furtherance of its Charter mandate may be considered as falling into the two broad categories of peaceful settlement of disputes under Chapter VI and enforcement measures under Chapter VII of the Charter. In the latter regard it was noted that the SC

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<sup>4</sup> Bruno Simma, Stefan Brunner and Hans-Peter Kaul, 'Article 27', in Bruno Simma et al (eds), *Charter of the United Nations: A Commentary* (2<sup>nd</sup> edn OUP Oxford 2002) 498.

<sup>5</sup> UN Charter, Article 23 (1).

<sup>6</sup> See Leland M. Goodrich, *The United Nations* (Thomas Y. Crowell Company 1964) 176 -182.

may authorise the use of force or measures falling short of the use of force, such as the imposition of economic sanctions in order to fulfil its Charter mandate in respect of the maintenance of international peace and security. Such powers have been recognized by commentators as affording the SC ‘very wide discretion’ in the field of international peace and security,<sup>7</sup> notwithstanding the clear requirement that the SC shall act ‘in accordance with the Purposes and Principles of the United Nations’ which implies that ‘at least the limits of the law of the Charter have to be observed’.<sup>8</sup>

The UNDP, a ‘semi-autonomous’ subsidiary organ of the ECOSOC, is the principal institution of the UN development system. The UNDP is managed by an Administrator who is elected by the SG, subject to the approval of the GA, and is responsible to the Executive Board which replaced the Governing Council in 1993.<sup>9</sup> It was established in 1965 by the GA in Resolution 2029 (XX) of 22 November 1965. The Resolution merged the UN Special Fund in existence since 1959 as a channel of funding for development initiatives, with the UN Expanded Programme of Technical Assistance (EPTA), established in 1949 by the GA to provide coordinated technical assistance to developing countries.<sup>10</sup> By the terms of the Resolution the GA intended the merger to ‘streamline the activities’ of the Special Fund and the EPTA and to facilitate the coordination of activities undertaken by the UN and the specialised agencies, in the sphere of economic and social development.<sup>11</sup> In light of these origins it is unsurprising that the UNDP is ‘the world’s largest channel for funding and coordinating international technical cooperation activities’.<sup>12</sup> The Resolution established a Governing Council (now Executive Board) to ‘provide general policy guidance and direction’ to both the

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<sup>7</sup> Ibid 161.

<sup>8</sup> Jost Delbruck, ‘Functions and Powers – Article 24’ in Simma et al (eds) (n 4) 445.

<sup>9</sup> UN GA Res. 48/162, ‘Further Measures for the Restructuring and Revitalisation of the United Nations in the economic, social and related fields’ (20 December 1993) A/RES/48/162.

<sup>10</sup> For an overview of the operation of the UN Special Fund and the EPTA and subsequent combination forming the UNDP, see A. LeRoy Bennett, *International Organisations: Principles and Issues* (6<sup>th</sup> edn Prentice Hall New Jersey 1995) 302 - 304; Francis M. Ssekandi and Peri Lynne Johnson, ‘UNDP’s National Execution Modality: On the Road to Turning the Management of Development Programmes over to Programme Governments’ (2000) 7 *ILSA Journal of International and Comparative Law* 39.

<sup>11</sup> UN GA Res 2029 (XX), ‘Consolidation of the Special Fund and the Expanded Programme of Technical Assistance in a United Nations Development Programme’ (22 November 1965), second preambular paragraph.

<sup>12</sup> Cynthia Day Wallace, ‘United Nations Development Programme’ in Max Plank Institute for Comparative Public Law and International Law, *Encyclopedia of Public International Law* (North-Holland Amsterdam/New York/Oxford/Tokyo 1987) 307-310, 308.

UNDP and the UN development system more generally.<sup>13</sup> Thus the UNDP has etched out a three pronged role that of coordinator, broker, and advocate.<sup>14</sup>

In 1970 the GA passed Resolution 2688 (XXV) the annex of which provides the operational basis for the UNDP.<sup>15</sup> The Resolution instituted the 'United Nations Development Co-operation Cycle' which was the key recommendation of a 1969 Report examining the capacity of the UN development system.<sup>16</sup> Under the Resolution, the Cycle consisted of five phases the first of which was the formulation of a country programme, followed by project formulation, appraisal and approval by the Governing Council. This would be succeeded by implementation, evaluation and follow-up of the project formulated on the basis of the country programme. Further, the Resolution provided for the periodic review of the operation of the Cycle.<sup>17</sup> A resident representative in the country helps to formulate and execute the country programme. This aspect has been subsequently strengthened to the extent that all technical assistance activities are coordinated through the country-programming framework, and thus resident representatives are frequently resident coordinators under the auspices of the United Nations Development Group (UNDG), an umbrella group with responsibilities for harmonizing assistance activities.<sup>18</sup> Nonetheless the focus of the operations or activities of the UNDP are firmly at the national level and on developing 'local capacity'<sup>19</sup> or emphasise what Francis M. Ssekandi and Peri Lynne Johnson call 'national execution'.<sup>20</sup>

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<sup>13</sup> UN GA Res 2029 (XX) (n 11) para. 4.

<sup>14</sup> UNDP, *2006 Annual Report* (The UN's global development network) <[http://www.undp.org/publications/annualreport2006/un\\_global\\_dev\\_network.shtml](http://www.undp.org/publications/annualreport2006/un_global_dev_network.shtml)> accessed 30 November 2006.

<sup>15</sup> UN GA Res. 2688 (XXV), 'The Capacity of the United Nations Development System' (11 December 1970). The annex to the Resolution is divided into the following seven parts: I. The United Nations development Co-operation Cycle; II. United Nations Development Programme Country Programmes; III. Intercountry Programming; IV. Over-all Disposition and Management of United Nations Development Programme Resources; V. Implementation of United Nations Development Programme Assistance; VI. Timing and Traditional Measures; VII. Organisation of the United Nations Development Programme.

<sup>16</sup> United Nations, *A Study of the Capacity of the United Nations Development System* (United Nations Geneva 1969). For a succinct contextual overview of the Report, commonly known as the Jackson Report, see Johann Kaufmann, 'The Capacity of the United Nations Development Program: The Jackson Report' (1971) 25 *International Organisation* 938

<sup>17</sup> UN GA Res. 2688 (XXV) (n 15), Annex I. para. 1.

<sup>18</sup> See e.g. UN GA Res. 32/197, 'Restructuring of the Economic and Social Sectors of the United Nations System' (20 December 1977) A/RES/32/197, Annex.

<sup>19</sup> UNDP, 'A World of Development Experience' <<http://www.undp.org/about>> accessed 1 December 2006.

<sup>20</sup> Ssekandi and Johnson (n 10) 60-66.

### III. THE UN SECURITY COUNCIL AND FREEDOM FROM FEAR: IN PURSUIT OF HUMAN SECURITY

The SC, a principal organ of the UN, does not have an express Charter mandate in respect of human rights.<sup>21</sup> Nonetheless the UN Charter does require the SC to act in accordance with the principles and purposes of the UN which include the promotion and protection of human rights and fundamental freedoms.<sup>22</sup> Hence, as Jochen Abr. Frowein and Nico Krisch note, human rights guide the SC in the furtherance of its Charter mandate to maintain international peace and security.<sup>23</sup> As such, for present purposes, it is necessary to look to SC practice in relation to human rights issues in order to begin to decipher the relationship between human rights and security upon which the role of the SC in achieving human security is based.

#### *A. UN Security Council Practice in relation to Human Rights*

The early history of the UN is characterised by a marked reluctance to engage with human rights issues. As documented in Chapter Two and Chapter Five, the 1940's bear testimony to this reluctance such as the initial response of the GA to the situation of Indians in South Africa and the self-regulating proclamation by the CHR regarding its sphere of competency in the field of human rights.<sup>24</sup> Such significant examples resonated beyond these formative years and indeed beyond the institutional confines of the GA and the CHR. While it is therefore unsurprising that the SC adopted a similar stance particularly given the absence of an explicit Charter mandate in respect of human rights, the annals of SC practice do provide an occasional example of SC involvement in human rights issues before the end of the cold war.<sup>25</sup> For instance, in a series of resolutions in the 1960's and 1970's the SC condemned the apartheid and racially discriminatory regimes of South Africa and Southern Rhodesia.<sup>26</sup> These resolutions are significant not only because they are cast against a backdrop of a pattern of circumspection in respect of human rights issues on the part of other principal UN organs, but also because they declared apartheid and other racially discriminatory

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<sup>21</sup> Sydney D. Bailey, *The UN Security Council and Human Rights* (St. Martins Press New York 1994) 123.

<sup>22</sup> UN Charter, Article 24 (2) reads in part: 'In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations'. The principles and purposes of the UN are articulated in Articles 1 and 2.

<sup>23</sup> Jochen Abr. Frowein and Nico Krisch, 'Introduction to Chapter VII' in Simma et al (eds) (n 8) 711.

<sup>24</sup> See Chapter Five.

<sup>25</sup> Bailey also counts self-determination as amongst the early practice of the SC in relation to human rights. See Bailey (n 21) 1 – 16.

<sup>26</sup> See for example UN SC Res 217 (20 November 1965) UN Doc S/RES/217 (Southern Rhodesia) and UN SC Res 181 (7 August 1963) UN Doc S/RES/181(South Africa).

policies as a 'threat to the peace' under Article 39 of the UN Charter thereby triggering the application of enforcement measures found in Chapter VII of the Charter. Chapter VII measures, as was noted above in Part II, encompass an arsenal of enforcement measures ranging from sanctions, such as economic and military sanctions, to the use of force for example to safeguard the delivery of humanitarian relief and, as such, are arguably the most significant powers in the UN system.

In 1965 the SC declared the proclamation of independence from the UK by 'a racist settler minority' in Southern Rhodesia as illegal, the continuation of which constituted a 'threat to international peace and security'.<sup>27</sup> As a consequence the SC called upon UN member states to 'refrain from any action which would assist and encourage the illegal regime' and suggested voluntary measures on the part of states such as an arms, oil and petroleum embargo and called upon the UK as 'the administering Power' to enforce these measures.<sup>28</sup> Indeed the following year, upon receiving reports that a shipment of oil was en route to the illegal regime in Southern Rhodesia, the SC authorised the UK, as the state deemed legally responsible for Southern Rhodesia, to use force if necessary to prevent the arrival of the shipment, in particular to arrest and detain the tanker concerned.<sup>29</sup> This was succeeded by Resolution 232 (1966) whereby the SC, acting explicitly under Chapter VII of the UN Charter having determined that the situation in Southern Rhodesia constituted a 'threat to international peace and security', imposed mandatory and comprehensive sanctions against the illegal regime of Southern Rhodesia, and in doing so reminded UN member states of their obligation under Article 25 of the Charter to 'accept and carry out' SC decisions.<sup>30</sup> Two years later the SC established a special committee under Resolution 253 (1968) to monitor the implementation of the economic, military and diplomatic sanctions imposed under Resolution 232 (1966) which remained in place until 1979.<sup>31</sup>

The SC similarly condemned the apartheid regime of South Africa in a series of resolutions beginning with Resolution 181 in 1963 which also called on UN member states to 'cease forthwith the sale and shipment of arms, ammunition of all types and

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<sup>27</sup> UN SC Res 217 (20 November 1965) UN Doc S/RES/217, paras. 3 and 1.

<sup>28</sup> Ibid paras. 8 and 9.

<sup>29</sup> UN SC Res 221 (9 April 1966) UN S/RES/221, para. 5.

<sup>30</sup> UN SC Res 232 (16 December 1966) UN S/RES/232, para. 1 (determination of threat to the peace), para. 2 (imposition of sanctions) and para. 3 (article 25 obligations).

<sup>31</sup> UN SC Res 253 (29 May 1968) UN S/RES/253, para. 20.

military vehicles to South Africa'.<sup>32</sup> However, it was only in 1977 that the SC first made an Article 39 determination in respect of the situation in South Africa, prompted in part by the continued apartheid policies of the South African government in conjunction with the acquisition of arms and related military material by South Africa which included a stated concern that South Africa was nearing nuclear capability.<sup>33</sup> Consequently the SC upgraded the voluntary arms embargo decreed in 1963 to a mandatory sanction under Chapter VII of the Charter in Resolution 418 (1977)<sup>34</sup> and called on member states and non-member states of the UN to 'act strictly in accordance with the provisions of the present resolution'.<sup>35</sup> Later the same year, the SC established a special committee by which to monitor the enforcement of the mandatory arms embargo against South Africa which remained in place until 1994 when the SC was no longer seized of the 'Question of South Africa'.<sup>36</sup>

Before the end of the cold war, the SC had only imposed mandatory sanctions in these two situations, Southern Rhodesia in 1966 and South Africa in 1977.<sup>37</sup> It is therefore unsurprising that these instances are viewed as antecedents to evolving SC practice in relation to human rights issues.<sup>38</sup> The South African situation provides a particularly clear illustration of the evolution of the meaning of 'threat to the peace' under the Article 39 rubric by the SC. For instance the first resolution by the SC in 1963 referred to 'world public opinion' in respect of apartheid before calling on the South African government to abandon such policies. By Resolution 473 (1980) the SC not only 'reaffirmed' that apartheid was a crime against 'the conscience and dignity of mankind' which was also incompatible with the UDHR but apartheid also 'seriously disturbs international peace and security'.<sup>39</sup> Moreover, Henry J. Steiner and Philip Alston

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<sup>32</sup> UN SC Res 181 (7 August 193) UN S/RES/181, para. 3.

<sup>33</sup> UN SC Res 418 (4 November 1977) UN S/RES/418, para. 1 (determination that the policies and acts of the South African government and acquisition of arms constitute a threat to the peace) and preambular para. 5 (nuclear capability of South Africa).

<sup>34</sup> *Ibid* para. 2.

<sup>35</sup> *Ibid* para. 5.

<sup>36</sup> UN SC Res 421 (9 December 1977) UN S/RES/421, para. 1 (establishment of sanctions committee) and UN SC Res 930 (27 June 1994) UN S/RES/930, para. 4.

<sup>37</sup> It is also noteworthy that states in their individual capacity had instituted sanctions against South Africa in the 1980's.

<sup>38</sup> See for example Bailey (n 21) 3-6 and 24 (Southern Rhodesia) and 9-13 (South Africa).

<sup>39</sup> Henry J. Steiner and Philip Alston chart this gradual evolution by way of reference to the South African example and conclude with the following quotation from Louis Sohn to the effect that apartheid moved from a potential threat, to a 'social evil, to a repugnant practice, to a crime under international law, to a threat to the peace that must not be tolerated by the international community and which warranted the imposition of mandatory economic sanctions against the deviant government'. Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law politics and morals* (2nd edn OUP Oxford 2000) 650 - 651.

remark that many of the procedures and mechanisms for human rights protection employed by the SC were ‘hammered out on the anvil of the South African apartheid system’,<sup>40</sup> and examples of such would include the imposition of sanctions along with the establishment of a sanctions committee to monitor implementation.<sup>41</sup> Nonetheless, it is important not to overemphasise the importance of these SC resolutions for the protection of human rights and indeed a number of qualifications are warranted.

The SC resolutions in respect of Southern Rhodesia and South Africa are situation specific in that they apply only to the apartheid regime of South Africa and the racial minority government of Southern Rhodesia. This is in keeping with the idea of the SC as ‘rapid reaction force’<sup>42</sup> and as such it is unsurprising that the pertinent resolutions have been seen as *not* providing a precedent that the SC will make an Article 39 determination to the effect that systematic and gross violations of human rights constitute a threat to the peace.<sup>43</sup> For instance, Resolution 232 (1966) in respect of the situation in Southern Rhodesia speaks of the failure of the UK to ‘bring the rebellion in Southern Rhodesia to an end’<sup>44</sup> a concern echoed during the SC debates in terms of the effect on neighbouring states.<sup>45</sup> Similarly Resolution 418 (1977) in respect of South Africa emphasises the military build up by South Africa and its ‘persistent’ attacks on neighbouring states.<sup>46</sup> Thus the aggressive stance adopted by South Africa towards neighbouring states and the potentially destabilising effect on the region of the continuation of the illegal regime in Southern Rhodesia, are equally discernible in the relevant resolutions as being of concern to the SC, as is the importance of the legal responsibility of the UK in respect of Southern Rhodesia. This particular facet of the SC Resolutions – the insistence of an ‘international dimension’ to human rights

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<sup>40</sup> Ibid 649.

<sup>41</sup> For example, UN SC Res 661 (6 August 1990) UN S/RES/661 (Iraq); UN SC Res 733 (23 January 1992) UN S/RES/733 (Somalia); UN SC Res 757 (30 May 1992) UN S/RES/757 (former Yugoslavia); UN SC Res 841 (16 June 1993) UN S/RES/841 (Haiti); UN SC Res 918 (17 May 1994) UN S/RES/918 (Rwanda); UN SC Res 1591 (29 March 1996) UN S/RES/1591 (Sudan). For the list of sanction committees see <<http://www.un.org/sc/committees>> accessed 25 May 2007.

<sup>42</sup> Jochen Abr. Frowein and Nico Krisch have stated: ‘As a result of the drafters’ primordial goal of ensuring rapid and effective action to maintain international peace and security, the powers of the SC under Chapter VII of the Charter are extremely far-reaching and subject to very few express limitations’. Frowein and Krisch (n 23) 705.

<sup>43</sup> Robert Cryer notes the limited precedential value of the resolutions on the situation in Southern Rhodesia and South Africa in terms of proposition that gross violations of human rights can constitute a threat. See Robert Cryer, ‘The Security Council and Article 39: A Threat to Coherence?’ (1996) 1 *Journal of Armed Conflict Law* 161, 178-180.

<sup>44</sup> UN SC Res 232 (1966) (n 30) preambular para. 2.

<sup>45</sup> Frowein and Krisch, (n 23) 724.

<sup>46</sup> UN SC Res 418 (1977) (n 33) paras. 2 and 6.

violations or adherence to 'traditional doctrine concerning the need for some kind of international threat'<sup>47</sup> – has characterised SC practice in relation to human rights issues.

The end of the cold war provides a clear demarcation in terms of SC practice in relation to human rights issues.<sup>48</sup> Indeed, the demise of the ideological impasse engendered by Cold War rivalries saw a flurry of activity by the SC in relation to human rights.<sup>49</sup> This new phase in SC practice in relation to human rights began in 1991 with the Article 39 determination by the SC that the repression of the Iraqi Kurds by the Iraqi government constituted a threat to international peace and security in Resolution 688 (1991). This was swiftly followed with similar determinations in respect of the situations in, for example, the former Yugoslavia (1991), Somalia (1992), Haiti (1993), Rwanda (1994), Sierra Leone (1997), and more recently in respect of the situation in Darfur, Sudan (2004). Against this light, it is unsurprising that contemporary accounts spoke of Resolution 688 (1991) as heralding a new era of UN human rights protection by the SC.<sup>50</sup> Indeed the stark contrast between the practice of the SC in relation to human rights since 1991 and the reluctance that characterised the cold war period prompted some commentators to proclaim the emergence of a doctrine whereby massive human rights violations constitute a threat to international peace and security thereby triggering SC action under Chapter VII of the Charter.<sup>51</sup>

At the very least, the above resolutions speak of a burgeoning SC practice in relation to human rights issues. More specifically the resolutions chart the evolution of the definition of 'threat to the peace' rubric to include human rights issues.<sup>52</sup> For instance, proceeding from the recognition in SC Resolution 688 (1991) that repression of the Iraqi civilian population constitutes a threat to the peace, SC Resolutions 794 (1992)

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<sup>47</sup> Dwight Newman, 'A Human Security Council? Applying a 'Human Security' Agenda to Security Council Reform' (1999/2000) 31 *Ottawa Law Review* 213, 255.

<sup>48</sup> Sydney D. Bailey identifies 'two exceptions to the reluctance of the Security Council to take up general questions of human rights between 1946 and the 1990's', namely The Congo (Zaire) and El Salvador. For a discussion see Bailey (n 21) 115 -166.

<sup>49</sup> For a succinct presentation of the 'generic' issues see Frederic L. Kirgis Jr, 'The United Nations at Fifty: The Security Council's first fifty years', (1995) 89 *American Journal of International Law* 506. See also David D. Caron, 'The Legitimacy of the Collective Authority of the Security', (1993) 87 *American Journal of International Law* 552 and Michael Glennon, 'Why the Security Council Failed', (2003) 82 *Foreign Affairs* 16.

<sup>50</sup> Tom J. Farer and Felice D. Garer, 'The United Nations and International Security after the Cold War' in Adam Roberts and Benedict Kingsbury (eds), *United Nations, Divided World* (2<sup>nd</sup> edn OUP Oxford 1993) 289 - 291.

<sup>51</sup> Christian Tomuschat, *Human Rights: Between Idealism and Realism* (OUP Oxford 2003) 130-131; Jochen Abr. Frowein and Nico Krisch, 'Article 39' in Simma et al (n 8) 724.

<sup>52</sup> A comparable 'evolution' or 'enlargement' of the meaning of 'threat to the peace' may be said to have occurred in respect of terrorism, democracy, and international humanitarian law. Ibid 722 - 726.

and 929 (1994), employing similar language, determined that 'the magnitude of human tragedy caused by the conflict in Somalia' and 'the magnitude of the humanitarian crisis in Rwanda' constituted a 'threat to the peace' under Article 39.<sup>53</sup> The SC similarly referred to the humanitarian crises in Haiti, including refugee flows, as 'becoming or aggravating threats to international peace and security' and to the 'heavy loss of human life' in the former Yugoslavia before declaring that the continuation of that particular situation 'constitutes a threat to international peace and security'.<sup>54</sup> Nonetheless the SC was circumspect to guard against bestowing precedential value on these resolutions. Indeed, the SC explicitly emphasised the 'unique character' of the situation in Somalia and clearly stated that the situation in Rwanda was a 'unique case'.<sup>55</sup> Thus the assertion by Christian Tomuschat that SC Resolution 794 (1992) in respect of the situation in Somalia makes it 'abundantly clear that patterns of gross violations of human rights may be deemed to meet the requirements of Article 39', is somewhat diluted.<sup>56</sup> In short, while it is clear that 'threat to the peace' as the minimum jurisdictional trigger for SC enforcement action has evolved to include human rights issues, this evolution is by no means a settled matter of principle or doctrine.

Indeed a closer inspection of the relevant resolutions reveals the fallacy of this position. SC practice does not illuminate human rights as 'an autonomous issue',<sup>57</sup> divorced from the jurisdictional requirement of an 'international dimension'. For instance, SC Resolution 713 (1991) on the situation in the former Yugoslavia referred to the 'consequences for the countries of the region' in particular the border areas of neighbouring states, if the humanitarian crisis continued before determining a threat to the peace.<sup>58</sup> In a similar manner, SC Resolution 841 (1993) spoke of the 'negative repercussions' of the refugee flows from Haiti on the region and the SC was equally concerned about the effect of the conflict in Rwanda on the region in Resolution 929 (1994) in making the Article 39 determination.<sup>59</sup> The determination that the situation in

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<sup>53</sup> UN SC Res 794 (3 December 1992) UN S/RES/794, preambular para. 3; UN SC Res 929 (22 June 1994) UN S/RES/929, preambular para. 10.

<sup>54</sup> UN SC Res 841 (16 June 1993) UN S/RES/841 preambular para. 9; UN SC Res 713 (25 September 1991) UN S/RES/713 preambular para. 3 and 4.

<sup>55</sup> UN SC Res 794 (1992) (n 53) preambular para. 2; UN SC Res 929 (1994) (n 53) preambular para. 9. The SC adopts a similar practice in respect of sanctions. See Mariano J. Aznar-Gomez, 'A Decade of Human Rights Protection by the UN Security Council: A Sketch of Deregulation?' (2002) 13 *European Journal of International Law* 221 226, 236.

<sup>56</sup> Tomuschat (n 51) 130.

<sup>57</sup> *Ibid* 129.

<sup>58</sup> UN SC Res 713 (1991) (n 54) preambular para. 3.

<sup>59</sup> UN SC Res 841 (1993) (n 54) preambular para. 9; UN SC Res 929 (1994) (n 53) preambular para. 10.

Sierra Leone constituted a threat to international peace and security was premised on the 'deteriorating humanitarian conditions' and the consequences thereof for neighbouring states along with a concern as to the installation of a military junta following a military coup which overthrew the democratically elected government.<sup>60</sup> Furthermore, while SC Resolution 794 (1992) regarding the situation in Somalia is seen as the example *par excellence* of the position that mass human rights violations constitute a threat to international peace and security thereby triggering SC enforcement action, it must be viewed in context.<sup>61</sup> SC Resolution 794 (1992) is part of a series of resolutions which did express concern as to the consequences of the conflict on the region<sup>62</sup> and indeed, at the material time, Somalia as a state had disintegrated.<sup>63</sup> This brief survey of SC practice demonstrates that while human rights issues are considered by the SC in making an Article 39 determination such issues are not determinative of a situation constituting a 'threat to the peace'. It further reflects the findings of a study of state practice in response to human rights violations by Katarina Tomasevski to the effect that states are not solely motivated by a concern for human rights when responding to human rights violations.<sup>64</sup>

For instance, in January 2007 Russia and China vetoed a SC resolution tabled in respect of the situation in Myanmar, which Michael Wood has described as 'ripe for SC action'.<sup>65</sup> The resolution, which occasioned the first instance of the double veto since the end of the cold war, called for the release of political prisoners and the cessation of military attacks on ethnic minorities and associated human rights violations.<sup>66</sup> China rejected the resolution on the basis that the situation fell within the domestic jurisdiction of Myanmar while Russia cautioned against using the SC 'to discuss issues outside its

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<sup>60</sup> UN SC Res 1132 (1997) (n 41) preambular para.7 -9.

<sup>61</sup> Tomuschat (n 51) 130.

<sup>62</sup> For example, UN SC Res 733 (1992) (n 41); UN SC Res 746 (17 March 1992) UN S/RES/746; UN SC Res 751 (24 April 1992) UN S/RES/751; UN SC Res 767 (24 July 1992) UN S/RES/767; UN SC Res 775 (28 August 1992) UN S/RES/755.

<sup>63</sup> Tomuschat (n 51) 130.

<sup>64</sup> Katarina Tomasevski, *Responding to Human Rights Violations 1946 - 1999*, (Martinus Nijhoff Publishers The Hague 2000) 369-390. This finding resonates with the survey of state practice conducted by Ryan Goodman and Edward T. Swaine in respect of the motivations prompting reservations to UN human rights treaties discussed in detail in Chapter Four.

<sup>65</sup> Statement by Michael Woods (Response to paper delivered at the Annual International Law Association (British Branch) Conference April 2007).

<sup>66</sup> For the text of the draft resolution see, 'Security Council Fails to Adopt Draft Resolution on Myanmar, Owing to Negative Votes by China, Russian Federation' (12 January 2007) SC/8939 <<http://www.un.org/News/Press/docs/2007/sc8939.doc.htm>> accessed 6 May 2007.

purview', adding that the situation is currently being considered by other UN bodies.<sup>67</sup> While the SC has been seized of the situation in Myanmar since September 2006,<sup>68</sup> the situation in Chechnya, notwithstanding the resolutions by the CHR which expressed concern as to the 'serious violations of human rights', has not made it onto the SC agenda.<sup>69</sup> These current examples of SC inconsistency in relation to human rights support the postulation by Mariano Aznar-Gomez that the SC has substituted the rule of law with the rule of power thereby allowing for 'case-by-case authoritative decisions'.<sup>70</sup>

It is clear from the foregoing brief survey of SC practice in relation to human rights that the SC has acted in 'defence of humanity'<sup>71</sup> by enlarging the jurisdictional basis for enforcement action.<sup>72</sup> Moreover, two primary characteristics of this particular facet of SC practice are discernible the first of which is the insistence on an 'international dimension' to human rights violations. This has characterised SC practice from the initial resolutions in respect of Southern Rhodesia and South Africa and its persistence prompted Dwight Newman to conclude that 'Security Council actions have been disconnected from human rights concerns *per se*'.<sup>73</sup> The second characteristic pertains to the scale and nature of the human rights violations in question. Unlike the initial resolutions on the situations in Southern Rhodesia and South Africa which focused on systematic repression, subsequent SC practice suggests extreme physical harm is required, such as 'loss of human life',<sup>74</sup> in order to reach the threshold for an Article 39 determination.<sup>75</sup> Nonetheless, it is equally clear from the foregoing that these characteristics do not produce uniform and consistent practice in relation to human rights. Indeed, the relevant SC resolutions often refer to human rights violations in a

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<sup>67</sup> Ibid. See also UN News Centre, 'China and Russia veto US/UK-backed Security Council draft resolution on Myanmar' <[#http://www.un.org/apps/news/story.asp?NewsID=21228&Cr=myanmar&Cr1#](http://www.un.org/apps/news/story.asp?NewsID=21228&Cr=myanmar&Cr1)> accessed 6 May 2007.

<sup>68</sup> See, 'Security Council, in procedural action, votes to include human rights situation in Myanmar on its agenda' (15 September 2006) SC/8832 <<http://www.un.org/News/Press/docs/2006/sc8832.doc.htm>> accessed 4 June 2007.

<sup>69</sup> CHR Res 2000/58 (25 April 2000) and CHR Res 2000/24 (20 April 2001).

<sup>70</sup> Aznar-Gomez (n 55) 224.

<sup>71</sup> UN SG, *We the Peoples: The Role of the United Nations in the 21<sup>st</sup> Century* (UN Dept of Public Information New York) 48.

<sup>72</sup> This is consistent with the wide discretion that the UN Charter bestows on the SC in determining its own jurisdiction under Article 39. Delbruck (n 8) 445.

<sup>73</sup> Newman (n 47) 215.

<sup>74</sup> UN SC Res 1132 (8 October 1997) UN Doc SC/RES/1132 preambular para. 8 ('loss of life' in Sierra Leone); UN SC Res 751 (24 April 1992) UN Doc SC/RES/751 preambular para. 6 ('the magnitude of human suffering' in Somalia).

<sup>75</sup> Henry J. Steiner, 'International Protection of Human Rights', in Malcolm Evans (ed), *International Law* (2<sup>nd</sup> edn OUP Oxford 2006) 759.

terse even, as Aznar-Gomez observes, oblique manner.<sup>76</sup> Antonio Cassese attributes this exercise in avoiding precedent to the fact that the SC is anxious to ‘retain discretionary power in this matter’.<sup>77</sup> While this is certainly understandable given the dangers inherent in ‘elevating humanitarian crises to threats to the peace’,<sup>78</sup> it also ensures that SC practice lacks coherency and consistency. Moreover, it ensures that the relationship between human rights and security, upon which the role of the SC in the pursuit of human security is based, is unclear beyond a simple ‘cause and effect’ correlation, which suggests that the relationship is one of interdependence.

The SC may pursue human security through two primary avenues – sanctions and the use of force. While the imposition of sanctions is undoubtedly the preferred mechanism of the SC by which to respond to human rights violations and thus contribute to the achievement of human security, both sanctions and the use force are particularly problematic for the achievement of human security. This is readily exemplified by the sanctions in place against Iraq the ills and shortcomings of which, as the longest and most comprehensive UN sanction regime in place, are well-documented.<sup>79</sup> For present purposes it is sufficient to note that the central challenge in imposing sanctions as a response to human rights violations is to guard against further exacerbating the situation which is particularly problematic as sanctions are a coercive measure.<sup>80</sup> Indeed the sanctions imposed on Iraq by SC Resolution 661 (1990) were subsequently modified in Resolution 687 (1991) to take account of the adverse humanitarian impact of the sanctions, the continued adverse affect on human rights protection of which prompted the then SG to declare sanctions a ‘blunt instrument’.<sup>81</sup> The SC has responded to the appeals to include human rights considerations when imposing and implementing

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<sup>76</sup> Aznar-Gomez (n 55) 225.

<sup>77</sup> Antonio Cassese, *International Law* (2<sup>nd</sup> edn OUP Oxford 2005) 347.

<sup>78</sup> Ibid.

<sup>79</sup> ECOSOC, ‘The Adverse Consequences of Economic Sanctions on the Enjoyment of Human Rights’ (Working Paper prepared by Marc Bossuyt) (June 2000) E/CN.4/Sub.2/2000/33. OHCHR, ‘The Human Rights Impact of Economic Sanctions on Iraq’ (5 September 2000) <<http://www.casi.org.uk/info/undocs/sanct31.pdf>> accessed 28 August 2007. Richard Garfield, ‘When Sanctions Don’t Work’ *The Economist* (14-18 April 2000).

<sup>80</sup> Attempts have been made to reconcile the seemingly incontrovertible aims of human rights and international peace and security. The Stockholm Process <[http://www.smartsanctions.se/stockholm\\_process/reports/The%20Stockholm%20Process.htm](http://www.smartsanctions.se/stockholm_process/reports/The%20Stockholm%20Process.htm)> accessed 28 August 2007.

<sup>81</sup> Michael Littlejohns, ‘Annan Questions “Blunt Instrument” of Economic Sanctions’ (18 November 2000) <<http://www.globalpolicy.org/security/sanction/gensanc/2000/1118sg.htm>> accessed 28 August 2007.

sanctions,<sup>82</sup> yet this is not reflected in the mandates of the various sanctions committees.<sup>83</sup> This is further compounded by the fact that sanctions committees 'operate secretly and cannot be monitored and made accountable to the public' and thus the sanctions regime 'may begin with one justification and continue with others',<sup>84</sup> as was apparent in relation to Iraq.<sup>85</sup>

The authorisation of the use of force by the SC on foot of an Article 39 determination is similarly not bereft of criticism,<sup>86</sup> particularly in relation to so-called 'humanitarian intervention'. The debate surrounding SC practice in respect of 'humanitarian intervention' is characterised by the failure of the SC to act in respect of the genocide in Rwanda in 1994 and the inaction of the SC in respect of the ethnic cleansing in Kosovo in 1999 and more recently centres on the role of the SC in alleviating the crisis situation in Darfur, Sudan.<sup>87</sup> As such these situations provide ample illustration of the inconsistent and incoherent, even selective, SC practice in this controversial and contested area of the use of force for humanitarian purposes.<sup>88</sup> In the last analysis, while the expansion of the Article 39 determination provides the SC with the jurisdictional basis by which to pursue human security, by way of employing sanctions and the use of force, the actual employment of such measures are problematic and potentially undermine the achievement of human security.

### ***B. Problems and Progress: Towards Human Security?***

The above survey reveals that the pursuit of human security by the SC is plagued by operational and institutional challenges which must be overcome in order to harness the potential of the SC to contribute to the achievement of human security. In particular the

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<sup>82</sup> In a letter to the President of the UN SC, China, France, Russia, the UK and the US stated: 'While recognising the need to maintain the effectiveness of sanctions imposed in accordance with the Charter, further collective actions in the Security Council within the context of any future sanctions regime should be directed to minimise unintended adverse side-effects of sanctions on the most vulnerable segments of targeted countries'. 'Letter Dated 13 April 1995 from the Permanent Representatives of China, France, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America Addressed to the President of the Security Council' (13 April 1995) UN Doc S/1995/300.

<sup>83</sup> For example UN SC Res 1591 (n 41) para. 3; UN SC Res 918 (n 41) para. 14. International human rights law and/or humanitarian law is mentioned insofar as they may provide a partial basis for SC action.

<sup>84</sup> James A. Paul, 'Sanctions: An Analysis' (August 1998)

<<http://www.globalpolicy.org/security/sanction/analysis.htm>> accessed 28 August 2007.

<sup>85</sup> This prompted Aznar-Gomez to ask whether it is possible to infer human rights into subsequent resolutions regarding sanctions and, if so, whether it is then possible to speak of a 'humanitarian rule'.

Aznar-Gomez (n 55) 227 – 230.

<sup>86</sup> See Cassese (n 77) 347 – 348.

<sup>87</sup> See for example, Alex J. Bellamy, 'Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit', (2006) 20 *Ethics and International Affairs* 144, 145-6

<sup>88</sup> HLP, *A More Secure World: Our shared responsibility* (United Nations New York 2004) para. 42.

foregoing review of SC practice reveals ‘humanitarian intervention’ as an especially controversial and pertinent operational challenge facing the SC, while insofar as the ad hoc and inconsistent practice of the SC in pursuit of human security is a product of the wide discretion bestowed on the SC, accusations of bias and illegitimacy abound. This has led to the diagnosis of a legitimacy deficit in respect of the SC which poses a particularly acute institutional challenge to the achievement of human security. Thus this Section is devoted to unravelling the paradox of ‘humanitarian intervention’ and discussing the legitimacy deficit that is the blight of SC practice.

### (i) The Paradox of ‘Humanitarian Intervention’

The dilemma of intervention for human protection purposes<sup>89</sup> has exercised many an academic mind and bedevilled the UN since its inception.<sup>90</sup> The intervention dilemma, which was the ‘centrepiece of international debate for most of the 1990’s’,<sup>91</sup> has been reduced to the decisive dichotomy of the ‘defence of sovereignty’ and the ‘defence of humanity’<sup>92</sup> and therein lies the paradox of intervention for human protection purposes. As Adam Roberts succinctly states ‘for the first 45 years the UN was firmly associated with the principle of intervention’ and then ‘became associated with a pattern of interventionism, often on at least party humanitarian grounds’.<sup>93</sup> Nonetheless the intervention dilemma is not merely an exercise in academic agility confined to the 1990’s whereby the countervailing and opposing logics of ‘human rights protection’ and ‘sovereignty’ are reconciled. The 2005 annual report of Human Rights Watch described the ‘massive ethnic cleansing’ in Darfur as a ‘fundamental threat to human rights’

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<sup>89</sup> This phrase is adopted from the Report of the International Commission on Intervention and State Sovereignty (ICISS) in preference to humanitarian intervention, as it does not entail military interventions without the authorisation of the SC. Furthermore, the ICISS deliberately adopted a change in language in part to reflect the objections of humanitarian institutions, such as the International Red Cross, to the phrase ‘humanitarian intervention’ for the use of force. International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (International Development Research Centre Ottawa 2001). For the purposes of comparison it is useful to refer to an authoritative definition of humanitarian intervention. J. L. Holzgrefe defines humanitarian intervention as: ‘the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied’. The definition clearly extends to ‘coalitions of the willing and able’ such as the NATO intervention in Kosovo. J. L. Holzgrefe, ‘The Humanitarian Intervention Debate’ in J.L Holzgrefe and Robert O. Keohane, *Humanitarian Intervention: Ethical, legal and political dilemmas* (CUP Cambridge 2003) 18.

<sup>90</sup> For a succinct historical overview of humanitarian intervention see Thomas M. Franck and Nigel S. Rodley, ‘After Bangladesh: The Law of Humanitarian Intervention by Military Force’ (1973) 67 *American Journal of International Law* 275.

<sup>91</sup> Gareth Evans, ‘From Humanitarian Intervention to the Responsibility to Protect’, (2006) 24 *Wisconsin International Law Journal* 703, 703.

<sup>92</sup> UN SG, *We the Peoples* (n 71) para. 48.

<sup>93</sup> Sir Adam Roberts, ‘The United Nations and Humanitarian Intervention’, Jennifer Welsh (ed), *Humanitarian Intervention and International Relations* (OUP Oxford 2004) 71.

before noting the ‘world’s callous disregard for the death of an estimated 70,000 people and the displacement of 1.6 million more’.<sup>94</sup> Amnesty International similarly reported in 2006 continued human insecurity stemming from war crimes, crimes against humanity and ‘grave abuses of human rights’ including arbitrary detention, rape and torture, adding that 1.8 million people ‘remain forcibly displaced internally’ with a further 220, 000 seeking refuge in neighbouring Chad.<sup>95</sup> This section explores intervention for human protection purposes as a mechanism at the disposal of the SC to alleviate human insecurity stemming from mass human rights violations for, as Don Hubert forcefully stated, ‘[a]ny conceptualisation of human security must have a response to genocide’.<sup>96</sup>

As intimated in the preceding section the SC possesses an ‘inconsistent record’ in terms of intervention for human protection purposes which, in part, is attributable to the operational challenge posed by sovereignty. The former UN Secretary-General (SG), Kofi Annan, issued impassioned pleas to address the intervention dilemma unequivocally stating in April 1999, against the backdrop of UN inaction in respect of the situation in Kosovo, that ‘[n]o government has the right to hide behind national sovereignty in order to violate the human rights and fundamental freedoms of its peoples’.<sup>97</sup> He later urged the SC to unite ‘around the aim of confronting massive human rights violations and crimes against humanity’.<sup>98</sup> The Swedish government was sufficiently concerned by the inaction of the UN in Kosovo and alarmed by the unilateral intervention taken by NATO in that regard, that it established the Independent International Commission on Kosovo to assess, amongst others, ‘the adequacy of present norms and institutions in preventing and responding’ to ethnic conflict as seen

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<sup>94</sup> Human Rights Watch, *World Report 2005* <<http://hrw.org/wr2k5/wr2005.pdf>? accessed 16 August 2006. See in particular the chapter entitled ‘Darfur: Whose responsibility to protect?’

<sup>95</sup> Amnesty International, *Report 2006* <<http://web.amnesty.org/report2006/index-eng>> accessed 16 August 2006. See in particular the country report on Sudan <<http://web.amnesty.org/report2006/sdn-summary-eng>> accessed 16 August 2006. Oxfam also reported around this time that vital humanitarian aid was not reaching an estimated four in ten people due to increased violence in the region Oxfam, ‘Crisis in Darfur’, available at <[http://www.oxfam.org.uk/what\\_we\\_do/where\\_we\\_work/sudan/emergency/updatesituation.htm](http://www.oxfam.org.uk/what_we_do/where_we_work/sudan/emergency/updatesituation.htm)> accessed 9 March 2007

<sup>96</sup> Don Hubert, ‘An Idea that Works in Practice’ (2004) 35 *Security Dialogue* 351, 351.

<sup>97</sup> UN SG, ‘Standing up for Human Rights’ (Speech delivered to the UN Commission on Human Rights, 7 April 1999) reprinted in the Secretary-General of the United Nations (SG), *The Question of Intervention: Statements by the Secretary-General* (UN Dept. of Public Information New York 1999) 24.

<sup>98</sup> UN SG, ‘Unifying the Security Council in Defence of Human Rights’ (Address delivered at the centennial of the first International Peace Conference, 18 May 1999) reprinted in SG, *The Question of Intervention* (n 97) 33.

in Kosovo.<sup>99</sup> Academic commentary on intervention for human protection purposes also flourished in aftermath of the NATO intervention in Kosovo.<sup>100</sup> Against this mounting concern, it is unsurprising that the SG grasped the opportunity to address ‘the prospects for human security and intervention’ in his annual address to the GA in 1999. Here, set against the Rwandan genocide, the ethnic cleansing in Kosovo, and numerous conflicts such as those raging in Sierra Leone and the Sudan, the SG called on UN member states to forge consensus behind ‘the principle that massive and systematic violations of human rights . . . should not be allowed to stand’.<sup>101</sup>

Such a consensus was forged in September 2005 when world leaders, gathered in New York for the UN World Summit, took the ‘bold decision’ of endorsing the notion of the responsibility to protect.<sup>102</sup> The Outcome Document of the Summit stated: ‘Each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity’.<sup>103</sup> It continued to assert a similar responsibility falling on the international community ‘to use appropriate diplomatic, humanitarian and other peaceful means’ as exercised through the UN, before stating:

we are prepared to take collective action . . . through the Security Council, in accordance with the Charter, including Chapter VII . . . should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, ethnic cleansing and crimes against humanity.<sup>104</sup>

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<sup>99</sup> The Independent International Commission on Kosovo, *The Kosovo Report: Conflict, international response, lessons learned* (OUP Oxford 2000) 25, citing the Mission Statement of the Commission. The Commission proposed a principled framework of three thresholds to be satisfied for any claim to humanitarian intervention to be considered legitimate. These are: ‘the suffering of civilians owing to severe patterns of human rights violations or the breakdown of government, the overriding commitment to the direct protection of the civilian population, and the calculation that the intervention has a reasonable chance of ending the humanitarian catastrophe’. Ibid.

<sup>100</sup> See for example, the editorial section ‘Nato’s Kosovo Intervention’ (1999) 93 *American Journal of International Law* 824. For example, Louis Henkin, ‘Kosovo and the Law of “Humanitarian Intervention”’ (1999) 93 *American Journal of International Law* 824; Ruth Wedgwood, ‘NATO’s Campaign in Yugoslavia’ (1999) 93 *American Journal of International Law* 828; Jonathan I. Charney, ‘Anticipatory Humanitarian Intervention in Kosovo’ (1999) 93 *American Journal of International Law* 834; Christine M. Chinkin, ‘A “Good” or “bad” War?’ (1999) 93 *American Journal of International Law* 841; Richard A. Falk, ‘Kosovo, World Order, and the Future of International Law’ (1999) 93 *American Journal of International Law* 847; Thomas M. Franck, ‘Lessons of Kosovo’ (1999) 93 *American Journal of International Law* 857; and, W. Michael Reisman, ‘Kosovo’s Antinomies’ (1999) 93 *American Journal of International Law* 860.

<sup>101</sup> UN SG, ‘Secretary-General presents his annual Report to the General Assembly, 20 September 1999’ Press Release SG/SM/7136 <<http://www.un.org/News/Press/docs/1999/19990920.sgsm7136.html>> accessed 11 April 2007.

<sup>102</sup> United Nations, ‘The 2005 World Summit: An Overview’ <<http://www.un.org/ga/documents/overview2005Summit.pdf>> accessed 26 February 2006.

<sup>103</sup> UN GA Res 60/1, ‘2005 World Summit Outcome’ (16 September 2005) A/RES/60/1, para. 138.

<sup>104</sup> Ibid para. 139.

The responsibility to protect is a framework for intervention for human protection purposes advanced by the International Commission on Intervention and State Sovereignty (ICISS). The ICISS was established in 2000 to 'promote a comprehensive debate on the relationship between intervention and sovereignty, with a view to fostering global political consensus on how to move from polemics towards action within the international system'.<sup>105</sup> To this end, the ICISS delivered an eponymous Report in 2001 in which the idea of the responsibility to protect was put forward with the central underlying thesis that:

sovereign states have a responsibility to protect their own citizens from avoidable catastrophe – from mass murder and rape, from starvation – but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states<sup>106</sup>

From this proposition the Commission derived two basic principles which underpin the responsibility to protect, namely that primary responsibility to protect people lies with the state and a secondary or surrogate responsibility to protect falls to the international community when the state is unable or unwilling to halt or avert a population suffering serious harm, whether resulting from internal war, insurgency, repression or state failure. These principles, in essence the responsibility to protect, are grounded in a refashioned notion of sovereignty as *responsibility*. Furthermore, as the ICISIS was not, in the words of co-chair Gareth Evans, solely concerned with producing an 'intellectually credible and satisfying' report but also with 'motivating action and mobilising support', the Report concludes with a discussion of pragmatic issues of authority and implementation.<sup>107</sup> In other words the ICISS tackles the two perennially enduring issues of intervention for human protection, that of sovereignty and the role of the SC.

The departure point for the reformulation of sovereignty as responsibility is the UN Charter. The ICISS Report asserts that membership of the UN involves a necessary re-characterisation of the notion of sovereignty from sovereignty as *control* to sovereignty as *responsibility*.<sup>108</sup> Such a re-characterisation has a three-fold significance in relation to intervention for human protection, firstly, that the state is responsible for the safety,

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<sup>105</sup> <<http://www.iciss.ca/progress-en.asp>> accessed 3 May 2006.

<sup>106</sup> ICISS (n 89) viii.

<sup>107</sup> Gareth Evans, 'The Responsibility to Protect: Humanitarian Intervention in the 21<sup>st</sup> Century' (2002 Wesson Lecture in International Relations Theory and Practice)

<<http://www.crisisgroup.org/home/index.cfm?id=2288&l=1>> accessed 28 August 2007.

<sup>108</sup> Anne-Marie Slaughter cautioned drafters of grand documents, such as the UN Charter, to beware of revisionist histories in relation to a similar argument made by the High-Level Panel on Threats, Challenges and Change. See Anne-Marie Slaughter, 'Security, Solidarity and Sovereignty: The Grand Themes of UN Reform' (2005) 99 *American Journal of International Law* 619, 623.

lives and welfare of citizens. It also suggests that states are internally responsible to citizens and, through the UN, externally responsible to the international community. Finally, sovereignty as responsibility entails the accountability of agents of the state for their acts and omissions.<sup>109</sup> The ICISS based this recasting of sovereignty as responsibility on the assertion that ‘the exercise of state sovereignty has always been more constrained and porous’ than the legal principle of non-intervention would suggest.<sup>110</sup> The Report further argues that this ‘traditional and static notion of sovereignty’ has been challenged by ‘the increased salience of self-determination’, the expanding definition of threats to international peace and security, state failure and finally ‘the heightened importance attached to popular sovereignty’, which supports the refashioning of sovereignty as responsibility.<sup>111</sup>

Put simply, the responsibility to protect framework consists of three dimensions – the responsibility to *prevent*, the responsibility to *react*, and the responsibility to *rebuild*. These dimensions exist along what Gareth Evans has called a ‘continuum of obligations’.<sup>112</sup> The responsibility to prevent is the most important dimension and is directed towards the prevention of deadly conflict and other man-made catastrophes that put populations at risk. The responsibility to rebuild sits at other end of the continuum and involves aspects of peace-building, reconstruction and reconciliation, and issues of territorial administration. However, the responsibility to react has been the focus of academic attention and commentary,<sup>113</sup> perhaps in part due to the in-depth consideration of the role of the SC in intervention for human protection purposes. Indeed, the responsibility to react directly engages the international aspect of the responsibility to protect, as it stipulates a response to ‘situations of compelling human need with appropriate measures’ which span the spectrum from sanctions to military

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<sup>109</sup> ICISS (n 89) 13.

<sup>110</sup> *Ibid*, *Research Essays* 3.

<sup>111</sup> *Ibid*.

<sup>112</sup> Gareth Evans, ‘From Humanitarian Intervention’ (n 91) 708.

<sup>113</sup> See for example Carsten Stahn, ‘Responsibility to Protect: Political Rhetoric or Emerging Legal Norm’ (2007) 101 *American Journal of International Law* 99; Rebecca J. Hamilton, ‘The Responsibility to Protect: From document to doctrine – but what of implementation?’ (2006) 19 *Harvard Human Rights Journal* 289; Graham Day and Christopher Freeman, ‘Operationalising the Responsibility to Protect – the Policekeeping Approach’ (2005) 11 *Global Governance* 139; Bellamy, ‘Whither the Responsibility to Protect?’ (n 87); Alex J. Bellamy, ‘Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq’ (2005) 20 *Ethics and International Affairs* 31, 42 – 50; Paul D. Williams and Alex J. Bellamy, ‘The Responsibility to Protect and the Crisis in Darfur’ (2005) 36 *Security Dialogue* 27; Thomas G. Weiss, ‘The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era’ (2004) 35 *Security Dialogue* 135; Ramesh Thakur, ‘Intervention, Sovereignty and the Responsibility to Protect: Experiences from ICISS’ (2002) 33 *Security Dialogue* 323.

intervention.<sup>114</sup> In respect of the latter, the Report sets down six criteria – right authority, just cause, right intention, last resort, proportional means and reasonable prospects – by which to determine when, how and by whom the international responsibility to react should be exercised.

The just cause criterion establishes a threshold broadly conceived of as large scale loss of life and large scale ethnic cleansing which triggers the responsibility to react in order to halt or avert such loss of life or ethnic cleansing. The requirements that intervention is a last resort in order to halt or avert human suffering, along with the stipulations that the intervention has a reasonable chance of success and that proportionate measures are used to this end, are precautionary criteria which ‘strictly limit the use of coercive military force for human protection purposes’.<sup>115</sup> The issue of ensuring that the ‘right authority’ determines whether the responsibility to react should be exercised by way of military intervention was resolved by the ICISS in terms of etching out a role for the SC as the sole arbiter of military interventions for human protection purposes.<sup>116</sup> The ICISS Report sees the SC as the most appropriate body to deal with military intervention for human protection purposes, particularly as the SC has the *legal* capacity to do so as found in the UN Charter (Chapter VII, especially article 42).<sup>117</sup> However, the Report readily acknowledges, although does not suggest any remedy, that the SC is plagued by institutional and operational difficulties, such as legitimacy and political will, which affect the capacity of the SC to effectively exercise the international responsibility to protect and thereby fulfil its Charter mandate to maintain international peace and security.

Yet the ICISS is not alone in putting forward criteria for military intervention for human protection purposes, and the ICISS does acknowledge the profusion and indeed validity of the available guidelines for intervention. For instance, the Kosovo Commission which reported in 1999 laid down a similar list of criteria. Nevertheless, it is the responsibility to protect as articulated by the ICISS that has been proclaimed as ‘the most sophisticated attempt at establishing a moral guideline for international action in

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<sup>114</sup> ICISS (n 89) xi.

<sup>115</sup> Ibid 35.

<sup>116</sup> This is made explicitly clear: ‘Security Council authorisation must in all cases be sought prior to any military intervention action being carried out’. Ibid 50. However, the ICISS does consider the situation of a deadlocked SC and sources of alternative authority. In this respect, cf. HLP, *A More Secure World: Our shared Responsibility* (United Nations New York 2004) 199 – 203.

<sup>117</sup> On the expansion of the meaning of ‘threat to international peace and security’ to include human rights violations see Cassese (n 77) 348 - 350; Frowein and Krish (n 51) 722 – 726.

the face of humanitarian emergency' as 'the most influential intellectual contribution' to the contemporary debate on the dilemma of intervention, and as a 'watershed event in international discussions of humanitarian intervention'. According to Gareth Evans, co-chair of the ICISS, the Report made 'four main contributions to the international policy debate' on intervention for human protection purposes, which continue to resonate.<sup>118</sup> The first contribution of the Report, the 'politically useful' change in language from humanitarian intervention to the responsibility to protect,<sup>119</sup> readily attests to the influential contribution of the Report on contemporary debate. However, Bellamy examined the use of the term 'responsibility to protect' in respect of the crisis situation in Darfur by, amongst others, the SC,<sup>120</sup> and discovered that while the debates were infused with the language of the responsibility to protect, what the term actually meant was 'hotly contested'.<sup>121</sup> He ultimately concluded that the change in language advocated by the ICISS Report has 'done little to forge consensus or overcome the struggle between sovereignty and human rights'.<sup>122</sup>

The second contribution of the Report noted by Evans also resonates clearly in contemporary debate on the dilemma of intervention for human protection. This is the 'conceptually significant' refashioning of sovereignty as responsibility.<sup>123</sup> Sovereignty has been described as a 'glittering and controversial notion' which by no means bears a settled and uncontested meaning.<sup>124</sup> Indeed, the death of sovereignty or the decreasing saliency of sovereignty has been variously declared as the portent of a new world order founded on theories of sovereignty such as 'popular sovereignty' and 'sovereignty-modern' has been heralded.<sup>125</sup> Against this backdrop, it is unsurprising that academic commentary focuses on the recasting of sovereignty as responsibility. Indeed, one commentator has observed that notwithstanding the contested restatement of

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<sup>118</sup> Evans, 'From Humanitarian Intervention' (n 91) 708.

<sup>119</sup> Ibid.

<sup>120</sup> Bellamy, 'Responsibility to Protect or Trojan Horse?' (n 113) 42 - 50.

<sup>121</sup> Ibid 33.

<sup>122</sup> Ibid.

<sup>123</sup> Evans, 'From Humanitarian Intervention' (n 91) 708.

<sup>124</sup> Max Plank Institute for Comparative Public Law and International Law, *Encyclopedia of Public International Law* (North-Holland Amsterdam/New York/Oxford/Tokyo 1987) 397.

<sup>125</sup> W. Michael Reisman, 'Sovereignty and Human Rights in Contemporary International Law' (1990) 84 *American Journal of International Law* 866; John H. Jackson, 'Sovereignty-Modern: A New Approach to an Outdated Concept' (2003) 97 *American Journal of International Law* 782; Cf. Paolo G. Carozza, 'Subsidiarity as a Structural Principle of International Human Rights Law' (2003) 97 *American Journal of International Law* 38.

sovereignty, the responsibility to protect remains within the 'sovereignty-discourse'.<sup>126</sup> This obscures the critical question of whether the responsibility to protect reconciles the countervailing logics of 'sovereignty' and 'human rights protection'. Indeed a closer inspection of the responsibility to protect framework proposed by the ICISS reveals a predisposition towards sovereignty - however understood. For example, the international responsibility to react, which is located on the fault line of the opposing imperatives of 'sovereignty' and 'human rights protection', sets a particularly high and specific threshold to trigger the responsibility to react and overcome the imperative of 'sovereignty'. In brief, despite all the claims of innovation, the responsibility to protect as based on sovereignty as responsibility remains firmly situated within the 'sovereignty-discourse' and sovereignty matrix, and ultimately fails, to paraphrase the SG, to confront the real dilemma between 'the defence of sovereignty' and 'the defence of humanity' which imbues the debate on intervention for human protection purposes.

The third contribution of the ICISS Report which Evans mentions is the emphasis on a 'continuum of obligations' stretching beyond coercive intervention.<sup>127</sup> The claim to influence contemporary debate appears relatively innocuous at first blush. However, as is evident from the foregoing, commentary and debate on the responsibility to protect focuses on the *international responsibility to react*. Such a skewed emphasis has meant that the other dimensions of the responsibility to protect are bereft of considered analysis. As intimated above, the responsibility to rebuild is plagued by latent ambiguities which Siobhan Wills saw in terms of explicating the legal responsibilities of the intervening forces and the state/organisation that sent them.<sup>128</sup> As Adam Roberts has observed this area has not been subjected to systematic analysis and is ripe for further clarification.<sup>129</sup> The most important dimension of the responsibility to protect, the responsibility to prevent, also remains under-developed. As Joelle Tanguy has found, the logic of the ICISS in this respect is faultless, and it is impossible not to agree that 'military intervention is a blunt, costly, dangerous, and limited instrument for the

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<sup>126</sup> Joelle Tanguy, 'Redefining Sovereignty and Intervention' (2003) 17 *Ethics and International Affairs* 141, 144.

<sup>127</sup> Evans, 'From Humanitarian Intervention' (n 91) 709.

<sup>128</sup> Siobhan Wills, 'Military Interventions on Behalf of Vulnerable Populations: The Legal Responsibilities of States and International Organisations Engaged in Peace Support Operations' (2004) 9 *Journal of Conflict and Security Law* 387.

<sup>129</sup> *Ibid* 387, citing Adam Roberts.

protection of human rights and security' which is best served by preventive measures and strategies.<sup>130</sup>

Finally, Evans counts the setting down of guidelines for military intervention for human protection purposes as the fourth contribution of the ICISS Report.<sup>131</sup> The Report recognises that imposing rules on a political body such as the SC may be unrealistic and even counterproductive.<sup>132</sup> Nevertheless, as Ian Johnstone argues guidelines such as these are not intended to produce a 'right answer' or ignore the dynamics of hard power and national interests that play out in the SC. Rather guidelines for military intervention for human protection purposes 'enhance the power of persuasion based on law' giving 'the 'better argument' a fighting chance in SC decision-making'.<sup>133</sup>

Yet Bellamy quite persuasively argues that this statement of principle 'does little to increase the likelihood of preventing future Rwandas and Kosovos'.<sup>134</sup> This is because the responsibility to protect as articulated by the ICISS is fraught with a number of inherent problems. For instance, Bellamy points to the indeterminacy of the guidelines for military intervention and to the reliance upon public opinion to prompt the SC to intervene for human protection purposes.<sup>135</sup> In this latter regard Bellamy forcefully states:

The point here is that there is little evidence to suggest that states intervene in foreign emergencies because they are in some sense morally shamed into doing so by either domestic or global public opinion.<sup>136</sup>

Notwithstanding these inherent weaknesses, Bellamy asserts that the central tenets of the responsibility to protect as articulated by the ICISS are lost in the transition from 'document to doctrine'<sup>137</sup> thereby 'significantly reducing the likelihood of progress in the near future' to prevent future Rwandas and Kosovos.<sup>138</sup>

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<sup>130</sup> Joelle Tanguy, 'Redefining Sovereignty and Intervention', (2003) 17 *Ethics and International Affairs* 141, 44.

<sup>131</sup> Evans, 'From Humanitarian Intervention' (n 91) 710 - 712..

<sup>132</sup> ICISS (n 89) 49—50.

<sup>133</sup> Ian Johnstone, 'Security Council Deliberations: The power of the better argument', (2003) 14 *EJIL* 437, 480. Similar argument by Ryan Goodman but in respect of unilateral humanitarian intervention. Ryan Goodman, 'Humanitarian Intervention and Pretexts for War' (2006) 100 *American Journal of International Law* 107.

<sup>134</sup> Bellamy, 'Whither the Responsibility to Protect?' (n 87) 145-6.

<sup>135</sup> Ibid 148 – 151. He also notes the ambiguity surrounding the procedure in cases of a deadlocked SC as a problem inherent to the responsibility to protect as articulated by the ICISS.

<sup>136</sup> Ibid 150-1.

<sup>137</sup> This phrase is borrowed from Rebecca J. Hamilton, 'The Responsibility to Protect: From document to doctrine – but what of implementation?' (2006) 19 *Harvard Human Rights Journal* 289.

<sup>138</sup> Bellamy, 'Whither the Responsibility to Protect?' (n 87) 146.

In an apparently innocuous amendment the SG divorces the endorsement of the responsibility to protect from the consideration of the need for guidelines for military intervention for human protection purposes, with the former situated in the section of advancing human freedom and dignity through strengthening international human rights law, institutions and mechanisms, and the latter located in the section on the use of force by the SC.<sup>139</sup> According to Bellamy this separation was maintained in the Outcome Document to appease China and Russia. Moreover the drafting process of the Outcome Document saw a further dilution in respect of the guidelines for military intervention. As Bellamy notes the initial drafts of the Outcome Document contained a commitment to guidelines which 'was reduced to a commitment to continue discussing criteria' and ultimately removed in the final version.<sup>140</sup> It would appear that the initial separation of the responsibility to protect from the thorny issue of principles governing the use of force and indeed from the equally intractable issue of SC reform by the SG enabled the commitment to the *principle* of the responsibility to protect in the Outcome Document.

As articulated by the ICISS, the responsibility to protect is a potential mechanism by which to achieve human security by the SC. While, the high and situation specific threshold restricts the employment of the responsibility to protect in the 'defence of humanity', it also serves to guard against adverse affects of coercive enforcement measures on the achievement of human security. Nonetheless, as a reform proposal the responsibility to protect underwent considerable dilution from 'doctrine to document', in particular in respect of the guidelines for the use of force for human protection purposes. This dilution has undermined the potential of the responsibility to protect to achieve human security as an operational tool at the disposal of the SC. In the last analysis, the prognosis in respect of the contribution of the SC to the achievement of human security remains unaltered, as UN member states could only muster a commitment to the responsibility to protect in principle, thereby rendering the value of the 'better argument' defunct.

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<sup>139</sup> UN SG, *In Larger Freedom: Towards Security, Development and Human Rights for All* (UN Dept. of Public Information New York 2005) paras. 122 - 126 (use of force) and paras. 133 - 135 (the responsibility to protect).

<sup>140</sup> Bellamy, 'Whither to the responsibility to protect?' (n 87) 166.

## (ii) The UN Security Council Legitimacy Crisis

The ills and shortcomings of the SC are well-documented and suffice to say that reform of the body charged with primary responsibility for international peace and security under the UN Charter has been mooted since the inception of the UN and for various reasons.<sup>141</sup> For example, Cold War rivalries were long cited as freezing the SC into a deadlock, thereby rendering it unavailable to perform its Charter mandate. However, a SC unfettered by the constraints of Cold War geopolitics encountered a series of new issues, not in the least in respect of the questionable consistency of SC action 'in the face of genocide or other atrocities' which was brought into sharp relief courtesy of situations such as Somalia, Rwanda, the former Yugoslavia and more recently, Darfur, Sudan.<sup>142</sup> Indeed the foregoing analysis of intervention for human protection purposes clearly reveals institutional challenges, such as legitimacy and political will, as besieging the operational capacity of the SC to respond to such situations. This section assesses the potential of the proposals for SC reform found in the 2004 Report of the High-Level Panel on Threats, Challenges and Change (HLP) to address the 'legitimacy crisis' plaguing the SC.

The HLP was established in 2003 by the then SG of the UN, Kofi Annan, to examine the current challenges to international peace and security; to consider the contribution of collective action to address such challenges; and to recommend ways to ensure effective collective action, including review of the principal organs of the UN.<sup>143</sup> The HLP delivered its Report, *A More Secure World: Our shared responsibility*, in December 2004 which contained 101 recommendations of which nine directly pertain to the reform of the SC.<sup>144</sup>

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<sup>141</sup> For concise reviews of the calls to reform the SC from different perspectives, see for example, Thomas G. Weiss and Karen E. Young, 'Compromise and Credibility: Security Council Reform?' (2005) 36 *Security Dialogue* 131; Justin Morris, 'UN Security Council Reform: A Counsel for the 21<sup>st</sup> Century' (2000) 31 *Security Dialogue* 265; and, Yehuda Z. Blum, 'Proposals for UN Security Council Reform' (2005) 99 *American Journal of International Law* 632. For a succinct presentation of the 'generic' issues see Frederic L. Kirgis Jr, 'The United Nations at Fifty: The Security Council's first fifty years' (1995) 89 *American Journal of International Law* 506. See also David D. Caron, 'The Legitimacy of the Collective Authority of the Security' (1993) 87 *American Journal of International Law* 552 and Michael Glennon, 'Why the Security Council Failed' (2003) 82 *Foreign Affairs* 16.

<sup>142</sup> HLP (n 88) para. 246. The HLP previously remarked that the UN 'had exchanged the shackles of the cold war for the straitjacket of Member State complacency and great Power indifference', *ibid* para. 13.

<sup>143</sup> *Ibid* 119. See also UN SG, 'The Secretary-General Address to the General Assembly' (23 September 2003) <<http://www.un.org/webcast/ga/58/statements/sg2eng030923>> accessed 26 February 2006.

<sup>144</sup> See HLP (n 142) 109-115 for a summary of these recommendations.

In brief, the HLP recommended that reform of the SC should take the form of enlargement which was to meet four principles of reform. The first principle of reform stipulated greater involvement in decision-making by countries which contribute the most to the UN.<sup>145</sup> These contributions would be seen in terms of financial, military and diplomatic in light of Article 23 of the Charter which details the membership requirements for the SC.<sup>146</sup> The second principle of reform specified that countries ‘representative of the broader membership’ should have a role in the decision-making process, especially such countries from the developing world. The third and fourth principles of reform respectively stipulated that reform should not impair the effectiveness of the SC and should increase the democratic and accountable nature of the SC.<sup>147</sup> Given these principles, in conjunction with the prognosis of the HLP that the challenge for SC reform is to increase its effectiveness and credibility in tandem with its capacity and willingness to act, it is unsurprising that the HLP concluded that enlargement of the SC was a necessity.<sup>148</sup> To this end, the HLP proposed two models of expansion, conveniently referred to as Model A and Model B.

Put simply, Model A provides for six new permanent seats without the power of the veto, in addition to three new non-permanent and non-renewable seats tenable for a two year period.<sup>149</sup> Model B provides for one new non-permanent and non-renewable seat tenable for a period of two years. It also creates the new category of renewable seats tenable for a four year period, of which it provides for eight.<sup>150</sup> In both these scenarios the seats are to be distributed across four regions which were designated ‘Africa’, ‘Asia and Pacific’, ‘Europe’ and ‘Americas’ by the HLP<sup>151</sup> and each region receives a total of six seats, including the existing permanent seats held by the US, Russia, China, France and the UK. Under either scenario the membership of the SC would swell from 15 to 24 states. Further, each scenario does not envision a change in the veto or entail any Charter modification of the SC’s existing powers.<sup>152</sup>

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<sup>145</sup> Ibid para. 249.

<sup>146</sup> UN Charter, Article 23.

<sup>147</sup> HLP (n 142) para. 249.

<sup>148</sup> Ibid para. 250 (necessity of SC enlargement) and para. 248 (challenge of reform).

<sup>149</sup> Ibid para. 252.

<sup>150</sup> Ibid para. 253.

<sup>151</sup> Ibid para. 251. In respect of these new groupings, the Panel noted that some of its members, particularly the Latin American members ‘expressed a preference for basing any distribution of seats on the current regional groups’. Yehuda Z. Blum agrees with this minority preference. See Blum (n 141)

<sup>152</sup> HLP (n 142) para. 256.

The HLP expressed the hope that the clear presentation of Model A and Model B as options for the enlargement of the SC would resolve the debate on SC reform.<sup>153</sup> However, and notwithstanding the endorsement of the HLP's recommendations by the SG in *In Larger Freedom*,<sup>154</sup> member states could only muster a re-commitment to reform of the SC in principle at the 2005 World Summit.<sup>155</sup> This is unsurprising for as Thomas G. Weiss asserts '[t]he clearest candidate for no action is a reformed Security Council'.<sup>156</sup> In support of this assertion Weiss contends that the HLP recommendations are missing the vital component of 'performance', which he characterises as a 'perpetual problem' pervading the reform efforts.<sup>157</sup> He observes that an enlarged SC would be unable to 'conduct serious negotiations' and would inhibit decision-making in respect of, for example, the use of force in Darfur.<sup>158</sup> Weiss continues to quizzically ponder how member states will choose between Model A and Model B as propounded by the HLP when the HLP, comprised of 16 experts in the area, cannot. He concludes that the 'recommendation is a superb illustration of why there will be no movement' on SC reform.<sup>159</sup> Notwithstanding, Weiss views this as unfortunate, as reform of the SC was pivotal to the HLP in presenting their 'grand design' of 101 recommendations.<sup>160</sup>

In a similar vein, David M. Malone argues that the inclusion of SC reform in the Report of the HLP undermined the 2005 World Summit.<sup>161</sup> According to Malone, the HLP's recommendations have resulted in, amongst others, 'jockeying for new permanent seats, notably in Africa' and 'serious tensions between China and Japan over the latter's aspirations for a permanent seat'.<sup>162</sup> Malone attributes this to a misplaced focus on 'legitimacy in terms of the representativity of the Council's composition', ignoring the 'performance legitimacy' of the SC, a term which Malone borrows from Ramesh

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<sup>153</sup> Ibid para. 250.

<sup>154</sup> UN SG, *In Larger Freedom* (n 139) para. 169. Simon Chesterman observes that *In Larger Freedom* 'endorses the fence-sitting position of the High-Level Panel, laying out options but not choosing between them, while urging member-states to take a decision on Council expansion even if consensus is not possible'. See Simon Chesterman, 'Great Expectations: UN Reform and the Role of the Secretary-General' (2005) 36 *Security Dialogue* 375, 376.

<sup>155</sup> UN GA 60/1 (n 103) para. 72. The Outcome Document which runs to 178 paragraphs contains a mere three on SC reform.

<sup>156</sup> Thomas G. Weiss, 'An Unchanged Security Council: The Sky Ain't Falling' (2005) 36 *Security Dialogue* 367, 368.

<sup>157</sup> Ibid.

<sup>158</sup> Ibid.

<sup>159</sup> Ibid.

<sup>160</sup> Ibid.

<sup>161</sup> David M. Malone, 'The High-Level Panel and the Security Council' (2005) 36 *Security Dialogue* 370, 371.

<sup>162</sup> Ibid.

Thakur.<sup>163</sup> Further, Malone voices his concern as to whether the dynamics of decision-making in an enlarged SC would bear positively on the ‘performance legitimacy’ of the SC or, in other words, the effectiveness of the SC to fulfil its Charter mandate.<sup>164</sup>

Nevertheless, the emphasis on the representative composition of the SC in the HLP’s recommendations is understandable. Indeed, Yehuda Z. Blum contends that it is only possible to comprehend the HLP’s recommendations on SC reform when viewed from an historical and contemporary perspective.<sup>165</sup> Hence, in his analysis of the reforms of the SC proposed by the HLP, Blum points to the experience of the League of Nations as the predecessor to the UN, and to SC enlargement in 1963-65.<sup>166</sup> He concludes that changes in the size and composition of the SC are warranted in order to render the SC representative, both in terms of reflecting the increased number of states and in terms of geopolitics.<sup>167</sup> Yet, Blum is also unsure of whether enhanced effectiveness follows upon enlargement.<sup>168</sup> This is certainly a less emphatic statement than that of W. Michael Reisman: ‘The United Nations has its problems, but a bigger Security Council, far from solving them, will only reduce the Council’s effectiveness’.<sup>169</sup>

As noted in Chapter Three human security provides the impetus and principled direction of the efforts to reform the UN. Thus human security provides a useful benchmark by which to assess the proposed reforms of the SC. Indeed it is clear that the HLP’s recommendations are spurred by the acknowledgment of a human security deficit – genocide, ethnic conflict. However, the proposals for the reform of the SC made by the HLP are not guided by human security, and may even inhibit human security. Granted the HLP did advocate principled reform of the SC and, as noted above, enunciated four principles of reform to this end. Blum placed these principles into the categories of ‘contribution’ and ‘representation’, with the first and third principles falling to be considered under the first category, while the second and fourth principles reside within the category of ‘representation’.<sup>170</sup> It is plainly apparent that the HLP in stipulating these principles which reform of the SC should meet did not consider human security as

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<sup>163</sup> Ibid at 372

<sup>164</sup> Ibid.

<sup>165</sup> Blum (n 141) 639.

<sup>166</sup> Ibid 634-639.

<sup>167</sup> Ibid 639.

<sup>168</sup> Ibid 644.

<sup>169</sup> W. Michael Reisman, ‘Expanding the Security Council: Much Ado’ (2005) 36 *Security Dialogue* 373, 374.

<sup>170</sup> Blum (n 141) 645.

a guiding principle. Indeed the HLP in recommending enlargement and thereby proposing two Models for the expansion of the SC clearly endorse representation as guiding SC reform. Indeed the HLP in recommending enlargement and thereby proposing two Models for the expansion of the SC clearly endorse representation as guiding SC reform.

Furthermore, the second principle which speaks of ensuring that the SC is 'representative of the broader membership'<sup>171</sup> in conjunction with the fourth which speaks of the democratic and accountable nature of the SC,<sup>172</sup> begs the question succinctly expressed by Justin Morris 'to what extent the representatives are themselves representative'.<sup>173</sup> In other words, reform of the SC in being guided by human security should advise caution to guard against the perpetuation of human insecurity, such as human rights violations. In this regard it is pertinent to recall Peggy Hicks observation in respect of the troubled CHR which suffered this 'double-standard' fate that 'improved membership alone is not a panacea'.<sup>174</sup> The unsurprising recommendation of the HLP in favour of the expansion of the SC serves to compound this potential for 'double-standards' and the perpetuation of human insecurity as the models of enlargement suggested by the HLP merely distribute seats among regions of the world. This is further exacerbated by the uncertainty, as documented above, surrounding the extent of the impact of an enlarged membership upon the effectiveness of an already embattled SC.

This somewhat cursory assessment of the reforms of the SC proposed by the HLP in terms of human security reveals the potentially debilitating effect of the reforms on human security. This is derived from the Janus-faced character of the suggested reform, representation, which potentially may inhibit human security and exacerbate the human security deficit for which the HLP was established to address. Nonetheless as member states could only muster a re-commitment to reform of the SC in principle, the institutional challenge of legitimacy and political will remains. In the last analysis, regardless of the prospects of the implementation of the HLP's recommendations, the

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<sup>171</sup> HLP (n 142) para. 249.

<sup>172</sup> Ibid.

<sup>173</sup> Morris (n 141) 274.

<sup>174</sup> Peggy Hicks, 'Correct Diagnosis, Wrong Prescription: The human rights component of security' (2005) 36 *Security Dialogue* 378, 379.

prognosis for overcoming the institutional challenges faced by the SC in the pursuit of human security remain unchanged.

### ***C. The Pursuit of Human Security by the UN Security Council: Some observations***

The relationship between human rights and security upon which the role of the SC in the pursuit of human security is based, is barely articulated as one of 'cause and effect', that is human rights violations may constitute a threat to international peace and security. Human security demands a clear articulation of the relationship between human rights and security as one of mutual interdependence which is not apparent in SC practice. Indeed SC practice under Article 39 of the Charter is riddled with inconsistencies in application and approach, which produce operational and institutional challenges to the achievement of human security by the SC. Moreover, attempts to overcome such operational challenges such as that posed by the use of force for human protection purposes and institutional challenges of legitimacy, which would give effect to the 'power of the better argument', have been scuttled. In the last analysis therefore, while the SC has a clear and indeed pivotal role in the achievement of human security, it remains reluctant to fulfil its Charter mandate in this regard and continues to possess 'an inconsistent record' in respect of human security.

## **IV. THE UNDP AND FREEDOM FROM WANT: IN PURSUIT OF HUMAN SECURITY**

The UNDP, as with the SC, does not have an express Charter mandate in respect of human rights. This is unsurprising given that the UNDP is a 'semi-autonomous agency' of the UN as discussed in Part II.<sup>175</sup> Nonetheless, the central place occupied by human rights in the UN development agenda ensures that the UNDP no longer accords 'marginal consideration' to human rights concerns.<sup>176</sup> Indeed, the endeavours to mainstream human rights into all UN activities including development prompted the UNDP issue the policy document, 'Integrating Human Rights with Sustainable Human Development' in 1998.<sup>177</sup> Here, the UNDP explicitly recognised the relationship between human rights and development as one of interdependence and mutual

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<sup>175</sup> Max Plank Institute for Comparative Public Law and International Law, *Encyclopedia of Public International Law* (North-Holland Amsterdam/New York/Oxford/Tokyo 1987)307 – 310.

<sup>176</sup> Theo van Boven, 'Human Rights and Development: The UN Experience' in David P. Forsythe (ed), *Human Rights and Development: International Views* (Macmillan Basingstoke 1989) 128.

<sup>177</sup> UNDP, 'Integrating Human Rights with Sustainable Human Development' (1998)

<<http://magnet.undp.org/Docs/policy5.html>> accessed 11 August 2006.

reinforcement and continued to refer to the right to development and human rights-based approaches to development. Thus, as Barnett R. Rubin has observed '[t]he relationship between human rights and development is actually a number of different relationships',<sup>178</sup> it is necessary to elucidate the relationship between human rights and development upon which the role of the UNDP in achieving human security is based, before assessing the activities undertaken by the UNDP in pursuit of human security.

### *A. Human Rights and Development in International Law*

The right to development and human rights-based approaches to development or rights-based approaches to development are the two primary manifestations of the relationship between human rights and development in International Law. This section provides an overview of the right to development and human rights-based approaches to development, before embarking on an assessment of UNDP activities in pursuit of human security.

#### **(i) The Right to Development**

The right to development was declared by the UN General Assembly (GA) in December 1986.<sup>179</sup> The UN Commission on Human Rights had asserted the existence of the right to development as a human right as early as 1977,<sup>180</sup> and the Declaration on the Right to Development, as the GA resolution is more commonly known as, proclaimed the right to development as an 'inalienable human right'.<sup>181</sup> Therefore 'every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised'.<sup>182</sup> The Declaration continues to state that while the 'human person is the central subject of development'<sup>183</sup> primary responsibility for the realisation of the right to development rests on states.<sup>184</sup> Notwithstanding, the Declaration does assert a duty of states to co-operate with each other 'in ensuring development and eliminating obstacles to development'<sup>185</sup> in addition to taking individual and collective steps 'to formulate international development policies' for the realisation of the right to

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<sup>178</sup> Barnett R. Rubin, 'Human Rights and Development: Reflections on Social Movements in India' in Forsythe (ed) (n 176) 110.

<sup>179</sup> UN GA Res 41/128, 'Declaration on the Right to Development' (4 December 1986) UN Doc A RES 41/128.

<sup>180</sup> As quoted in Tomuschat (n 51) 48.

<sup>181</sup> UN GA Res 41/128 (n 179), Article 1.

<sup>182</sup> Ibid.

<sup>183</sup> Ibid Article 2.

<sup>184</sup> Ibid Article 3(1).

<sup>185</sup> Ibid Article 3 (3).

development.<sup>186</sup> The indivisibility and interdependence of human rights, that is economic, social, cultural, civil and political rights, is also recognised in the Declaration<sup>187</sup> which is at pains to counter the argument prevalent in the 1960's and 1970's as to the suspension of human rights in favour of development. The UN Declaration unequivocally states:

States should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic, social and cultural rights<sup>188</sup>

The Declaration is a compromise document which failed to secure the support of the United States which voted against the initiative largely, it would appear, on grounds that the Declaration diluted and confused the human rights agenda.<sup>189</sup> While a further eight countries abstained from voting for reasons ranging from a concern as to the erosion of individual rights and the failure to distinguish between individual and collective rights,<sup>190</sup> the Declaration did pass on the sizeable majority of 146 affirmative votes in the GA. Nevertheless, it is important to stress that UN GA resolutions, including the Declaration of the Right to Development, are not binding and have no legal force. As such it is unsurprising that various arguments have been advanced as to the legal basis for the right to development, particularly as a human right recognised by international law. It is beneficial at this juncture to enumerate a number of the more persistent arguments in this regard.<sup>191</sup>

- (1) the right to development is a synthesis of the economic, social and cultural rights of the individuals comprising a collective;<sup>192</sup>
- (2) the right to development is an aspect of, or in the alternative is derived from, the right to self-determination;<sup>193</sup>

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<sup>186</sup> Ibid Article 4. (1).

<sup>187</sup> Ibid Article 6 (1).

<sup>188</sup> Ibid Article 6 (3).

<sup>189</sup> van Boven (n 176) 124.

<sup>190</sup> The states that abstained from voting were: Ireland, United Kingdom, Australia, Austria, Japan, Belgium, Germany and Norway. For the reasons for the abstention see *ibid* 124.

<sup>191</sup> For an excellent although somewhat dated review of the legal basis for a right to development see Roland Y. Rich, 'The Right to Development as an Emerging Human Right' (1983) 23 *Virginia Journal of International Law* 287.

<sup>192</sup> See for example, Georges Abi-Saab, 'The Legal Formulation of a Right to Development' in René-Jean Dupuy (ed), *The Right to Development at the International Level* (Alphen aan den Rijn/Pays-Bas The Netherlands 1980) 159, 163. Also reprinted in Steiner and Alston (n 39) 1320-1321.

<sup>193</sup> See for example Mohammed Bedjaoui, 'The Right to Development', in Mohammed Bedjaoui (ed), *International Law: Achievements and Prospects* (Martinus Nijhoff Dordrecht 1991). Cf. Jack Donnelly, 'In Search of the Unicorn: the jurisprudence and politics of the right to development' (1985) 15 *California Western International Law Journal* 473, 482.

- (3) the right to development stems from Article 28 of the UDHR which stipulates that everyone is entitled to a 'social and international order' in which the human rights contained in the UDHR may be realised;<sup>194</sup>
- (4) the right to development is a 'solidarity right' or a 'third generation' right where on this latter taxonomy, civil and political rights are first generation rights and economic, social and cultural rights comprise of the second generation of rights.<sup>195</sup>

Threading through these arguments and indeed, clearly apparent in the avowed human rights orientation of the UN Declaration on the Right to Development, is the use of the language of human rights as a legitimising tool.<sup>196</sup> Indeed Keon de Feyter speaks of a conscious decision on the part of the newly independent states to invoke the language of human rights in advocating the adoption of a UN declaration on the right to development.<sup>197</sup> It is possible to express this observation in a more affirmative manner, namely that these arguments for a human right to development and the UN Declaration constitute attempts to harness the transformative power of human rights.<sup>198</sup> For instance, Philip Alston, a firm proponent of the mutually reinforcing relationship between human rights and development,<sup>199</sup> wrote in 1988 that claims for the recognition of 'new' human rights, including the right to development, were unsurprising given the perceived 'potential of the power of the rights rhetoric'.<sup>200</sup> However, he continued to postulate, with remarkable foresight, that the right to development and other such 'new' rights were advanced in order to remedy existing deficiencies in international human rights

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<sup>194</sup> See for example Subrata Roy Chowdhury and Paul J.I.M de Waart, 'Significance of the Right to Development: an introductory view' in Subrata Roy Chowdhury, Erik M.G. Denters and Paul J.I.M de Waart (eds) *The Right to Development in International Law* (1992). Cf. Jack Donnelly, 'In Search of the Unicorn' (n 193) 482

<sup>195</sup> See generally Tomuschat (n 51) 24 – 28; 48 – 52. However, Stephen Marks notes that the cataloguing of human rights into generations is misleading in its simplicity. See Stephen Marks, 'The Human Right to Development: Between Rhetoric and Reality' (2004) 17 *Harvard Human Rights Journal* 137, 138.

<sup>196</sup> Christine Bell, albeit in the context of peace agreements, has remarked that 'the generality, abstract impartiality, and international basis of human rights standards means that, as the process progress, both sides may turn to the language of human rights'. She continues to observe that this may have the desired effect of stamping the peace agreement with international legitimacy and thus she concludes that human rights is the 'universally recognised chic language in which to write peace agreements'. See Christine Bell, *Peace Agreements and Human Rights* (OUP Oxford 2000) 297 - 8.

<sup>197</sup> Koen de Feyter, *World Development Law: Sharing responsibility for development* (2001) 20.

<sup>198</sup> See Costas Douzinas, *The End of Human Rights: Critical Legal Thought as the turn of the century* (Hart Publishing Oxford 2000).

<sup>199</sup> See e.g., Philip Alston and Mary Robinson (eds), *Human Rights and Development: Towards mutual reinforcement* (OUP Oxford 2005).

<sup>200</sup> Philip Alston, 'Making Space for New Human Rights: The case of the Right to Development' (1988) 1 *Harvard Human Rights Journal* 3, 3.

law.<sup>201</sup> Today, it is accepted that most claims arise from an insufficiency of protection in respect of particular vulnerable groups, inadequacy of the protection afforded to a specific value such as privacy or, alternatively a desire to 'protect internationalised and global values', such as development.<sup>202</sup> Nevertheless, a recent observation by Stephen Marks to the effect that the reliance on 'human rights terminology is a phenomenon of the late twentieth century' strongly resonates with the Alston's analysis and reintroduces his conclusions to the contemporary human rights and development debate.<sup>203</sup>

Indeed, this tendency to rely upon the language of human rights to shore up deficiencies may perhaps prove to be the Achilles heel of this particular manifestation of the relationship between human rights and development - the human right to development. For as Tomuschat observes such efforts are surrounded by uncertainties regarding the clear identification of the right holder, the duty bearer, and the substance or content of the right in question. The right to development formulated as a human right, suffers from these three maladies in abundance. Thus, while the UN Declaration clearly stipulates that individuals and peoples are the right holders virtue of Article 1,<sup>204</sup> Mohammed Bedjaoui sees states and peoples as the holders of the right to development.<sup>205</sup> Hence, the right holders vary according to the legal justification or formulation of the right to development. Similarly, the UN Declaration clearly bequeaths the state with responsibility for the realisation of the right to development. However as Tomuschat remarks this aspect of the UN Declaration may be interpreted in two ways, first 'peoples have rights against their own governments' or second, states, in particular poorer 'states have entitlements vis-à-vis other states'. As Tomuschat concludes neither of these interpretations sit comfortably within the framework of traditional international law.<sup>206</sup>

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<sup>201</sup> See Philip Alston, 'Conjuring up New Human Rights: A Proposal for Quality Control' (1984) 78 *American Journal of International Law* 607.

<sup>202</sup> Krzysztof Drzewicki, 'Internationalisation of Human Rights and Their Jurisdiction', in Raija Hanski and Markku Suksi (eds), *An Introduction to the Protection of Human Rights: A Textbook* (2<sup>nd</sup> rev edn Åbo Institute for Human Rights Åbo 1999) 45.

<sup>203</sup> Marks (n 195) 139

<sup>204</sup> Although it will be recalled that Australia abstained from voting in the General Assembly in respect of the UN Declaration precisely because it blurred the distinction between individual and peoples rights.

<sup>205</sup> Bedjaoui (n 193).

<sup>206</sup> Tomuschat (n 51) 51.

The second preambular paragraph of the Declaration on the Right to Development is the only aspect of the UN Declaration that bears any resemblance to a panacea for the third malady, that of the content of the right to development. The relevant part reads:

development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom<sup>207</sup>

The Vienna Declaration and Programme for Action 1993, the outcome of the second World Conference on Human Rights, reaffirmed the right to development as articulated in the UN Declaration as ‘a universal and inalienable right and an integral part of fundamental human rights’.<sup>208</sup> While the Vienna Declaration was seen as a progressive step insofar as the United States did not oppose the inclusion of the right to development, no further elaboration as to the content of the right was forthcoming. Thus the UN having declared the existence of the right to development was faced with the ignominious task of defining it. The UN embarked on this quest with much vigour. For instance, the Commission on Human Rights established a Working Group on the Right to Development in 1993 to, amongst others, monitor and review progress made in the promotion and implementation of the right to development. From 1997 the work of the Working Group was supported by an independent expert who was replaced in 2004 by the high-level task force on the implementation of the right to development. While undoubtedly these efforts have contributed to the conceptual clarity of a right to development, it has done little to remedy the malady of an uncertain content which must be overcome in order to be potentially considered a human right.

The logic of the right to development, particularly the human-centred emphasis, resonates with human security. However, it does tend to undermine the notion of human rights. As David P. Forsythe remarks ‘[i]f development implies inherently minimum standards of socio-economic and civil-political behaviour, then one cannot speak clearly about development and human rights’.<sup>209</sup> It is precisely this broader notion of development that is intimated by the second preambular paragraph of the UN Declaration on the Right to Declaration. Thus on Forsythe’s analysis development and

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<sup>207</sup> UN GA Res 41/128 (n 179) second preambular paragraph.

<sup>208</sup> UN GA, ‘Vienna Declaration and Programme of Action’ (12 July 1993) A/CONF.157/23, para 10.

<sup>209</sup> David P. Forsythe, ‘Human Rights and Development: A Concluding View’ in Forsythe (ed) (n 176) 351-2.

human rights become 'confused and redundant'.<sup>210</sup> With these controversies plaguing the right to development as a human right it is unsurprising that human rights-based approaches to development emerged. For while the right to development may be properly seen as a child of the 1980's the human rights-based approach is a product of the 1990's, born at the confluence of the project to mainstream human rights at the UN and the impasse as to the 'development' of the right to development.

## (ii) The Human Rights-Based Approach to Development

Since the early 1990's there has been a discernible shift towards human rights-based approaches or rights-based approaches to development.<sup>211</sup> This Section details what may be referred to the UN human rights-based approach to development. This is articulated in documents such as 'An Agenda for Development' and subsequently elaborated upon in documents such as the Millennium Report and *In Larger Freedom* and by UN organs and agencies such as the UN Office of the High Commissioner for Human Rights (OHCHR) and the UNDP. However as the UN, particularly the OHCHR and the UNDP, interchange the terms of human rights-based approach and rights-based approach, it is necessary to offer a clarification as to the terminology employed in this Section, that of 'human rights-based approach'.

While human rights based approaches or rights based approaches to development have flourished in the last ten years or so, there has been little agreement as to definition.<sup>212</sup> The absence of an agreed definition is exemplified and compounded by the ease at which the key terms 'human-rights based approach' and 'rights-based approach' are interchanged. To some commentators the difference between the terms, albeit a subtle

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<sup>210</sup> Ibid 351.

<sup>211</sup> Celestine Nyamu-Musembi and Andrea Cornwall offer an insightful analysis into why such approaches to development have emerged at this moment, identifying five causal factors. These are: the end of the Cold War; role of non-governmental organisations; changes in way aid is delivered within context of changed global and political environment; increased emphasis on participation in development; assurance that the human rights-based approach does not come with the ideological baggage of the right to development. Celestine Nyamu-Musembi and Andrea Cornwall, 'What is the 'rights-based approach' all about? Perspectives from international development agencies' (IDS Working Paper 234 2004) <<http://www.ids.ac.uk/ids/bookshop/wp/wp234.pdf>> accessed 19 July 2005, 10.

<sup>212</sup> This lack of definition in part prompts Cecilia M. Ljungman to assert that 'human rights based approaches' are better understood as human rights based *perspectives*. However, this is the 'first step in the gradual process towards full-scale application of a rights-based approach'. Cecilia M. Ljungman, 'Applying a Rights-Based Approach to Development: Concepts and Principles' (Paper presented at 'The Winners and Losers from the Rights-Based Approaches Development', University of Manchester, February 2005) <[http://www.sed.manchester.ac.uk/idpm/research/events/february2005/documents/Ljungman\\_000.doc](http://www.sed.manchester.ac.uk/idpm/research/events/february2005/documents/Ljungman_000.doc)> accessed 11 August 2006, 6.

one, is of practical significance and thus strict adherence to the appropriate terminology is required. As Celestine Nyamu-Musembi and Andrea Cornwall succinctly explain:

A 'human rights approach' . . . signals an emphasis on legal codification and normative universality or rights, while a 'rights based approach' incorporates a more all-encompassing reference to people's general sense of equity, justice, entitlement and/or fairness<sup>213</sup>

On this understanding the type and form of development which is instituted is determined, if not dependent, upon the extent to which international human rights law is incorporated into development. In a similar vein, James C.N. Paul's synopsis of the sources of what he calls the international law of development, it is the primacy accorded to international human rights law that imparts the legal nature of his international law of development. This is particularly apparent in contrast to the other sources cited, such as GA Resolutions, which are properly understood as 'soft law'.<sup>214</sup> Indeed, the UN OHCHR has stated that the legal character of international human rights law lies at the heart of the human rights based approach to development.<sup>215</sup> Similarly one of Cecilia M. Ljungman's distinctive features of human rights-based approaches to development is the legal basis as founded on obligations specified in international human rights law.<sup>216</sup>

In short, it is precisely the incorporation of international human rights law into development that distinguishes human rights based approaches from rights based approaches. Moreover, the extent to which international human rights law is incorporated serves to distinguish within the multiplicity of human rights based approaches. Nyamu-Musembi and Cornwall assessed approaches adopted by various international development agencies such as the UN, the World Bank and CARE, and concluded that there are four ways in which human rights are employed in development. First, human rights are used as set of normative principles to guide development; second, human rights provide a set of instruments by which to assess development; third, a

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<sup>213</sup> Nyamu-Musembi and Cornwall (n 211) 14.

<sup>214</sup> James C.N. Paul, 'The United Nations and the Creation of an International Law of Development' (1995) 36 *Harvard International Law Journal* 307.

<sup>215</sup> UN High Commissioner for Human Rights, 'Bridging the Gap between Human Rights and Development: From normative principles to operational relevance' (Presidential Address to the World Bank, 3 December 2001) <<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/2DA59CD3FFC033DCC1256B1A0033F7C3?openDocument>> accessed 11 August 2006.

<sup>216</sup> Ljungman (n 212) 7. The second feature is the normative feature provided by international human rights law from which Ljungman identifies six key principles of universalism and inalienability, equality and non-discrimination, indivisibility and interdependence of human rights, participation and inclusion, accountability and the rule of law. Finally human rights-based approaches to development are cognisant that the process of realising the goal is a goal itself, that is human rights are a means to an end and an end in itself.

human rights component is integrated into development programmes; and finally, human rights justifies development policies aimed at strengthening institutions and participation therein.<sup>217</sup>

Given the different permutations implicit in human rights based approaches it is unsurprising that there is a marked tendency in the academic literature to discuss the merits of incorporating international human rights law into development and the implications for the development community.<sup>218</sup> For instance Mary Robinson has enumerated the criticisms of the incorporation of international human rights law, which she notes largely originate from within the development community, as follows:

- (1) human rights are political;
- (2) human rights are unrealistic;
- (3) human rights are abstract, cannot be applied practically;
- (4) human rights cannot cope with time;
- (5) law and poor and do not mix<sup>219</sup>

Nevertheless, a common motivation or justification for the incorporation of international human rights law permeates the various approaches, which Robinson explains thus: '[r]ights lend moral legitimacy and reinforce principles of social justice that already underpin much development thinking'.<sup>220</sup> Thus the above equation of human rights to international human rights law for the purposes of definition takes on added significance in the immediate context. First, human rights based approaches to development seek to harness the transformative power or utilise the legitimising function of human rights by way of incorporating, to various degrees, international human rights law. Second, Mary Robinson's observation that the human rights principles pertaining to social justice '*already* underpin much development thinking' speaks directly of the common ground shared by human rights and development.<sup>221</sup>

These two features are reflected in the prevailing academic concern with the merits of incorporating international human rights law into development and the resultant implications for the development community. However, human security demands a

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<sup>217</sup> Nyamu-Musembi and Cornwall (n 211) 46.

<sup>218</sup> See e.g. Peter Uvin, *Human Rights and Development* (Kumarian Press 2004).

<sup>219</sup> Mary Robinson, 'What rights can add to good development practice' in Alston and Robinson (eds) (n 199) 25 -41.

<sup>220</sup> Ibid.

<sup>221</sup> Author's italics.

reorientation in that the relationship at issue is understood as human rights *and* development as opposed to human rights *in* development. Indeed, such a reorientation demands consideration of the implications of incorporation for the human rights community and an assessment of the impact of incorporation on international human rights law. This is a particularly pertinent issue in light of Robinson's assertion, prevalent in the literature,<sup>222</sup> to the effect that there are significant points of correlation between human rights and development upon which to base the incorporation of international human rights law into development. At this juncture it may be useful to recall the critique of human rights offered by Amartya Sen who concluded that case for rights in development rests on the intrinsic importance and the consequential role in providing 'political incentives and economic security, and the constructive role in creating 'values and priorities'.<sup>223</sup>

The UN human rights-based approach to development is motivated by harnessing the transformative power of human rights and is grounded in the commonalities between human rights and development. However it remains to be determined whether due consideration is given to the implications for the human rights community and the impact on the evolution of international human rights law in adopting and implementing a human rights-based approach to development.

### ***B. UNDP Practice and Activities in relation to Human Rights***

In 1989 Theo van Boven observed that the UNDP only gives 'marginal consideration' to human rights concerns.<sup>224</sup> In 1998 the UNDP issued the policy document 'Integrating Human Rights with Sustainable Human Development' in response to the SG's call to integrate human rights into UN activities.<sup>225</sup> Cristina N. Campanella noted that the UNDP adopted a three pronged approach to human rights in development therein. The first aspect concerned the commitment to establish the right to development, while the second angle at which the UNDP approached human rights was to stress the human rights component of the human-centred sustainable human

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<sup>222</sup> See for example, United Nations Development Programme (UNDP), *Human Development Report 2000* (OUP Oxford 2000).

<sup>223</sup> Amartya Sen, *Development as Freedom* (OUP Oxford 2001) 246.

<sup>224</sup> van Boven (n 176) 128.

<sup>225</sup> UNDP, 'Integrating Human Rights' (n 177)

development scheme. Finally the UNDP emphasised the need for legislative, executive and judicial reforms, that is advocated the adoption of good governance measures.<sup>226</sup>

This was not a major policy reformulation on the part of the UNDP for, as noted above in Chapter One, the 1990 HDR in putting forward the notion of human development heralded the emergence of a multidimensional approach to development. Human development as understood and elaborated upon by the UNDP emphasises the centrality of the person and stresses protection and empowerment strategies in addition to the achievement of economic growth. The apparent commonalities between the fledging notion of human development and the more established one of human rights did not go un-noticed. Indeed the UNDP had sufficiently elucidated its position in respect of human rights by 2000 to devote the HDR to exploring the relationship between human development and human rights, stating:

Human development and human rights are close enough in motivation and concern to be compatible and congruous, and they are different enough in strategy to supplement each other fruitfully<sup>227</sup>

Having articulated its policy regarding human rights the UNDP proceeded to identify ‘three strategic areas of intervention’ in the 2005 Practice Note, ‘Human Rights and UNDP’.<sup>228</sup> First the UNDP pledged to support national systems for the promotion and protection of human rights. This includes activities such as advocacy and awareness raising, human rights education and training, supporting the establishment and functioning of national human rights institutions and national human rights action plans. The UNDP produced the Human Rights World Map which collates country-specific human rights information, as a tool to aid UNDP staff in such activities.

The second strategic area identified in the Practice Note is the promotion and application of a human rights-based approach to development programming. This involves capacity building and training of UNDP staff, human rights-based assessments and analyses of development situations and the integration of human rights into country programmes. In this regard the UNDP refers to the 2003 ‘Common Understanding’ document noted above as an operationalising tool. However, Nyamu-Musembi and Cornwall, for the purposes of their 2004 paper, were unable to find a human rights

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<sup>226</sup> Cristina N. Campanella, ‘The United Nations’ New Approach to Human Development and Poverty’ (2001) 17 *New York Law School Journal of Human Rights* 951, 954.

<sup>227</sup> UNDP, *HDR 2000* (n 222) 19.

<sup>228</sup> UNDP, ‘Human Rights in UNDP’ (Practice Note 2005) 4

<[http://www.undp.org/governance/docs/HRPN\\_English.pdf](http://www.undp.org/governance/docs/HRPN_English.pdf)> accessed 11 August 2006.

based assessment in any specific country programme, based on the Common Understanding or otherwise. This prompted the suggestion that a 'deliberate attempt is being made to systematise and 'plan' for rights'.<sup>229</sup>

Finally, greater engagement with the international human rights machinery was identified as the third area of UNDP activity and entails, amongst others, advocacy for the ratification and implementation of international and regional human rights treaties and advisory, technical and financial support in submitting state reports to relevant UN treaty monitoring body. Yet the UNDP readily acknowledges, while country offices support the international human rights system, this would benefit from being on an institutional footing.<sup>230</sup> This admission echoes Nyamu-Musembi and Cornwall's suggestion regarding the absence of human rights-based assessments in country programming. Nevertheless, the UNDP forged an area of cooperation with the OHCHR through the establishment of HURIST (Human Rights Strengthening Initiative), a joint programme with the primary purpose of identifying best practices and learning opportunities to develop national capacities for promoting and protecting human rights and applying human rights-based approach to development.<sup>231</sup>

In short there is little evidence of the successful integration of human rights into the development programming of the UNDP or adoption of a human rights-based approach, particularly at an institutional level. Indeed a recent UN report noted that amongst UN agencies and organs human rights were still seen as a specialised and separate area.<sup>232</sup> While UNDP country offices have issued training manuals for human rights-based approaches to development, such as the Philippines,<sup>233</sup> this has occurred on an *ad hoc* basis and reinforces the dearth of guidance required for the successful institutionalisation of such a policy. Ljungman identified a key challenge to operationalising human rights-based approaches as the absence of tools in particular documents providing practical guidelines.<sup>234</sup> Nevertheless, this tension between

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<sup>229</sup> Nyamu-Musembi and Cornwall (n 211)211, 20.

<sup>230</sup> UNDP, Practice Note 2005 (n 228) 17.

<sup>231</sup> <<http://www.unhchr.ch/development/huristproject.doc>> accessed 11 August 2006.

<sup>232</sup> Interagency Workshop on Implementing a Human Rights-Based Approach to Development, 'Report of the Second Interagency Workshop on Implementing a Human Rights-Based Approach to Development' (2003) <<http://www.undp.org/governance/cdromhr/homepage.html>> accessed 11 August 2006.

<sup>233</sup> United Nations Philippines, 'Rights-Based Approach to Development Programming: Training Manual' (2002) <[http://www.crin.org/docs/resources/publications/hrbap/RBAmanuel\\_UN\\_Philippines.pdf](http://www.crin.org/docs/resources/publications/hrbap/RBAmanuel_UN_Philippines.pdf)> accessed 11 August 2006.

<sup>234</sup> Ljungman (n 212) 15.

rhetoric and practice appears to be contiguous, stretching beyond the UNDP. Nyamu-Musembi and Cornwall conclude their assessment of human rights-based approach which included the UNDP, UNICEF, the World Bank, bilateral agencies such as DIFA and NGO's such as CARE, with the observation, 'little of what is actually *done* involves the kinds of institutions, or even instruments, conventionally associated with human rights'.<sup>235</sup>

### *C. The Pursuit of Human Security by the UNDP: Some observations*

It is possible to conclude this review of the two main manifestations of the relationship between human rights and development in international law with a number of observations. The human security perspective found that human rights and development, while sharing common points of reference and indeed must be considered mutually reinforcing are conceptually distinct. In some respects the right to development blurred the conceptual boundaries and thereby undermined the notion of human rights. The requirement that human rights and development remain distinct exposed the current manifestations of the relationship between human rights and development as one-sided which may be characterised as human rights *in* development. The primary concern of the right to development and the UN human rights-based approach is to harness the (perceived) transformative power of human rights for the benefit of development.<sup>236</sup> The utilisation of the legitimising function of human rights was plainly apparent in the tension between the human rights rhetoric employed by the UNDP and actual practice, as detailed above.

A further observation is that the human security perspective demands a reorientation of the relationship between human rights and development towards mutual reinforcement rather than (potential) mutual limitation. This involves, at least, awareness of the implications of incorporation of international human rights law into development for the human rights community and an assessment of the impact of such incorporation on international human rights law, given the points of congruence from which incorporation is founded. The importance attached to strengthening the UN human rights machinery, especially the institutional arrangements, in the first tributary of the UN human rights-based approach as a necessary component of the UN development

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<sup>235</sup> Nyamu-Musembi and Cornwall (n 211) 45. (Italics in original).

<sup>236</sup> This is characterised as 'perceived' as whether calling upon the language of human rights actually benefits development is outside the scope of this study.

agenda, is a welcome advancement towards realigning the relationship between human rights and development. It also resonates with the role of the UN in the achievement of human security.

## V. BUILDING BRIDGES: A ROLE FOR THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS?

Since the adoption of the Universal Declaration on Human Rights in 1948, the creation of a UN High Commissioner for Human Rights (HCHR) as an ‘overarching institution’ to deal with human rights violations<sup>237</sup> had been persistently proposed and consistently rejected.<sup>238</sup> With the demise of the cold war, there were renewed calls for the establishment of a HCHR and the 1993 Vienna Declaration and Programme of Action in 1993 recognised the ‘necessity for a continuing adaptation of the United Nations human rights machinery to the current and future needs in the promotion and protection of human rights’<sup>239</sup> and in particular, the improvement of the coordination, efficiency and effectiveness of the human rights organs of the UN. To this end the Vienna Declaration recommended that the GA consider as a ‘matter of priority [. . .] the question of the establishment of a High Commissioner for Human Rights for the promotion and protection of all human rights.’<sup>240</sup> The GA ‘somewhat surprisingly’<sup>241</sup> complied and after considerable debate passed Resolution 48/141 on the 20<sup>th</sup> of December 1993, thereby creating the post of the UN HCHR.<sup>242</sup>

Under GA Resolution 48/141 the HCHR is the ‘official with principal responsibility’ for UN human rights activities and thus is charged, amongst others, to ‘promote and protect the effective enjoyment by all of all civil, cultural, economic, political and social rights’ and to ‘coordinate the human rights promotion and protection activities throughout the United Nations system’.<sup>243</sup> While the mandate of the HCHR has

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<sup>237</sup> Markus G. Schmidt, ‘The Office of the UN High Commissioner for Human Rights’ in Raija Hanski and Markku Suski (eds) (n 202) 169.

<sup>238</sup> On the history of the proposals to establish a HCHR see Philip Alston, ‘The United Nations High Commissioner for Human Rights’ (1995) *The American Society of International Law Newsletter* and Janet E. Lord, ‘The United Nations High Commissioner for Human Rights: Challenges and Opportunities’ (1995) 17 *Loyola of Los Angeles International and Comparative Law Journal* 329. See also Ton J.M. Zuijwijk, *Petitioning the United Nations: A study in human rights* (St Martin's Press New York 1982) 117 - 136.

<sup>239</sup> UN GA, ‘Vienna Declaration’ (n 208) para. 17.

<sup>240</sup> *Ibid* para. 18.

<sup>241</sup> Alston, ‘The United Nations High Commissioner’ (n 238).

<sup>242</sup> UN GA Res 48/141, ‘High Commissioner for the Promotion and Protection of all Human Rights’ (20 December 1993) A/RES/48/141, para. 1.

<sup>243</sup> *Ibid* para 4, 4(a) and 4(i).

remained a ‘contentious issue’,<sup>244</sup> guidance is forthcoming from the UN Charter which, along with the UDHR and other ‘international instruments of human rights’, provide the legal landscape within which the HCHR operates.<sup>245</sup> As such, the Charter recognition of the interdependence of the ‘three great purposes’ of the UN – human rights, security and development – necessarily informs the mandate and activities of the HCHR. Further, the creation of the post of HCHR was hailed as ‘an affirmation of the commitment of the international community to move toward a world in which all persons are guaranteed their fundamental rights’<sup>246</sup> and as such has a particular resonance with the human security framework developed in Part One. Thus, this Part evaluates the role of the HCHR in the fields of security and development in order to assess the contribution to the achievement of human security. The assessment occurs against the backdrop of UN reform initiatives which confirm the interdependence of human rights, security and development and intends to offer further elaboration, by way of exploration of relevant policy documentation and the practice of the HCHR, of the series relationships forming human security, that of human rights and security on the one hand, and human rights and development on the other.

Under GA Resolution 48/141, the HCHR is charged with playing an active role in ‘removing the current obstacles’ and ‘meeting the challenges’ impeding the ‘full realisation of all human rights’ and in ‘preventing the continuation of human rights violations throughout the world’.<sup>247</sup> This broad ‘right of initiative’ has been interpreted by successive HCHR’s as bequeathing a mandate in the field of peace and security, and more specifically in respect of peace operations.<sup>248</sup> Indeed Bertrand Ramcharan observed that not only has the HCHR addressed the SC along with providing monthly briefings to the President of the SC, but the main thrust of the OHCHR in the field of peace and security has been the integration of human rights in peace-making, peace-keeping and peace-building.<sup>249</sup> This is unsurprising given the clear Charter logic of the interrelationship between respect for human rights and fundamental freedoms and the maintenance of international peace and security, and indeed is in line human rights mainstreaming, a programme prompted by the inaugural promise of the then SG, Kofi

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<sup>244</sup> Alston, ‘The United Nations High Commissioner’ (n 238)

<sup>245</sup> UN GA Res 48/141 (n 242) para. 3 (a). On this aspect of the mandate of the HCHR, see Lord (n 238) 356 – 357.

<sup>246</sup> Lord (n 238) 363.

<sup>247</sup> UN GA Res 48/141 (n 242) para. 4 (f).

<sup>248</sup> Schmidt (n 237) 171.

<sup>249</sup> Bertrand Ramcharan, *Human Rights and Human Security* (Martinus Nijhoff The Hague 2002) 126.

Annan, 'to ensure that human rights take their rightful place as a central concern of the United Nations and of the international community',<sup>250</sup> which entails enhancing the UN human rights programme and integrating human rights into all UN activities, including peace and security.<sup>251</sup> Yet, notwithstanding the 'greater awareness of the need to take human rights into account' and indeed the impetus of UN reform whereby the inter-relationship of human rights and security is prominent, the role of the HCHR in the field of peace and security is underdeveloped.<sup>252</sup>

In 2003 as part of a general plea for strategic management of the post of HCHR, Fionnuala NiAolain, persuasively argued for the inclusion of peace and security as a strategic priority of the HCHR to reflect the priorities of UN reform, which would include, amongst others, consultation between the OHCHR and key actors such as the Department of Peacekeeping Operations (DPKO) and the High Commissioner for Refugees, along with 'the integration of human rights norms in post-conflict peace-keeping operations'.<sup>253</sup> The 2005 Plan of Action adopted by the HCHR in response to the SG's 2004 Report, *In Larger Freedom*, which spoke of strengthening the OHCHR and of the interrelationship between human rights and international peace and security, identified peace and security as a strategic priority of the OHCHR.<sup>254</sup> More specifically, the Plan of Action, which 'charts a course to strengthen' the HCHR and the 'overall vision for the future direction' of the OHCHR,<sup>255</sup> stated: '[t]he protection of human rights must be at the core of policies to address conflict' at all stages, and advocated the

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<sup>250</sup> Kofi Annan, 'Strengthening the United Nations Action in the Field of Human Rights: Prospects and Priorities' (1997) 10 *Harvard Human Rights Journal* 1, 1.

<sup>251</sup> The UN SG designated 'human rights as cutting across' security and development'. UN SG, 'Renewing the United Nations: A Programme for reform' (14 July 1997) UN Doc A/51/950, para. 28, 78.

<sup>252</sup> UN SG, *In Larger Freedom* (n 154) para. 144. The Brahimi Report saw the OHCHR as playing a pivotal coordinating role in 'integrated mission task forces' and yet observed that 'the ability of the Office of the United Nations High Commissioner for Human Rights to plan and support the human rights components of peace operations needs to be reinforced'. 'Report of the Panel on United Nations Peace Operations' (21 August 2000) A/55/305-S/2000/809, paras. 198 – 245 (integrated missions), xii; Hurst Hannum, 'Human Rights in Conflict Resolution: The Role of the Office of High Commissioner for Human Rights in UN Peacemaking and Peacebuilding' (2006) 28 *Human Rights Quarterly* 1; and, Katrina Månsson, 'Integration of Human Rights in Peace Operations: Is there an Ideal Model' (2006) 13 *International Peacekeeping* 547.

<sup>253</sup> Fionnuala Ni Aolain, 'The First Ten Years of the Office, and the Next: Looking Ahead: Strategic Priorities and Challenges for the United Nations High Commissioner for Human Rights' (2004) 35 *Columbia Human Rights Law Review* 469, 478.

<sup>254</sup> The United Nations High Commissioner for Human Rights (HCHR), 'The OHCHR Plan of Action: Protection and Empowerment' (United Nations Geneva May 2005)

<<http://www.ohchr.org/english/planaction.pdf>> accessed 16 July 2007.

<sup>255</sup> Ibid para. 2. The Strategic Management Plan unveiled in 2006 'details the means by which we aim to work with Member States to operationalise' the vision articulated in the 'Plan of Action'. OHCHR, 'High Commissioner's Strategic Management Plan 2006 – 7'

<<http://www.ohchr.org/english/about/docs/strategic.pdf>> accessed 3 September 2007.

adoption of a human rights based approach to various issues such as peace and security.<sup>256</sup> In particular, the Plan of Action identified the two primary avenues by which the OHCHR pursues human rights in the field of peace and security, namely, through human rights field presences<sup>257</sup> and second, by way of human rights components in peace operations.<sup>258</sup>

Human rights field presences are a relatively new phenomenon which were provided for in the 1993 Vienna Programme for Action and have become the cornerstone of OHCHR practice.<sup>259</sup> While, the first human rights field presence in Rwanda ‘highlights the limitations’ of the mandate of the HCHR as contingent upon the invitation of the host state,<sup>260</sup> the potential of human rights field presences as ‘a reliable early-warning mechanism’ is well-recognised<sup>261</sup> and the Plan of Action seeks to capitalise on such potential through the provision, analysis and evaluation of country specific information in order ‘to anticipate looming human rights crises and to highlight the human rights implications of unfolding crises’.<sup>262</sup> Nonetheless, the Plan of Action recognises that the crucial task of the human rights field presences is to ensure that the information is ‘brought to the attention of those with a responsibility to act’.<sup>263</sup> Indeed, Katrina Månsson underscored the need for a clearly defined and institutionalised relationship between the OHCHR and the DPKO when she observed in the context of the Rwandan genocide that the warning of the Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions as to the impending genocide did not reach the field presence and the relevant peace-keeping operation.<sup>264</sup>

To this end, the 2000 Brahimi Report on UN Peace Operations recommended, amongst others, that the OHCHR coordinate and institutionalise human rights in peace operations, stating that a human rights component is ‘critical to effective peace-

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<sup>256</sup> HCHR, ‘The Plan of Action’ (n 254) paras. 16 and 68.

<sup>257</sup> Ibid para. 81.

<sup>258</sup> Ibid para. 79.

<sup>259</sup> UN GA, ‘Vienna Declaration’ (n 208) para. 69. See for example the Annual Reports of the OHCHR which reflect a greater emphasis on field presences, available on the OHCHR website <<http://www.ohchr.org/>> accessed 3 September 2007. See also Anne Gallagher, ‘United Nations Human Rights Field Operations’ in Hanski and Suski (eds) (n 202) 251; Hannum (n 252).

<sup>260</sup> Schmidt (n 237) 173.

<sup>261</sup> Ibid 172. See also Gallagher (n 259) 251.

<sup>262</sup> HCHR, ‘The Plan of Action’ (n 254) para. 81.

<sup>263</sup> Ibid.

<sup>264</sup> Månsson (n 252) 554.

building'.<sup>265</sup> In this light, the 1999 Memorandum of Understanding between the OHCHR and the DPKO which provides the basis for human rights components in peace operations, is to be welcomed.<sup>266</sup> As such, the MOU, which was renewed in 2002, speaks of enhancing the cooperation between the OHCHR and DPKO in order to affect a 'unified United Nations approach' to human rights in peace operations.<sup>267</sup> The MOU sets out six key areas and methods of cooperation between the OHCHR and the DKPO, while recognising that a human rights component of a peace operation must be founded on monitoring and promotion in order to ensure a comprehensive approach. Under the MOU the DPKO shall consult with the OHCHR in the planning, design and establishment of the human rights component of peace operations,<sup>268</sup> while the OHCHR shall provide the necessary institutional support including the 'provision of relevant training, documentation, materials and methodological tools developed by the OHCHR as well as advice as required'.<sup>269</sup> According to the MOU the activities of the human rights component of peace operations shall be based on international human rights standards and be directed to promoting an integrated approach to human rights monitoring and promotion, with due regard to 'civil, cultural, economic, political and social rights, including the right to development' and to groups such as children and displaced persons, that require special protection.<sup>270</sup> Further, staff of peace operations shall receive appropriate human rights training and be aware of and abide by the relevant international human rights standards, and to this end the OHCHR shall prepare training manuals.<sup>271</sup> Finally the MOU stipulates certain procedural requirements in respect of reports, administration and funding, and joint initiatives.<sup>272</sup>

Nevertheless, Månsson questions 'how these ambitious arrangements materialise in operations with no human rights components' and indeed, this 'serious flaw' is not remedied by DPKO policy document 'Handbook on United Nations Multidimensional Peacekeeping Operations' in which the policy framework for human rights components in peace operations are further explicated. Moreover, the role of the OHCHR in peace

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<sup>265</sup> Brahimi Report (n 252) para. 41.

<sup>266</sup> Memorandum of Understanding between the Office of the High Commissioner for Human Rights and the Department of Peace-Keeping Operations (5 November 1999) [http://www.unhchr.ch/html/menu2/4/mou\\_dpko.htm](http://www.unhchr.ch/html/menu2/4/mou_dpko.htm) accessed 12 July 2007. The MoU was subsequently revised in 2002.

<sup>267</sup> Ibid para. 1.

<sup>268</sup> Ibid.

<sup>269</sup> Ibid para. 4.

<sup>270</sup> Ibid para. 5.

<sup>271</sup> Ibid paras. 12 and 15.

<sup>272</sup> Ibid paras. 6 – 11.

operations the importance of which Månsson stated ‘annot be understated’<sup>273</sup> is conspicuous for its absence in this key policy document.<sup>274</sup> Yet, the OHCHR lists five activities in this regard, namely, the development of training materials, the provision of training, support and facilitation of training programmes organised by the DPKO and others, technical support to field staff, and advice and assistance to the DKPO, member states and the OHCHR in respect of integrating human rights into policy documents and training manuals.<sup>275</sup> Indeed, the collaboration between the OHCHR and DPKO as founded on the MOU has received cautious endorsement with a leading NGO remarking that while closer collaboration was required in the context of post-conflict reconstruction in Sierra Leone, it nevertheless, ‘appears that this inter-agency collaboration has given good results in other post-conflict situations’.<sup>276</sup> That the uncertain position of the MOU is reflected in the mixed record of implementation is unsurprising and, furthermore, illustrates the different perspectives brought to bear on the role of the HCHR in peace operations by the primary actors involved in integrating human rights into peace and security – the DKPO and the HCHR.

Indeed, the high rhetoric of these policy statements emanating from the DPKO and the HCHR has not been met in practice. For instance, Hurst Hannum observes that the ‘meshing of two perspectives’ that of security and human rights, ‘occurred too quickly for each component to fully understand what was expected of it’.<sup>277</sup> Månsson similarly questions the integration of human rights into peace operations, noting the myriad of institutional designs as a barrier to the successful integration of human rights and suggesting further analysis.<sup>278</sup> Indeed in this regard, Michael O’Flaherty remarks that while ‘much has been achieved in the short history of human rights programming within peace missions’, ‘clarification of core doctrine’, that is of principles and goals of human rights programming within the broader context of peace operations is urgently required. Such clarification would in turn facilitate the evaluation of peace operations with human

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<sup>273</sup> Månsson (n 252) 559.

<sup>274</sup> Department of Peacekeeping Operations, ‘Handbook on United Nations Multidimensional Peacekeeping Operations’ (United Nations Geneva 2003) 101 – 112.

<sup>275</sup> OHCHR, ‘Annual Report 2005’ <<http://www.ohchr.org/english/about/docs/annualreport2005.pdf>> accessed 3 September 2007.

<sup>276</sup> International Institute for Democracy and Electoral Assistance, ‘Reconciliation Lessons Learned from United Nations Peacekeeping Missions – Case Studies – Sierra Leona and Timor L’Este’ (Report prepared by the International IDEA for the Office of the High Commissioner for Human Rights (OHCHR), Annual Head of Field Presences (HOFP) Meeting, Geneva, November 2004) 21 <[http://www.idea.int/conflict/sr/upload/policypaperReconciliation\\_ETimor\\_SierraLeone.pdf](http://www.idea.int/conflict/sr/upload/policypaperReconciliation_ETimor_SierraLeone.pdf)> accessed 29 July 2007.

<sup>277</sup> Hannum, ‘Human Rights in Conflict Resolution’ (n 252) 4.

<sup>278</sup> Månsson (n 252) 556 – 558.

rights components which is similarly urgently required in order to successfully integrate human rights into peace operations. He also refers to comprehensive professional training programmes and consistent application of human rights programming as requiring attention. In short, that the activities pursued by the HCHR in support of human rights in peace operations are predominantly the provision of technical assistance and human rights training, is merely a first step in etching out a role for the HCHR in the field of peace and security, the next step is the clear articulation of 'a coherent policy framework' as promised in the Plan of Action.<sup>279</sup>

While, the fledging role of the HCHR in the field of international peace and security is founded in the UN Charter and supported by initiatives such as human rights mainstreaming and UN reform, it remains underdeveloped and skewed in favour of peace and security. Indeed, the HCHR focuses on one aspect of peace and security, that of peace operations, to the detriment of other issues for example, as Ni Aolain demanded, transitional justice, notwithstanding a clear recognition of the place of human rights at all stages of conflict prevention, management and resolution. Similarly, the type of activity undertaken by the HCHR is constrained by operational considerations such as whether the peace operation provides for a human rights component, and by the institutional considerations of collaboration with the DPKO. In this light, it is unsurprising that the HCHR has etched out a largely advisory role. Nonetheless, as the DPKO formulated the policy document explicating the framework within which to integrate human rights into peace operations, the role of the HCHR as 'lead agency' for human rights as mandated under GA Resolution 48/141, is undermined. In this respect it is noteworthy that the policy document did not stress the legal obligations arising from international human rights standards and thus reflects the skewed emphasis on peace and security considerations. In the last analysis, the role of the HCHR in the field of international peace and security does not reflect the interdependent relationship between human rights and security envisaged by human security. More importantly, human rights are not present at all stages of conflict resolution, management and prevention, either in policy or in practice and thus the achievement of human security is impeded.

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<sup>279</sup> HCHR, 'Strategic Management' (n 255) 35.

In contrast, GA Resolution 48/141 bestows a specific mandate in respect of development on the HCHR, namely to ‘promote and protect the realisation of the right to development and to enhance support from relevant bodies of the United Nations system for this purpose’,<sup>280</sup> and the HCHR has carved out a more substantial role in respect of development than in relation to security. The OHCHR has pursued this specific mandate from three angles,<sup>281</sup> firstly by demonstrating a *commitment to implementing the right to development* by undertaking activities supporting the Working Group on the Right to Development and the high-level task force on the implementation of the right to development. These activities tend to be oriented towards the support and development of research documents and/or supporting the formulation of policy documents.<sup>282</sup> Second the OHCHR pursues its mandate in respect of development by way of *advocating human rights-based approaches*. Indeed the current HCHR, Louise Arbour, in setting forth the Plan of Action for the OHCHR in response to the proposals for strengthening the OHCHR contained in *In Larger Freedom*, stipulated that the OHCHR will ‘build on existing expertise in rights-based approaches’ in terms of mandate in respect of development<sup>283</sup>. The activities of the OHCHR in this regard include supporting the conceptual clarification of human rights-based approaches, such as the 2006 document ‘Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation’.<sup>284</sup> A human rights-based approach is also apparent in the thematic work undertaken by the OHCHR, for instance in respect of poverty reduction strategies.<sup>285</sup> Finally, the OHCHR actively pursues *interagency cooperation and coordination* through mechanisms such as HURIST as noted above a joint programme with the UNDP.<sup>286</sup>

These activities underscore that the HCHR primarily plays a facilitative role by enhancing the coordination, efficiency and effectiveness of the various organs of the

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<sup>280</sup> Ibid para. 4 (c).

<sup>281</sup> This is derived from an assessment of the Annual Reports of the OHCHR and the reports of the HCHR to the Commission on Human Rights pursuant to a 1998 resolution of the Commission, available on the OHCHR website <[www.ohchr.ch](http://www.ohchr.ch)>

<sup>282</sup> See UNHCHR, ‘The Right to development’ (Report of the United Nations High Commissioner for Human Rights 2005) E/CN.4/2006/24.

<sup>283</sup> HCHR, ‘Plan of Action’ (n 252) para. 11, 68 and 69.

<sup>284</sup> OHCHR, *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation* (United Nations Geneva 2006).

<sup>285</sup> See OHCHR, *Human Rights and Poverty Reduction: A Conceptual Framework* (United Nations Geneva 2004) and the Annual Reports of the OHCHR for an exposition of human rights-based approaches in respect of thematic areas such as gender, AIDS and indigenous peoples.

<sup>286</sup> The third section covered by the annual Report to the Commission on Human Rights pursuant to the Commission Resolution 1998/72 pertains to interagency cooperation and includes agencies such as the UNDP, FAO, UNAIDS, UNESCO, UNICEF and WHO.

UN dedicated to human rights. However para. 4 (f) of the GA Resolution is of particular note in that it endows the HCHR with a sufficiently broad power of initiative in order to overcome obstacles to and to meet the challenges facing human rights promotion and protection, and to prevent the continuation of human rights violations. As noted successive HCHR have based increasing involvement in conflict prevention on this provision of the Resolution.<sup>287</sup> Arguably Mary Robinson as HCHR (1997-2002) exercised a similar power of initiative in respect of development.<sup>288</sup> Thus the role of the HCHR in development has moved beyond the merely facilitative to active engagement as clearly seen in the advocacy of a human rights-based approach to development cooperation.

In the policy document 'Frequently Asked Questions' the OHCHR explains what is meant by a human rights-based approach to development. According to the OHCHR this is:

a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyse inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress<sup>289</sup>

There are three essential attributes of a human rights-based approach which are drawn from the 2003 UN Common Understanding, the first of which is the requirement that the main objective in the formulation of development policies and programming is the fulfilment of human rights. The second attribute is the identification of right holders and duty bearers, while the third attribute comprises of six principles derived from international human rights treaties which guide all development cooperation. These principles are: universality and inalienability; indivisibility; interdependence and interrelatedness; equality and non-discrimination; participation and inclusion; and accountability and the rule of law.<sup>290</sup> This understanding of human rights-based

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<sup>287</sup> Schmidt (n 237) 171. Indeed, the first UN High Commissioner, Jose Ayala Lasso did interpret this paragraph as permitting involvement in conflict prevention, while his successor, Mary Robinson, repeatedly stressed the importance of conflict prevention for the promotion and protection of human rights and petitioned the UN Security Council in this respect. See Ramcharan (n 249) Chapter 9 and 10.

<sup>288</sup> See for example, Jessica Schille, 'The High Commissioner's Achievements During the United Nations' 55<sup>th</sup> Session' (2001) 17 *New York Law School Journal of Human Rights* 905.

<sup>289</sup> OHCHR, *Frequently Asked Questions* (n 284) 15.

<sup>290</sup> There are slight differences in the human rights-based approach advanced here and the website of the OHCHR. For instance the essential features of a human rights-based approach include: express linkage to rights, accountability, empowerment, participation, and non-discrimination and attention to vulnerable groups. However, express linkage to rights necessarily involves recognition of the indivisibility of rights, the interdependence and universality of rights along with the grounding principles of human rights equality and non-discrimination. See OHCHR website <<http://www.unhchr.ch/development/approaches->

approach to development bears remarkable correlation to the human rights perspective advanced by Cecilia M. Ljungman. Leaving aside terminological nuances momentarily, Ljungman holds that there are three distinctive features of a human rights-based approach, the first of which is the legal basis as founded on obligations specified in international human rights law. The second feature is the normative framework provided by international human rights law from which Ljungman identifies six key principles of universalism and inalienability, equality and non-discrimination, indivisibility and interdependence of human rights, participation and inclusion, accountability and the rule of law. Finally human rights-based approaches to development are cognisant that the process of realising the goal is a goal itself, that is human rights are a means to an end and an end in itself.<sup>291</sup>

On such an understanding of human rights-based approaches, the goals or objectives of the development policy, programme or practice are defined in terms of human rights. This is clearly seen in the OHCHR's policy towards poverty reduction, although poverty, like other social phenomena, is not defined by reference to *all* human rights.<sup>292</sup> As Ljungman explains the principle of indivisibility and interdependence of human rights underpinning the human rights-based approach, permits a certain amount of prioritisation between human rights, providing that a minimum threshold of realisation is maintained for all human rights.<sup>293</sup> In this respect, she states that the focus of development programming, policy or practice should be on 'contextually strategic' human rights that is those rights that have 'the most potential of assisting in the realisation of other rights' namely the human rights which define the development goal or objective.<sup>294</sup>

While this is a clear articulation of policy which is missing from the activities of the HCHR in respect of peace and security, from the perspective of human security, this is the crux of the approach of the HCHR to development. Human rights-based approaches such as that articulated and employed by the HCHR demand that human rights *define* the development goal(s) in question. This has the effect of blurring the conceptual boundaries between human rights and development. Granted, human rights and

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[04.html](#)> accessed 12 August 2006. Cf. the list of principles identified by the UNDP, 'Practice Note 2005' (n 228).

<sup>291</sup> Ljungman (n 212) 7.

<sup>292</sup> OHCHR, *Human Rights and Poverty Reduction* (n 285) 10. (Authors italics).

<sup>293</sup> Ljungman (n 212) 10.

<sup>294</sup> *Ibid* 11.

development are conceptual bedfellows with comparable emphasis on empowerment and protection of people, which must be seen alongside the recognition in the UN Charter of the interdependence of human rights and development. However, this does not mean that human rights and development are not conceptually distinct. It is possible to hold, as Jack Donnelly does, that human rights must be incorporated into development planning where development and human rights are seen ‘as complementary and mutually reinforcing in all time frames’<sup>295</sup> without defining development in terms of human rights. Indeed Donnelly rejects a tautological relationship between human rights and development as entailing the redefinition of human rights as a subset of development. This echoes Peter Uvin’s precautionary words regarding the impact of human rights-based approaches upon human rights which, in the present analysis, assumes a prophetic significance.

A similar argument regarding the blurring of conceptual lines between human rights and development, can be advanced in respect of the right to development. Thus the OHCHR in its commitment to implementing the right to development and advocacy of the human rights-based approach to development are blurring the conceptual boundaries between human rights and development and thereby arguably acting to the detriment of human rights. Moreover, it is an imperative of human security that human rights and development remain conceptually distinct and that conceptual boundaries remain intact. For instance, it is significant that the OHCHR policy document explicating the human rights-based approach for humanitarian coordinators does not define security goals in terms of human rights.<sup>296</sup> As human security is also concerned with the relationship between human rights and security, the situation whereby human rights become a subset of development and is not considered conceptually distinct may be viewed pyrrhic.

In summary, the HCHR has a clear role in respect of development and security which holds tremendous potential to contribute to the achievement of human security, particularly as a bridge governing the human rights components of each field of activity. Nevertheless, present role of the HCHR in respect of development and security tends to blur the conceptual lines between human rights and development and to reinforce the

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<sup>295</sup> Jack Donnelly, ‘Human Rights and Development: Complementary or Competing Concerns?’ (1984) 36 *World Politics* 255, 255.

<sup>296</sup> Inter-Agency Standing Committee, ‘Human Rights Guidance Note for Humanitarian Coordinators’ <<http://www.ohchr.org/english/countries/field/docs/HRguidance-coordinators.pdf>> accessed 11 August 2006.

divisions between human rights and security, respectively. Both these facets of the role of the HCHR impede the achievement of human security. It is necessary to return to first principles and to realign the relationships between human rights and development as one of mutual reinforcement and between human rights and security as one of mutual interdependence as reflected and expressed in the UN Charter and the HCHR as ‘an affirmation of the commitment of the international community to move toward a world in which all persons are guaranteed their fundamental rights’<sup>297</sup> is well placed to govern such a human security endeavour.

## VI. CONCLUDING REMARKS

The SC and the UNDP possess mixed records in respect of the achievement of human security. Moreover, the prospects for improvement in this regard are not particularly favourable for the achievement of human security. Indeed, the consistent rejection of any proposal that would temper the wide discretion of the SC and prompt action in ‘defence of humanity’ as seen by the dilution of the responsibility to protect in the Outcome Document, reduces the capacity of the SC to contribute to the achievement of human security. In a similar vein the predilection of the UNDP to embrace a human rights based approach to development without considered assessment, has not only blurred the conceptual boundaries of human security but, in doing so, has also impaired the capacity of the UNDP to achieve human security. In this respect, etching out a role for the HCHR to govern the human rights elements of the UN security agenda in collaboration with the SC and the UN development agenda in conjunction with the UNDP, would appear to offer a way forward that would engender conceptual clarity along with enhancing the operational and institutional capacity of the SC and the UNDP to deliver human security in their respective fields of activity. Nevertheless, in the last analysis, to paraphrase the HLP, while the UN gave birth to the notion of human security, it has proved to be and still proves to be poorly equipped to provide it.<sup>298</sup>

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<sup>297</sup> Lord (n 238) 363.

<sup>298</sup> HLP (n 142) para. 13.

## CONCLUSION

### THE UN HUMAN SECURITY FRAMEWORK

At the heart of this study of human security in international law lies the argument that human security is a framework for analysis and action, specifically in relation to UN activity in the disparate fields of human rights, security and development, which draws upon international law as a foundation. The UN human security framework, as developed throughout the study, rests on the legal and normative basis provided by UN human rights law and relates to the terrain occupied by the 'three great purposes' of the UN - human rights, development and security – 'all of which must be underpinned by the rule of law'.<sup>1</sup> In addition to defining the human rights component of human security as the protection, respect and fulfilment of all human rights of all human beings, the UN human security framework provided the benchmark against which to assess the capacity of the UN to contribute to the achievement of human security, specifically in the fields of human rights, development and security. As such, the UN human security framework provides the focal point to return to the questions underpinning the research - the contribution of the UN to the development of the idea of human security and to the achievement of human security, the connections between human rights, development and security, and the 'intricate convergence' of human rights and human security.<sup>2</sup>

#### I. THE RELATIONSHIP BETWEEN HUMAN SECURITY AND HUMAN RIGHTS

The oft-repeated mantra found in academic commentary and matched in the policy sphere<sup>3</sup> that human rights define human security is under-explored. The logical conclusion of the proposition, as Gerd Oberleitner has correctly observed, is to render human security 'superfluous because all its concerns are covered by the human rights

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<sup>1</sup> UN SG, 'The Secretary-General Statement to the General Assembly' (Speech delivered to the UN General Assembly, New York, 21 March 2005) <<http://www.un.org/largerfreedom/sg-statement.html>> accessed 26 February 2006.

<sup>2</sup> Gerd Oberleitner, 'Porcupines in Love: The Intricate Convergence of Human Rights and Human Security' (2005) 6 *European Human Rights Law Review* 588

<sup>3</sup> See for example, Sabina Alkire, 'A Conceptual Framework for Human Security' (Working Paper 2, Centre for Research on Inequality, Human Security and Ethnicity) <<http://www.crise.ox.ac.uk/pubs/workingpaper2.pdf>> accessed 6 May 2005,<sup>3</sup> Bertrand Ramcharan simply declares: 'human rights define human security'. Bertrand G. Ramcharan, *Human Rights and Human Security* (The Hague Kluwer Law International 2002) 9. Dwight Newman also sees a correlation between human rights and human security, see Dwight Newman, 'A Human Security Council? Applying a 'human security' agenda to Security Council reform' (1999/2000) 31 *Ottawa Law Review* 213.

system'.<sup>4</sup> Oberleitner has also noted that defining human security in terms of human rights may have the detrimental affect of detracting from the legal character of human rights and, moreover, conflating human rights with human security presents governments with the 'tempting policy option' of choosing the 'more palatable dish' of human security in preference to obligations under international human rights law.<sup>5</sup> The 'repercussions of the rise of human security on the legal nature of human rights'<sup>6</sup> can be clearly seen upon considering the issue of prioritisation. As was evident in Chapter One, a key criticism of the definitions of human security related to the ability to prioritise between and within threats to human security. For instance, the UNDP listed seven types of human security threat and offered little guidance as to how to prioritise between, for example, economic security and community security, and within threats food security. The necessity for human security to prioritise stands in opposition to the indivisibility of human rights as a fundamental principle of UN human rights law. Thus, in addition to concerns as to 'old wine in new bottles', defining human security in terms of human rights bears the clear potential of violating a fundamental principle of UN human rights law and thereby, arguably create a hierarchy of human rights within the international legal order. The reluctance of the Commission on Human Security (CHS) and Sabina Alkire, whose working definition of human security provided the basis for the definition proffered by the CHS, to expand beyond the mere statement that the 'vital core' to be protected by human security includes a 'set of fundamental rights and freedoms',<sup>7</sup> is somewhat explained by the imperative of human security to prioritise. Indeed Alkire implicitly recognised this when she observed that: '[t]he task of prioritising among rights and capabilities, each of which is argued by some to be fundamental, is a value judgement and a difficult one, which may be best undertaken by appropriate institutions'.<sup>8</sup>

On the other side of the coin, further scrutiny challenges the comfortable assumption that defining human security in terms of human rights is beneficial for human security. While the value added of human security is questioned upon defining human security in terms of human rights, commentators have also noted the possibility that issues that

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<sup>4</sup> Oberleitner, 'Porcupines in Love' (n 2) 598.

<sup>5</sup> Ibid 596.

<sup>6</sup> Ibid 594.

<sup>7</sup> CHS, *Human Security Now* (United Nations New York 2003) 4.

<sup>8</sup> Alkire (n 3) 3-4.

may properly be considered human security issues, such as ‘death by economics’<sup>9</sup> are not human rights issues. In the last analysis, such issues are absent from human security when defined in terms of human rights. This criticism is common to definitions that are seen to ‘narrow’ the remit of human security and are consequently met with claims of undermining the holistic foundation of human security and limiting ‘the emancipatory potential’ of human security.<sup>10</sup> In short, while human rights and human security are conceptual bedfellows, sharing the core underpinning that people matter, they are and remain distinct concepts.

The UN human security framework reflects the conceptual division between human security and human rights and in doing so addresses the two fundamental issues, noted above, originating from the proposition that human rights define human security. The human rights element of the UN human security package was defined in Chapter Four as the protection, respect and fulfilment of all human rights of all human beings while the fields of human rights, development and security comprise the terrain occupied by human security. This produced the proposition that UN human rights law, as underpinned by the principles of equality, non-discrimination, participation and indivisibility, provides the legal and normative *basis* for achieving human security. In other words, the UN human security framework is about injecting the core underpinning of human security – that people matter - into the development and security activities of the UN by way of UN human rights law, along with strengthening the existing UN human rights system for the protection, respect and fulfilment of human rights and thereby integrating the three great purposes of the UN. In this way, the UN human security framework ensures that human rights and human security remain conceptually distinct and in doing so guards against any further incidents of the instrumentalisation of human rights in the service of human security.

Furthermore, by emphasising the nature of the obligation created under UN human rights law, in preference to the nature of the human right guaranteed, the UN human security framework introduces a three-tiered threshold by which to distinguish between and within threats to human security which does not violate fundamental principles of UN human rights law such as the indivisibility of all human rights. Indeed, the focus on

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<sup>9</sup> Alex J. Bellamy and Matt MacDonald, ‘The Utility of Human Security’: Which Humans? What Security? A Reply to Thomas and Tow’ (2002) 35 *Security Dialogue* 373, 374.

<sup>10</sup> *Ibid* 375.

the nature of the obligation is closely linked with the designation of appropriate responses and mechanisms to the source of human insecurity. For instance protection strategies may entail the development of 'national and international norms, processes and institutions, which must address insecurities in ways that are systematic not makeshift, comprehensive not compartmentalised, preventive not reactive', while fulfilment strategies would encompass, amongst others, the provision of education and information,<sup>11</sup> and thus the three-tiered threshold produces a spectrum of responses available to the UN human security framework to best address human insecurity. This 'human rights' threshold is further supplemented by the inter-relationship between human rights, development and security upon which the UN human security framework is founded. For example, the practice of the UN Security Council (SC) in respect of human rights was shown to be contingent upon an 'international dimension' to human rights violations or adherence to 'traditional doctrine concerning the need for some kind of international threat'.<sup>12</sup> Hence, it is possible to draw from practical manifestations of the relationships between human rights and security or human rights and development, to further concretise the UN human security framework, by way of identifying the most appropriate institution and mechanism by which to pursue human security. This not only buttresses the idea of a spectrum of responses available to the UN in pursuit of human security, but it also underlines the role of the UN, expressed in the UN Charter, as a centre for harmonising the actions of UN member states in 'the attainment of these common ends' including the maintenance of international peace and security, international economic and social cooperation, and the promotion and protection of human rights and fundamental freedoms. It is in this latter respect that the UN human security framework, by purporting to harmonise UN activity in the fields of human rights, development and security, is firmly grounded in the commitments in the UN Charter.

## II. THE 'ADDED VALUE' OF HUMAN SECURITY

The key to the added value of human security for international law and the UN lies in two recent developments in the international landscape, the first of which is the discernible shift in the priorities of the UN to 'put people at the centre of everything we

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<sup>11</sup> CHS (n 7) 11.

<sup>12</sup> Newman (n 3) 255.

do',<sup>13</sup> while the second relates to the recognition in UN policy of the inter-relationship between human rights, development and security. While these developments are intimately tied to the current efforts to reform the UN,<sup>14</sup> it would be mistaken to assume that human security is a new idea for international law and the UN. As Chapter Two clearly illustrates the idea of human security as the entitlement of all to freedom from fear and freedom from want dates to the Second World War and the establishment of the UN.<sup>15</sup> Indeed the core underpinning of human security – that people matter – is evident in the provisions of the UN Charter particularly, although not exclusively in Articles 1 (3) and 55, which Kofi Annan identified as providing the basis for 'individual sovereignty'.<sup>16</sup> It is also apparent as the driving force behind the evolution of UN human rights law as detailed in Chapters Three and Four, in the humanising forces brought to bear on the UN development and security agendas as discussed in Chapter Three and more recently, in the aftermath of the cold war, in the processes of democratisation that, as noted in Chapter Four, emphasise normative principles such as participation. Thus, the underlying concern of human security is reflected in and finds clear antecedents in international law and UN policy and practice. Nevertheless, the re-discovery of human security by the UN in the last decade and its propulsion onto the UN agenda at the beginning of the 21<sup>st</sup> century was prompted by the practical impetus that freedom from fear and freedom from want, as two of the founding aims of the UN, remain elusive.<sup>17</sup> In this light, the UN human security framework, as developed throughout this study, arguably simultaneously habitates the idea of human security within international law and the practice of human security by the UN.<sup>18</sup>

The 'habilitation' of the idea of human security within international law provides a welcome bridge by which to reconcile the imperatives of two competing concepts of the UN Charter.<sup>19</sup> The conflict between these two concepts, succinctly expressed by Kofi

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<sup>13</sup> UN SG, *We the Peoples: The Role of the United Nations in the 21st Century* (UN Department of Public Information New York 2000) 7.

<sup>14</sup> *Ibid* 11.

<sup>15</sup> S Neil MacFarlane traces a longer 'prehistory' of human security as founded in liberal theories of the state. See S. Neil MacFarlane, 'The Pre-History of Human Security' (2005) 1 *St. Antony's International Review* 43.

<sup>16</sup> Kofi Annan, 'Two Concepts of Sovereignty' (1999) 352 *The Economist* (1999) 49 – 50.

<sup>17</sup> UN SG, *We the Peoples* (n 13) 17.

<sup>18</sup> The notion of 'habilitating' human security is borrowed from Barry Buzan who speaks of 'habilitating the concept of security' as the notion is under-developed and under-explored. Barry Buzan, *People, States and Fear: An agenda for international security studies in the post-cold war era* (Lynne Rienner Publishers Colorado 1991) 3.

<sup>19</sup> Errol Mendes, 'Human Security, International Organisations and international Law: The Kosovo Crisis exposes the "tragic flaw" in the UN Charter' (1999) <<http://www.uottawa.ca/hrrec/publicat/bull38.html>>

Annan as individual sovereignty which relates to international human rights law and state sovereignty which pertains to territorial integrity and political independence,<sup>20</sup> often manifests as the decisive dichotomous tension between ‘the defence of humanity’ and the ‘defence of sovereignty’<sup>21</sup> of which ‘humanitarian intervention’ serves as a particularly stark microcosm. The notion of the responsibility to protect, as detailed in Chapter Six, has the potential to alleviate human insecurity arising from genocide, ethnic cleansing and mass human rights violations. These incidences of human insecurity automatically engage with state sovereignty and thus the responsibility to protect attempts to straddle the dichotomous tension between the ‘defence of humanity’ and the ‘defence of sovereignty’. Moreover, the responsibility to protect as articulated by the International Commission on Intervention and State Sovereignty, is founded on the idea of human security and a re-cast understanding of sovereignty as responsibility and, as such, the responsibility to protect is not only an example of how human security bridges the competing concepts of the UN Charter, but also illustrates how human security contributes to the development of international law.

The idea of human security reconciles the countervailing logics of ‘human rights protection’ and ‘sovereignty’ by emphasising points of correlation and indeed compatibility between the two foundational concepts of the UN Charter.<sup>22</sup> In particular human security stresses that ‘the security of the state has to be seen alongside the security of the individual’.<sup>23</sup> This is not merely because human insecurity, as readily exemplified by genocide and ethnic cleansing, can result in state insecurity and endanger international peace and security by way of, for example, transnational refugee flows that may accompany genocide, but also because ‘[a] ‘secure state’ untroubled by contested territorial boundaries can still be inhabited by insecure people’,<sup>24</sup> which attests to the intrinsic value of human security. Nonetheless it is in respect of the former

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accessed 24 August 2007 and Gerd Oberleitner, ‘Human Security: A Challenge to International Law?’ (2005) 11 *Global Governance* 185, 192.

<sup>20</sup> Annan (n 16).

<sup>21</sup> UN SG, *We the Peoples* (n 13) 48.

<sup>22</sup> Louis Henkin argues that state values such as sovereignty must be distinguished from human values, such as the welfare of individual human beings, but that this is not to suggest that ‘state values and human values are necessarily, or ordinarily, in opposition’. Louis Henkin, *International Law: Politics and Values* (Kluwer Law International Boston/The Hague/London 1995) 99.

<sup>23</sup> Oberleitner, ‘A Challenge to International Law’ (n 19) 192. This linkage between the state and the people that comprise the state resonates with MacFarlane’s prehistory of human security as originating in liberal theories delineating the relationship between the state and the people. See MacFarlane, ‘The Pre-History’ (n 15).

<sup>24</sup> Nicholas Thomas and William T. Tow, ‘The Utility of Human Security: Sovereignty and Humanitarian Intervention’ (2002) 33 *Security Dialogue* 177, 178.

instrumental value of human security that the idea of human security in international law, and the UN human security framework, bears a clear affinity with the changes in the notion of sovereignty. While it is arguable that sovereignty ‘has never been as inviolable either in law or in practice as a formal legal definition might imply’,<sup>25</sup> it is clear that the ‘traditional and static notion of sovereignty’ denoted by principles of territorial integrity, political independence and non-interference has been challenged by ‘the increased salience of self-determination’, the expanding definition of threats to international peace and security, state failure and finally ‘the heightened importance attached to popular sovereignty’, which supports the refashioning of sovereignty as responsibility.<sup>26</sup> In the last analysis, human security is facilitated by and ‘reinforces the assertion of sovereignty as a responsibility’.<sup>27</sup>

Don Hubert observed that ‘[a]ll approaches to human security focus on the security and development nexus’,<sup>28</sup> and indeed the UN human security framework is grounded on the recognition of the inter-relationship between human rights, development and security. More particularly, the UN human security framework elucidates the UN Secretary General’s (SG) assertion that ‘we will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights’.<sup>29</sup> The UN human security framework illuminates the inter-relationship between the ‘three great purposes’<sup>30</sup> of the UN as one of mutual reinforcement. Yet, the assessment of UN activity in the fields of human rights, development and security conducted in Chapters Five and Six, revealed an inconsistent record in this regard. For while the normative content of human rights is clearly articulated in international law, the relationship between human rights and development as presently manifested in international law, blurs conceptual boundaries and arguably undermines human rights. In contrast, the relationship between human rights and security in international law, while apparently bereft of any firm articulation in international law, respects conceptual boundaries to the extent that human rights are arguably absent from the security field. As the UN human security framework is about

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<sup>25</sup> ICISS, *The Responsibility to Protect: Research Essays*, (International Development Research Centre: Ottawa, 2001) 5.

<sup>26</sup> *Ibid* 3.

<sup>27</sup> Sadako Ogato and Johan Cels, ‘Human Security – Protecting and Empowering People’ (2003) 9 *Global Governance* 273, 275.

<sup>28</sup> Don Hubert, ‘An Idea the Works in Practice’ (2004) 35 *Security Dialogue* 351, 351.

<sup>29</sup> UN SG, *In Larger Freedom: Towards Security, Development and Human Rights for All* (UN Dept of Public Information New York 2005) para. 17.

<sup>30</sup> UN SG, ‘Statement of the SG’ (n 1).

injecting the core underpinning of human security – that people matter – into the fields of development and security by way of UN human rights law, it contributes to the strengthening of the UN, particularly in respect of the efforts to mainstream human rights into all fields of UN activity.

Moreover, the UN human security framework provided the benchmark against which to assess the capacity of the newly instituted UN Human Rights Council (HR Council), the UN SC and the UNDP, as the primary UN bodies in the fields of human rights, security and development, to contribute to the achievement of human security. The institutional and operational challenges facing these institutions resonates with Oberleitner's assertion that a 'human security approach to international law can reinforce and strengthen attempts to bring international law better into line with the requirements of today's world'.<sup>31</sup> For instance, the capacity of the UN SC was stymied due to a legitimacy crisis which underlines the importance of transposing processes of democratisation that stress participation, and indeed, larger strategies of governance, into the UN. However, the recent cycle of UN reform failed to reach a consensus on reform of the SC and thus to harness the evolutionary trends in international law. In this latter respect, the role etched out for the UN High Commissioner for Human Rights under the UN human security framework in respect of providing coordinating forum for the activities of the UNDP and the UN SC is of note. Indeed, by emphasising the importance of strategies of good governance, along with the normative ideals that underpin processes of democratisation, the UN human security framework harnesses the evolutionary trends in the international landscape, which serve to reinforce the premise of human security that people matter and to contribute to the efforts to reinvigorate the UN to better address 'the changed nature of threats' and the 'new vulnerabilities to old threats'.<sup>32</sup> Hence, in the last analysis, the added value of the UN human security framework, and human security in general, lies primarily in facilitating the changes to fundamental precepts of international law, the development of new norms of international law and the strengthening of international institutions such as the UN and its organs, that better reflect the realities of today's world.

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<sup>31</sup> Oberleitner, 'A Challenge to International Law?' (n 19) 186.

<sup>32</sup> UN SG, *We the Peoples* (n 13) 11.

### III. A WAY FORWARD? THE PROMISE OF THE UN HUMAN SECURITY FRAMEWORK

The proclamation by the UN SG that the UN ‘exists for, and must serve the needs and hopes of, people everywhere’<sup>33</sup> spearheaded the shift in UN priorities to ‘put people at the centre of everything we do’.<sup>34</sup> Yet, Sadako Ogata and Johan Cels state: ‘the starkest example of the tension between the rhetorical commitment to human security and the imperatives of state security is military action in Iraq’.<sup>35</sup> The war in Iraq and US foreign policy more generally is counted by Simon Chesterman as part of a ‘broader attack on international law that proposes to order the world not around norms and institutions but the benevolent goodwill of the US’.<sup>36</sup> The UN human security framework and human security in general, by accommodating and strengthening the shift in UN priorities, acts as a counterweight to this contemporary trend. In particular the UN human security framework which emphasises the role of international law, specifically UN human rights law, in the achievement of human security, reinforces the ‘power of the better argument’, that of the ‘power of persuasion based on law’.<sup>37</sup>

Nonetheless Ogata and Cels’ observation highlights a recurring theme of the research, that of the dissonance between word and deed, between the idea and practice of human security, particularly in respect of the UN. Underlying the tension between word and deed is the key question of the extent to which the UN has translated the idea of human security into practice. Chapters Five and Six assessed the capacity of the primary UN organs in the fields of human rights, development and security and in doing so identified gaps in the achievement of human security and thereby the translation of the idea of human security into practice. While the assessment confirms the promise of human security as a framework for analysis and action, the prognosis for the UN is not as fortunate. The contribution of the UN to the development of the *idea* of human security, fares equally well upon evaluation by S. Neil MacFarlane and Yuen Foong Khong. According to MacFarlane and Foong Khong ‘the real measure’ of the contribution of the UN in this regard ‘lies in the degree to which member states and

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<sup>33</sup> Ibid 6.

<sup>34</sup> Ibid 7.

<sup>35</sup> Ogata and Cels (n 27) 273.

<sup>36</sup> Simon Chesterman, *You the People: the United Nations, transitional administration and state-building* (OUP Oxford 2005) 7.

<sup>37</sup> Ian Johnstone, ‘Security Council Deliberations: The power of the better argument’, (2003) 14 *European Journal of International Law* 437, 480.

other international actors have accepted the concept and adjusted their policy accordingly' and the record in this regard is, at best, mixed.<sup>38</sup>

The assessment as to the capacity of the primary UN bodies in the fields of human rights, development and security brought into sharp relief the challenges of situating human security within a state centric framework, such as international law. Indeed, a number of commentators view such an endeavour as particularly problematic. For instance, Alex J. Bellamy and Matt MacDonald resist such attempts primarily on the basis that in doing so states, as agents of human insecurity, are reinforced and even legitimised.<sup>39</sup> There are additional issues to placing human security within international law which are borne out in Chapter Four, which detailed how the international law on reservations to treaties, specifically UN human rights treaties, facilitates the exercise of sovereignty by states to the detriment of human rights protection. The effectiveness of UN human rights law as the normative and legal basis for achieving human security was undermined and hence the UN human security framework for analysis and action bears an inherent flaw. In this sense, the UN human security framework, to paraphrase Bellamy and MacDonald, operates 'less as a policy agenda' and more as a 'critique' of the practices of the UN in pursuit of human security.<sup>40</sup>

As a critique of UN practice the UN human security framework illuminates the question of measurement as an outstanding issue of the study of human security in international law. Indeed, scholars such as Kanti Bajpai have constructed a human security audit whereby human security, or more precisely human insecurity, is measured.<sup>41</sup> Similarly the Human Security Report Project measures the global levels of human insecurity in an annual report.<sup>42</sup> Yet, the UN human security framework eschews such temporally discrete pronouncements on the achievement of human security as a 'future end state',<sup>43</sup> in favour of emphasising the capacity of the UN to contribute to the achievement of human security. In other words, conceptualising human security as a *framework* indicates a process of achievement which acknowledges the dynamic and fluid nature of

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<sup>38</sup> S. Neil MacFarlane and Yuen Foong Khong, *Human Security and the United Nations: A critical history* (Indiana University Press: Bloomington and Indianapolis, 2006) 10.

<sup>39</sup> Bellamy and MacDonald (n 9) 374.

<sup>40</sup> Ibid 376.

<sup>41</sup> See Kanti Bajpai, 'Human Security: Concept and Measurement' (Kroc Institute Occasional Paper #19:OP:1, August 2000) <[http://www.nd.edu/~krocinst/ocpapers/op\\_19\\_1.pdf](http://www.nd.edu/~krocinst/ocpapers/op_19_1.pdf)> accessed 16 May 2005.

<sup>42</sup> Human Security Report Project, *Human Security Report 2006*. (OUP Oxford 2006).

<sup>43</sup> David Beetham, *Democracy and Human Rights* (Polity Press Cambridge 1999) 144.

human security in international law.<sup>44</sup> As such the outstanding issue of measurement is not as pressing to the study of human security in international law as first perceived. In this way, the research re-orientates the focus of academic commentary on human security ‘beyond seeking objectively to define its scope’<sup>45</sup> and follows Peter Hough’s argument that the ‘inherent contestability’ is to be ‘embraced’.<sup>46</sup> Indeed characterising the *idea* of human security as essentially contested underlines that there is no one definition of human security and that all definitions of human security, in seeking to emulate the original exemplar of freedom from fear and freedom from want, advance freedom from fear and want. In this light, it is unsurprising that the UN emerges from the study of human security in international law with a clear role to harmonise and coordinate the quest for human security.

The promise of human security as a way forward lies in its potential as a framework for analysis and action, which was readily demonstrated by the UN human security framework. In Chapters Five and Six, the UN human security framework provided the benchmark against which to critique UN practice in pursuit of human security and in doing so identified gaps in the achievement of human security by key UN organs and proposed ways to strengthen the pursuit of human security by the UN, such as the potential of the responsibility to protect as a mechanism to alleviate human insecurity. In this respect the UN human security framework conforms to Oberleitner’s assertion that a ‘human security approach to international law *can* reinforce and strengthen attempts to bring international law better into line with the requirements of today’s world’.<sup>47</sup> While the research clearly illustrates the contribution that human security can make to the development of international law and to strengthening the UN, it is important to acknowledge that human security for the UN is an *emerging* framework for analysis and action. The re-discovery of human security by the UN, particularly the recognition at the 2005 World Summit of the entitlement of all to ‘freedom from fear

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<sup>44</sup> Christian Tomuschat draws similar conclusions regarding the term ‘human rights protection’. See Christian Tomuschat, *Human Rights: Between Idealism and Realism* (OUP Oxford 2003) 319..

<sup>45</sup> Alexander Betts and Matthew Eagleton-Pierce, ‘Editorial Introduction’ (2005) 1 *St Antony’s International Review* 5, 6.

<sup>46</sup> Peter Hough, ‘Who’s Securing Whom? The Need for International Relations to Embrace Human Security’ (2005) 1 *St Antony’s International Review* 72.

<sup>47</sup> Oberleitner, ‘A Challenge to International Law?’ (n 19) 186. (Emphasis added).

and want' marks the moment at which human security became embedded in the consciousness of the UN and entered 'our common international discourse'.<sup>48</sup>

Nonetheless, the UN human security framework not only demonstrates the contribution of human security to the development of international law and the strengthening of the UN, but it also illuminates the promise of human security as a framework for analysis and action – for the UN and other actors concerned with protecting and empowering people. In particular, the UN human security framework brings together the disparate fields of human rights, development and security in a coherent and principled manner and, in doing so elucidates the connections between these 'three great purposes' of the UN. Moreover, human security provides the framework for further analysis of the causal connections that underpin human rights, development and security and the institutional coordination required to pursue human security. In this respect, the UN, as a centre for harmonising and coordinating the quest for human security under the UN human security framework, has a pivotal role in contributing to the development of the idea and practice of human security. Further, human security in international law and, more specifically, the UN human security framework, affords the opportunity to 'interrogate, evaluate and criticize the practices that make people insecure in the first place'<sup>49</sup> and thus, in the last analysis, the UN human security framework and human security in general, is a welcome step forwards in the quest that began at San Francisco in 1945 for a 'life in larger freedom'.<sup>50</sup>

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<sup>48</sup> Keith Krause, 'Is Human Security more than just a Good Idea?' in Michael Brzoska and Peter J. Croll (eds), *Promoting Security: But How and For Whom?* (Bonn International Center for Conversion: Bonn, 2004) 43.

<sup>49</sup> Bellamy and MacDonald (n 9) 376.

<sup>50</sup> UN Charter, Preamble.

## BIBLIOGRAPHY

### BOOKS

- Alston, P. and Robinson, M (eds), *Human Rights and Development: Towards mutual reinforcement* (OUP Oxford 2005)
- Alston, P. and Crawford, J. (eds). *The Future of UN Human Rights Treaty Monitoring* (CUP Cambridge 2000)
- Alston, P. (ed), *Promoting Human Rights through Bills of Rights: Comparative Perspectives* (OUP Oxford 1999)
- Alston, P. (ed). *Human Rights Law* (Dartmouth Aldershot 1996)
- Alston, P. *The United Nations and Human Rights: A Critical Appraisal* (Clarendon Press Oxford 1992)
- Baehr, P. R. and Gordenker, L. *The United Nations in the 1990's* (Macmillan London 1992)
- Bailey, S. D. *The UN Security Council and Human Rights* (Macmillan Press London 1994)
- Bedjaoui, M. (ed), *International Law: Achievements and Prospects* (Martinus Nijhoff Dordrecht 1991)
- Beetham, D. (ed.), *Defining and Measuring Democracy* (Sage London 1994)
- Beetham, D. *Democracy and Human Rights* (Polity Press Cambridge 1999)
- Bell, C. *Peace Agreements and Human Rights* (OUP Oxford 2000)
- Bennett, A. L. *International Organisations: Principles and issues* (6<sup>th</sup> edn Prentice Hall New Jersey 1995)
- Brown, C. *Sovereignty, Rights and justice: International Political Theory Today* (Polity Press Cambridge 2002)
- Brownlie, I. *Principles of International Law* (6<sup>th</sup> edn OUP Oxford 2003)
- Brzoska, M. and Croll, P. J. *Promoting Security: But how and For Whom?* (Bonn International Center for Conversion Bonn 2004)
- Buchanan, A. *Justice, Legitimacy, and Self-determination: Moral foundations for International Law* (OUP Oxford 2004)
- Buergenthal, T. *International Human Rights in a Nutshell* (2<sup>nd</sup> edn West Publishing Co St Paul Minn 1995)

- Bull, H. *The Anarchical Society: A Study of order in world politics* (Palgrave Basingstoke 2002)
- Burchill, R. White, N. D. and Morris, J. (eds). *International Conflict and Security Law: Essays in memory of Hilaire McCoubrey* (CUP Cambridge 2005)
- Buzan, B. *People, States and Fear: An Agenda for International Security Studies in the post-cold war era* (2<sup>nd</sup> edn Lynne Rienner Boulder Year)
- Byers, M. *The Role of Law in International Politics: Essays in International Relations and International Law* (OUP Oxford 2001).
- Campbell, T. Goldsworthy, J. and Stone, A. *Protecting Human Rights: Instruments and institutions* (OUP Oxford 2003)
- Cassese, A. *International Law* (2<sup>nd</sup> edn OUP Oxford 2005)
- Cassese, A. *Human Rights in a Changing World* (Polity Press Cambridge 1990)
- Cassese, A. *International Law in a Divided World* (Clarendon Press Oxford 1988)
- Chadwick, A. (ed). *The Future of the United Nations System: Potential for the twenty-first century* (United Nations University Press Tokyo 1998)
- Chesterman, S. *Just war or Just Peace? Humanitarian Intervention and International Law* (OUP Oxford 2001)
- Chesterman, S. *You the People: The United Nations, Transitional Administration and State-Building* (OUP Oxford 2004)
- Chowdhury, S. R. Denters, E. M. G, and de Waart, P. J. I. M.(eds) *The Right to Development in International Law* (Martinus Nijhoff Publishers The Hague/Boston/London 2004)
- Claude, R. P. and Weston, B. H. (ed), *Human Rights in the World Community: Issues and Action* (2<sup>nd</sup> edn University of Pennsylvania Press Philadelphia 1992)
- Conte, C. Davidson, S. and Burchill, R. *Defining Civil and Political Rights: The jurisprudence of the United Nations Human Rights Committee* (Ashgate Aldershot 2004)
- Cooper, A. F. and English, J. and Thakur, R. (eds). *Enhancing Global Governance: Towards a new Diplomacy?* (United Nations University Press Tokyo 2002)
- Craven, M. *The International Covenant on Economic, Social and Cultural Rights: A perspective on its development* (Clarendon Press Oxford 1995)

- Danieli, Y. Stamatopoulou, E. and Dias, C. J. (eds.) *The Universal Declaration of Human Rights: Fifty Years and Beyond* (Baywood Publishing Company Inc New York 1999)
- de Feyter, K. *World Development Law: Sharing responsibility for development* (Intersentia Antwerpen 2001)
- Donnelly, J. *The Concept of Human Rights* (Croom Helm London 1985)
- Donnelly, J. *Universal Human Rights in Theory and Practice* (Cornell University Press London 1989)
- Douzinas, C. *The End of Human Rights* (Hart Publishing Oxford 2000)
- Doyal, L. Gough, I. *A Theory of Human Need* (Macmillan London 1991)
- Drakidis, P. *The Atlantic and United Nations Charters: Common law prevailing for world peace and security* (Centre de Recherche et d'information Politique et Sociale Besançon 1995)
- Dupuy, R. (ed), *The Right to Development at the International Level* (Alphen aan den Rijn/Pays-Bas The Netherlands 1980)
- Dworkin, R. *Law's Empire* (Belknap Press Cambridge Mass. 1986)
- Eichelberger, C. M. *United Nations: The first fifteen years* (Harper and Brothers New York 1960)
- Elmandjra, *The United Nations System: An Analysis* (Faber and Faber London 1973)
- Evans, M. D. (ed). *International Law* (2<sup>nd</sup> edn OUP Oxford 2006)
- Falk, R. *On Humane Governance: Toward a New Global Politics* (Polity Press Cambridge 1995)
- Fassbender, *UN Security Council Reform and the Right of Veto: A Constitutional Perspective* (Kluwer Law International London/The Hague 1998)
- Flood, P. J. *The Effectiveness of UN Human Rights Institutions* (Preager London 1998)
- Forsythe, D. P. and Patrice C. McMahon (eds), *Human Rights and Diversity: Areas Studies Revisited* (University of Nebraska Press Lincoln and London 2003)
- Forsythe, D. P. *Human Rights in International Relations* (Cambridge: CUP, 2000)
- Forsythe, D. P. (ed), *Human Rights and Development: International Views* (Macmillan Basingstoke 1989)

- Fox, G. H. and Brad R. Roth (eds) *Democratic Governance and International Law* (CUP Cambridge 2000)
- Fox, H. (ed) *The Changing Constitution of the United Nations* (British Institute of International and Comparative Law London 1997)
- Freeden, M. *Ideologies and Political Theory: A Conceptual Approach*. (Clarendon Press Oxford 1996)
- Freeman, M. *Human Rights* (Polity Press Cambridge 2002)
- Galtung, J. *Human Rights in Another Key* (Polity Press Cambridge 1994)
- Gardner, J. P. (ed), *Human Rights as General Norms and a State's Right to Opt Out: Reservations and objections to human rights conventions* (British Institute of International and Comparative Law London 1997)
- Ghandhi, P. R. *The Human Rights Committee and the Right of Individual Communication* (Ashgate Dartmouth 1998)
- Goodrich, L. M. and Hambro, E. *Charter of the United Nations: Commentary and Documents* (2<sup>nd</sup> edn Stevens London 1949)
- Goodrich, L. M. and Hambro, E. *The Charter of the United Nations: Commentary and Documents* (1st edn World Peace Foundation place 1946)
- Goodrich, L. M. Hambro, E. and Simons, A. *The Charter of the United Nations: Commentary and Documents*, (3<sup>rd</sup> edn Columbia University Press New York/London 1969)
- Gray, C. *International Law and the Use of Force* (2nd edn OUP Oxford 2004)
- Gregg, R. W. and Barkun, M. *The United Nations System and its Functions: Selected Readings* (D. Van Nostrand Company New Jersey/London 1968)
- Gurr, T. R. *Peoples versus States: Minorities at Risk in the New Century* (United States Institute of Peace Press Washington 2000)
- Hafner, G. et al (eds), *Liber Amicorum Professor Seidl-Hohenveldern – in Honour of his 80<sup>th</sup> birthday* (Kluwer International Law: The Hague 1998)
- Hannum, H. (ed). *Guide to International Human Rights Practice* (3<sup>rd</sup> edn Transnational Publishers New York 1999)
- Hannum, H. (ed.) *Guide to International Human Rights Practice* (2<sup>nd</sup> edn University of Pennsylvania Press Philadelphia 1992)

- Hanski, R. and Markku Suski (eds) *An Introduction to the International Protection of Human Rights: A Textbook* (2<sup>nd</sup> rev edn Åbo Institute of Human Rights Åbo 1999)
- Hardin, L. *Liberalism, Constitutionalism, and Democracy* (OUP Oxford 2003)
- Harriman, E. A. *The Constitution at a Cross Roads: A study of the legal aspects of the League of Nations and Permanent Organisation of Labor and the Permanent Court of International Justice* (George H. Doran Company New York 2004)
- Harris, D. J. *Cases and Materials on International Law* (6<sup>th</sup> edn Sweet and Maxwell London 2004)
- Hart, H. L. A. *The Concept of Law* (2<sup>nd</sup> edn Clarendon Press Oxford 1994)
- Hegarty, A. and Leonard, S. (ed.), *Human Rights: An Agenda for the 21<sup>st</sup> Century* (Cavendish Publishing Limited London 1999)
- Held, D. (ed.), *Prospects for Democracy: North, south, east and west* (Polity Press Cambridge 1993)
- Held, D. *Models of Democracy* (2<sup>nd</sup> edn Polity Press Cambridge 1996)
- Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Polity Press Cambridge 1995)
- Henkin, L. Neuman, G. L. Orentlicher, D. F. and Leebron D. W. *Human Rights*, (Foundation Press New York 1999)
- Henkin, L. *International Law: Politics and Values* (Kluwer Law International Boston/The Hague/London 1995)
- Henkin, L. and Hargrove, J. L. (eds.) *Human Rights: An Agenda for the Next Century* (ASIL Washington 1994)
- Henkin, L. (ed), *The International Bill of Rights: the covenant on civil and political rights* (Columbia University Press New York 1981)
- Higgins, R. *Problems and Process: International Law and How we Use it* (Oxford: OUP Oxford 1994)
- Hilaire, M. *United Nations Law and the Security Council* (Ashgate Aldershot 2005)
- Hilderbrand, R. C. *Dumbarton Oaks: The Origins of the United Nations and the Search for Postwar Security* (University of North Carolina Press Chapel Hill and London 1990)
- Holzgrefe, J. L and Keohane, R. O. *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (CUP Cambridge 2003)

- Jennings, R. and Watts, A. (eds). *Oppenheim's International Law* (9th edn Longman New York/London 1996)
- Jessup, P. C. *A Modern Law of Nations: An introduction* (Macmillan London 1949)
- Joseph, S. Schultz, J. and Castan, M. *The International Covenant on Civil and Political Rights: Cases, materials and commentary* (OUP Oxford 2000)
- Joyce, J. A. *Human Rights: International Documents Volume 1* (Alphen aan den Rijn Sijthoff and Noordhoff 1978)
- Kagan, R. *Of Paradise and Power: America versus Europe in the New World Order* (Altantic London 2005)
- Kemp, W. (ed.) *Quiet Diplomacy in Action: The OSCE High Commissioner on National Minorities* (Kluwer Law International The Hague/Boston/London 2001)
- Kennedy, D. *The Dark Sides of Virtue: Reassessing International Humanitarianism* (Princeton University Press Princeton 2004).
- Klabbers, J. *An Introduction to International Institutional law* (CUP Cambridge 2002)
- Knapp, W. *A History of War and Peace: 1939 – 1965* (OUP Oxford 1967)
- Knight, W. A. *A Changing United Nations: Multilateral Evolution and the Quest for Global Governance* (Palgrave London 2000)
- Koskenniemi, M. *From Apology to Utopia: The structure of International Legal Argument* Reissue (2<sup>nd</sup> edn CUP Cambridge 2005)
- Koskenniemi, M. *From Apology to Utopia: The Structure of International Legal Argument* (Finnish Lawyers' Publishing Company Helsinki 1989)
- Krasner, S. D. *Sovereignty: Organised Hypocrisy* (Princeton University Press New Jersey 1999)
- Lammers, E. *Refugees, Gender and Human Security: A theoretical introduction and annotated bibliography* (International Books Utrecht 1999)
- Lang, A. F. (ed). *Just Intervention* (Georgetown University Press Washington 2003)
- Lauterpacht, H. *An International Bill of the Rights of Man* (Columbia University Press New York 1945)
- Lauterpacht, H. *International Law and Human Rights*, (Fredrick A. Praeger Inc. New York 1950)

- Lauterpacht, H. *Oppenheim's International Law: A Treatise* (Longmans Green London 1948)
- Lempinen, M. *Challenges Facing the System of Special Procedure of the United Nations Commission on Human Rights* (Åbo Institute for Human Rights Åbo 2001)
- Lijhart, A. *Patterns of Democracy: Government forms and performance in thirty-six countries* (Yale University Press New Haven/London, 1999)
- Lijnzaad, L. *Reservations to UN Human Rights Treaties: Ratify and ruin?* (Martinus Nijhoff Publishers Dordrecht 1995)
- Lindholt, L. *Questioning the Universality of Human Rights: The African Charter on Human and Peoples' Rights in Botswana, Malawi and Mozambique* (Ashgate Dartmouth 1997)
- Luard, E. (ed). *The International Protection of Human Rights* (Thames and Hudson London 1967)
- Luard, E. *A History of the United Nations: Vol. 1: The Years of western Domination, 1945 – 1955* (St Martin's Press New York 1982)
- Luard, E. *The United Nations: How it works and what it does* (2nd edn Macmillan London 1994)
- MacDonald, R., Johnston, D. M., and Morris, G.L. *The International Law and Policy of Human Welfare* (Alphen aan den Rijn Sijthoff and Noordhoff 1978)
- MacFarlane, S.N. and Foong Khong, Y. *Human Security and the UN: A Critical History* (Indiana University Press Bloomington and Indianapolis 2006)
- MacLean, S. Black, D. R. and Shaw, T. M. (eds). *A Decade of Human Security: Global Governance and New Multilateralisms* (Ashgate Aldershot 2006)
- Marks, S. *The Riddle of all Constitutions: International Law, Democracy and the Critique of Ideology* (OUP Oxford 2000)
- Mastny, V. and Jan Zielonka (eds.) *Human Rights and Security: Europe on the Eve of a New Era* (Westview Press Boulder 1991)
- Max Plank Institute for Comparative Public Law and International Law, *Encyclopedia of Public International Law* (North-Holland Amsterdam/New York/Oxford/Tokyo 1987)

- McRae, R. and Hubert, D. (eds). *Human Security and the New Diplomacy: protecting People, promoting peace* (McGill-Queen's University Press Montreal and Kingston/London/Ithaca 2001)
- McWhinney, E. *The United Nations and New World Order for a New Millennium: Self-Determination, State Succession, and Humanitarian Intervention* (Kluwer Law International The Hague/Boston/London 2000)
- Meisler, S. *United Nations: First Fifty Years*. (The Atlantic Monthly Press New York 1995)
- Meron, T. *Human Rights in International Law: Legal and Policy Issues* (Clarendon Press Oxford 1985)
- Moynihan, D. P. *On the Law of Nations* (Harvard University Press Cambridge Mass. 1990) 73
- Müller, J. (ed). *Reforming the United Nations: The Quiet Revolution* (Kluwer Law International The Hague/London 2001)
- Murray, R. *Human Rights in Africa: From the OAU to the African Union* (CUP Cambridge 2004)
- Mutua, M. *Human Rights: A political and cultural critique* (University of Pennsylvania Press Philadelphia 2000)
- Nef, J. *Human Security and Mutual Vulnerability: The Global Political Economy of Development and Underdevelopment* (2<sup>nd</sup> edn International Development Research Centre Ottawa 1999)
- Nicholas, H. G. *The United Nations as a Political Institution* (OUP Oxford 1975)
- Nifosi, I. *The UN Special Procedures in the Field of Human Rights* (Intersentia Antwerpen 2005)
- Nino, C. S. *The Ethics of Human Rights* (Clarendon Press Oxford 1993)
- Nowak, M. *Introduction to the International Human Rights Regime* (Martinus Nijhoff Publishers Leiden/Boston 2003)
- Nowak, *UN Covenant on Civil and Political Rights: CCPR commentary* (N.P. Engel Kehl 1993)
- O'Byrne, D. J. *Human Rights: An Introduction* (Longman London 2003)
- Orend, B. *Human Rights: Concept and Context* (Broadview Press Ltd 2002)

- Owen, N. (ed.) *Human Rights, Human Wrongs: The Oxford Amnesty Lectures 2001* (OUP Oxford 2003)
- Peck, C. *Sustainable Peace: The role of the UN and Regional Organisations in Preventing Conflict* (Rowman and Littlefield Publishers Lanham/Boulder/New York/Oxford 1998)
- Price, R. M. and Mark W. Zacher (ed.) *The United Nations and Global Security* (Palgrave Macmillan London 2004)
- Ramcharan, B. G. (ed), *Human Rights: Thirty years after the Universal Declaration: commemorative volume on the occasion of the thirtieth anniversary of the Universal Declaration of Human Rights* (Martinus Nijhoff The Hague 1979)
- Ramcharan, B. G. *Human Rights and Human Security* (Martinus Nijhoff The Hague 2002)
- Rawls, J. *A Theory of Justice* (2<sup>nd</sup> edn OUP Oxford 1999).
- Rehman, J. *International Human Rights Law: A practical approach* (Longman Harlow 2003)
- Reus-Smit, C. (ed). *The Politics of International Law* (CUP Cambridge 2004)
- Roberts, A. and Kingsbury, B. (ed.), *United Nations, Divided World: The UN's roles in international relations* (2<sup>nd</sup> edn revised and expanded OUP Oxford 1993)
- Roberts, A. and Kingsbury, B. *Presiding Over a Divided World: Changing UN Roles, 1945-1993* (Lynne Rienner London 1994)
- Robertson, A. H. and J.G. Merrills, *Human Rights in the World: An introduction to the study of the international protection of human rights* (3<sup>rd</sup> edn rev Manchester University Press Manchester 1989)
- Robertson, C. L. *International Politics since World War II: A Short History* (ME Sharp New York/London 1997)
- Rodley, N. S. *The Treatment of Prisoners in International Law* (2<sup>nd</sup> edn Clarendon Press Oxford 1999)
- Russell, R. *A History of the United Nations Charter: The role of the United States 1940 - 1945* (Brookings Institution Washington 1951)

- Sands, P. and Klein, P. *Bowett's Law of Internatioanl Institutions* (5th edn Sweet and Maxwell London 2001)
- Sano, H-O, and Alfredsson, G. (eds). *Human Rights and Good Governance: Building Bridges* (Martinus Nijhoff Publishers The Hague/London/New York 2002)
- Schachter, O. and Christopher C. Joyner (eds) *United Nations Legal Order (Vol. 1)* (CUP Cambridge 1995)
- Schlesinger, S. C. *Act of Creation: the founding of the United Nations: a story of superpowers, secret agents, wartime allies and enemies, and their quest for a peaceful world* (Westview Blouder 2004)
- Sen, A. *Development as Freedom* (OUP Oxford 1999)
- Sepúlveda, M. *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights* (Intersentia Oxford 2003)
- Shaw, M. D. *International Law* (5<sup>th</sup> edn CUP Cambridge 2003)
- Shue, H. *Basic Rights: Subsistence, Affluence and US Foreign Policy* (Princeton University Press Princeton 1996)
- Sieghart, P. *The Lawful Rights of Mankind: An introduction to the international legal code of human rights* (OUP Oxford 1986)
- Simma, B. et al (eds), *The Charter of the United Nations: A Commentary* (2<sup>nd</sup> edn OUP Oxford 2002)
- Simpson, G. *Great Powers and Oultaw States: Unequal Sovereigns in the Internatioanl legal Order* (CUP Cambridge 2004)
- Smith, R. *Textbook on International Human Rights* (OUP Oxford 203)
- State- Building* (OUP Oxford 2004)
- Steiner, H. J. and Alston, P. *International Human Rights in Context: Law, politics and morals* (1st edn OUP Oxford 1996)
- Steiner, H. J. and Alston, P. *International Human Rights in Context: Law, politics and morals* (2nd edn OUP Oxford 2000)
- Symonides, J. (ed). *Human Rights: Concept and Standards* (Ashgate Dartmouth 1998)
- Symonides, J. (ed). *Human Rights: New Dimensions and Challenges* (Ashgate Aldershot 1998)
- Taylor, P. (ed). *The United Nations at the Millennium: The Principal Organs* (AJR Groom Continuum London/New York 2000)

- Tehrani, M. (ed). *Worlds Apart: Human Security and Global Governance* (I. B. Tauris London/New York 1999)
- Tomasevski, K. *Responding to Human Rights Violations 1946 - 1999* (Martinus Nijhoff Publishers The Hague 2000)
- Tomuschat, C. *Human Rights: Between idealism and realism* (OUP Oxford 2003)
- Tomuschat, C. *The United Nations at Age Fifty: A legal perspective* (Kluwer Law International The Hague/Boston/London 1995)
- Tuck, R. *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (OUP Oxford 1999)
- UN Secretary-General, *The Question of Intervention: Statements by the Secretary-General* (UN Dept of Public Information New York 1999)
- van Boven, T. *People Matter: Views on International Human Rights Policy* (Meulenhoff Amsterdam 1982)
- Vasak, K. and Alston, P. (eds) *The International Dimensions of Human Rights Vol. I and Vol. II* (Greenwood Press Westport Connecticut 1982)
- Walker, *Inside/Outside: International relations as political theory* (CUP Cambridge 1993)
- Wallensteen, P. *Understanding Conflict Resolution: War, Peace and the Global System* (SAGE Publications London 2002)
- Weber, C. *Simulating Sovereignty: Intervention, the state, and symbolic exchange* (CUP Cambridge 1995)
- Weiss, T. G. Forsythe D. P and Coate, R. A. *The United Nations and Changing World Politics* (4th edn Westview Press Boulder 2004)
- Welsh, J.(ed). *Humanitarian Intervention and International Relations* (OUP Oxford 2004)
- White, N. D. *The Law of International Organisations* (MUP Manchester 1996)
- White, N. D. *The United Nations System: Toward International Justice* (Lynne Rienner Boulder 2002)

- Wolff, *Disputed Territories: The Transnational Dynamics of Ethnic Conflict Settlement* (Berghahn Books New York 2003)
- Woodiwiss, A. *Human Rights* (Routledge London 2005)
- Wykes, A. *1942: The Turning Point* (Macdonald London 1972)

- Ziemele, I. (ed). *Reservations to Human Rights Treaties and the Vienna Convention regime: Conflict, harmony or reconciliation* (Martinus Nijhoff Publishers Leiden/Boston 2004)
- Zuijdwijk, T. J. M. *Petitioning the United Nations: A study in Human Rights* (Gower Aldershot 1982)

## ARTICLES

- Abi-Saab, G. 'The Legal Formulation of a Right to Development' in René-Jean Dupuy (ed), *The Right to Development at the International Level* (Alphen aan den Rijn/Pays-Bas The Netherlands 1980)
- Acharya, A. 'A Holistic Paradigm' (2004) 35 *Security Dialogue* 355
- Adebajo, A. 'UN Reform: What's in it for Africa?' (2005) 36 *Security Dialogue* 384
- Alkire, S. 'A Conceptual Framework for Human Security' (CRISE Working Paper 2, Centre for Research on Inequality, Human Security and Ethnicity 2002) <<http://www.crise.ox.ac.uk/pubs/workingpaper2.pdf>> accessed 11 November 2005
- Alkire, S. 'A Vital Core that must be Treated with the same Gravitas as Traditional Security Threats' (2004) 35 *Security Dialogue* 359
- Allot, P. 'The Concept of International Law' (1999) 10 *European Journal of International Law* 31
- Alston, P. 'Remarks on Professor B.S. Chimni's A Just World Under Law: A View from the South' (2007) 22 *American University International Law Review* 221
- Alston, P. 'Promoting the Accountability of Members of the new UN Human Rights Council' (2005) 15 *Journal of Transnational Law and Policy* 49
- Alston, P. 'Bills of Rights: An Analytical Framework' in Philip Alston (ed), *Promoting Human Rights through Bills of Rights* (OUP Oxford 1999)
- Alston, P. 'Conjuring up New Human Rights: A proposal for quality control' (1984) 78 *American Journal of International Law* 607

- Alston, P. 'The United Nations High Commissioner for Human Rights' (1995) *American Society of International Law Newsletter*
- Alston, P. 'The UN's Human Rights Record: From San Francisco to Vienna and Beyond' (1994) 16 *Human Rights Quarterly* 375
- Alston, P. 'The Commission on Human Rights' in Philip Alston, *The United Nations and Human Rights: A Critical Appraisal* (Clarendon Press Oxford 1992)
- Alston, P. 'Making Space for New Human Rights: The case of the Right to Development' (1988) 1 *Harvard Human Rights Journal* 3
- Alvarez, J. 'International Organisations: Then and Now' (2006) 100 *American Journal of International Law* 324
- Annan, K. 'Strengthening United Nations Action in the Field of Human Rights: Prospects and Priorities' (1997) *Harvard Human Rights Journal* 1
- Annan, K. 'Two Concepts of Sovereignty' *The Economist* (1999) 49
- Atack, I. 'Ethical Objections to Humanitarian Intervention' (2002) 33 *Security Dialogue* 279
- Axworthy, L. 'A New Scientific Field and Policy Lens' (2004) 35 *Security Dialogue* 348
- Axworthy, L. 'Human Security and Global Governance: Putting people first' (2001) 7 *Global Governance* 19
- Ayoob, M. 'Third World Perspectives on Humanitarian and International Administration' (2004) 10 *Global Governance* 99
- Aznar-Gomez, M. J. 'A Decade of Human Rights Protection by the UN Security Council: A Sketch of Deregulation?' (2002) 13 *European Journal of International Law* 221
- Baehr, P. R. Castermans-Holleman, M. C. and Grünfeld, F. 'Human Rights in the Foreign Policy of the Netherlands' (2002) 24 *Human Rights Quarterly* 992.
- Bajpai, K. 'An Expression of Threats Versus Capabilities across Time and Space' (2004) 35 *Security Dialogue* 360
- Bajpai, K. 'Human Security: Concept and Measurement' (Kroc Institute Occasional Paper #19:OP:1, August 2000) [http://www.nd.edu/~krocinst/ocpapers/op\\_19\\_1.pdf](http://www.nd.edu/~krocinst/ocpapers/op_19_1.pdf) accessed 16 May 2005
- Baldwin, D. 'The Concept of Security' (1997) 23 *Review of International Studies* 26

- Baratta, R. 'Should Invalid Reservations to Human Rights Treaties be Disregarded?' (2000) 11 *European Journal of International Law* 413
- Barnes, S. H. 'The Contribution of Democracy to rebuilding Postconflict Societies' (2001) 95 *American Journal of International Law* 86
- Bartelson, J. 'The Concept of Sovereignty Revisited' (2006) 1 *European Journal of International Law* 463
- Baylis, E. A. 'General Comment 24: Confronting the Problem of Reservations to Human Rights Treaties' (1999) 17 *Berkeley Journal of International Law* 277
- Bedjaoui, M. 'The Right to Development', in Mohammed Bedjaoui (ed), *International Law: Achievements and Prospects* (Martinus Nijhoff Dordrecht 1991)
- Beetham, D. 'Democracy and human rights: contrast and convergence' (Paper delivered at Seminar on the Interdependence Between Democracy and Human Rights, Office of the High Commissioner for Human Rights, Geneva, 25 – 26 November 2002) <<http://www.unhchr.ch/democracy/D-Beetham.pdf>> accessed 28 August 2007
- Belden Fields, A. and Narr, W-D. 'Human Rights as a Holistic Concept' (1992) 14 *Human Rights Quarterly* 1
- Bellamy, A. J. 'Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq' (2005) 19 *Ethics and International Affairs* 31
- Bellamy, A. J. 'Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit' (2006) 20 *Ethics and International Affairs* 143
- Bellamy, A. J. and McDonald, M. "'The Utility of Human Security': Which Humans? What Security? A reply to Thomas and Tow' (2002) 33 *Security Dialogue* 373
- Bello, W. 'On Secretary-General Annan's Vision of "Freedom from Fear"' (2005) <<http://www.globalpolicy.org/reform/intro/0906vision.htm>> accessed 3 September 2007
- Bennoune, K. 'Sovereignty Vs Suffering'? Re-examining Sovereignty and Human Rights through the Lens of Iraq' (2002) 13 *European Journal of International Law* 241
- Benomar, J. 'Technical Cooperation in the Field of Human Rights, Past and Present, Reflections for further development' in Yael Danieli, Elsa Stamatopoulou, and Clarence J. Dias, *The Universal Declaration of Human Rights: Fifty Years and Beyond* (Baywood Publishing Company, Inc. new York 1999)
- Bernabéu, I. 'Laying the foundations of Democracy? Reconsidering Security Sector Reform under UN Auspices in Kosovo' (2007) 38 *Security Dialogue* 71

- Betts, A. and Eagleton-Pierce, M. 'Editorial Introduction' (2005) 1 *St Antony's International Review* 5
- Beutz, M. 'Functional Democracy: Responding to failures of accountability' (2003) 44 *Harvard International Law Journal* 387
- Blackwell, D. 'Renewing the United Nations System – A summary' (1995) <<http://www.globalpolicy.org/reform/intro/1995childers.htm>> accessed 3 September 2007
- Blum, Y. Z. 'Proposals for UN Security Council Reform' (2005) 99 *American Journal of International Law* 632
- Brown, M. M. 'Democratic Governance: Toward a Framework for Sustainable Peace' (2003) 9 *Global Governance* 141
- Bruderlein, C. 'People's security as a new measure of global stability' (2001) *International Review of the Red Cross* 335
- Brunne, J. and Toope, S. J. 'The Use of Force: International Law after Iraq' (2004) 53 *International and Comparative Law Quarterly* 785
- Buergenthal, T. 'The Evolving International Human Rights System' (2006) 100 *American Journal of International Law* 783
- Buergenthal, T. 'The Normative and Institutional Evolution of International Human Rights' (1997) 19 *Human Rights Quarterly* 703
- Buergenthal, T. 'To Respect and to Ensure: State obligations and permissible derogations' in Louis Henkin (ed), *The International Bill of Rights: the covenant on civil and political rights* (Columbia University Press New York 1981)
- Bunn, I.D. 'The Right to Development: Implications for International Economic Law' (2000) 15 *American University International Law Review* 1425
- Burchill, R. 'Minority Rights' in Alex Conte, Scott Davidson, and Richard Burchill (eds), *Defining Civil and Political Rights: The jurisprudence of the United Nations Human Rights Committee* (Ashgate Aldershot 2004)
- Burchill, R. 'Self-Determination' in Alex Conte, Scott Davidson, and Richard Burchill (eds), *Defining Civil and Political Rights: The jurisprudence of the United Nations Human Rights Committee* (Ashgate Aldershot 2004)
- Burchill, R. 'The Role of Democracy in the Protection of Human Rights: Lessons from the European and Inter-American Human Rights Systems' in David P. Forsythe and Patrice C. McMahon (eds), *Human Rights and Diversity: Areas Studies Revisited* (University of Nebraska Press Lincoln and London 2003)

- Burgess J. P. and Piper, R. 'Editors' Introduction to Special Section: Report of the High-Level Panel on Threats, Challenges and Change' (2005) 36 *Security Dialogue* 361
- Burgess, J. P. and Owen, T. 'Editor's Note' (2004) 35 *Security Dialogue* 345
- Buzan, B. 'A Reductionist, Idealistic Notion that Adds Little Analytical Value' (2004) 35 *Security Dialogue* 369
- Campanella, C. N. 'The United Nations' New Approach to Human Development and Poverty' (2001) 17 *New York Law School Journal of Human Rights* 951
- Cancado Trindade, A. A. 'The Consolidation of the Procedural Capacity of the Individual in the Evolution of the International Protection of Human Rights: Present State and Perspectives at the turn of the century' (1998) 30 *Columbia Human Rights Law Review* 1
- Carey, J. 'The United Nations' Double Standard on Human Rights Complaints' (1966) 60 *American Journal of International Law* 792
- Caron, D. D. 'The Legitimacy of the Collective Authority of the Security' (1993) 87 *American Journal of International Law* 552
- Carozza, P. G. 'Subsidiarity as a structural principle of international human rights law' (2003) 97 *American Journal of International Law* 38
- Cassese, A. 'The General Assembly: Historical Perspective 1945 – 1989' in Philip Alston, *The United Nations and Human Rights: A Critical Appraisal* (Clarendon Press Oxford 1992)
- Chesterman, S. 'Great Expectations: UN Reform and the Role of the Secretary-General' (2005) 36 *Security Dialogue* 375
- Chimni, B. S. 'International Institutions Today: An Imperial Gloibal State in the Making' (2004) 15 *European Journal of International Law* 1
- Chinkin, C. C. 'A "Good" or "bad" War?' (1999) 93 *American Journal of International Law* 841
- Chowdhury, S. R. and de Waart, P.J.I.M. 'Significance of the Right to Development: an introductory view' in Subrata Roy Chowdhury, Erik M.G. Denters and Paul J.I.M de Waart (eds) *The Right to Development in International Law* (Martinus Nijhoff Dordrecht 1992)

- Clerk, B. 'The Vienna Convention Reservations Regime and the Convention on Discrimination against Women' (1991) 85 *American Journal of International Law* 281.
- Cohen, J. L. 'Whose Sovereignty? Empire versus International Law' (2004) 18 *Ethics and international Affairs* 1
- Craven, M. 'The International Covenant on Economic, Social and Cultural Rights' in Raija Hanski and Markku Suski (eds) *An Introduction to the International Protection of Human Rights: A Textbook* (Åbo Institute of Human Rights Åbo 1999)
- Crawford, J. 'The Charter of the United Nations as a Constitution' in Hazel Fox (ed), *The Changing Constitution of the United Nations* (British Institute of International and Comparative Law London 1997)
- Crook, J. R. 'United States Votes Against New UN Human Rights Council' (2006) 100 *American Journal of International Law* 697
- Cryer, R. 'The Security Council and Article 39: A Threat to Coherence?' (1996) 1 *Journal of Armed Conflict Law* 161
- D'Amato, A. 'US Forces in Panama: Defenders, aggressors or human rights activists? The invasion of Panama was a lawful response to tyranny' (1990) 84 *American Journal of International Law* 516
- Day, G. and Freeman, C. 'Operationalising the Responsibility to Protect – the Policekeeping Approach' (2005) 11 *Global Governance* 139
- de Burca, G. and Gerstenberg, O. 'The Denationalisation of Constitutional Law' (2006) 47 *Harvard International Law Journal* 243
- de Wet, E. 'The International Constitutional Order' (2006) 55 *International and Comparative Law Quarterly* 51
- Donnelly, J. 'Human rights and Development: Complementary or Competing Concerns?' (1984) 36 *World Politics* 255
- Donnelly, J. 'Human Rights, Democracy and Development' (1999) 21 *Human Rights Quarterly* 608
- Donnelly, J. 'International Human Rights: A regime analysis' (1986) 40 *International Organisation* 599
- Donnelly, J. 'In Search of the Unicorn: the jurisprudence and politics of the right to development' (1985) 15 *California Western International Law Journal* 473

- Donoho, D. L. 'The Role of Human Rights in Global Security Issues' (1993) 14 *Michigan Journal of International Law* 827
- Drzewicki, K. 'Internationalisation of Human Rights and Their Jurisdiction', in Rajja Hanski and Markku Suksi (eds), *An Introduction to the Protection of Human Rights: A Textbook* (2<sup>nd</sup> rev edn Åbo Institute for Human Rights Åbo 1999)
- Dupuy, P-M. 'The Constitutional Dimension of the Charter of the United Nations Revisited' (1997) 1 *Max Planck Yearbook of United Nations Law* 1
- Evans, G. 'From Humanitarian Intervention to the Responsibility to Protect', (2006) 24 *Wisconsin International Law Journal* 703
- Evans, G. 'The Responsibility to Protect: Humanitarian Intervention in the 21<sup>st</sup> Century' (2002 Wesson Lecture in International Relations Theory and Practice) <<http://www.crisisgroup.org/home/index.cfm?id=2288&l=1>> accessed 28 August 2007
- Evans, P. 'A Concept still on the Margins, but Evolving from its Asian Roots' (2004) 35 *Security Dialogue* 363
- Falk, R. and Strauss, A. 'On the Creation of a Global Peoples Assembly: Legitimacy and the Power of Popular Sovereignty' (2000) 36 *Stanford Journal of International Law* 191
- Farer, T. J. and Gaer, F. D. 'The UN and Human Rights: At the end of the beginning' in Adam Roberts and Benedict Kinsbury (eds), *United Nations, Divided World: The UN's roles in international relations* (2<sup>nd</sup> edn OUP Oxford 1994)
- Fassbender, B. 'Quis Judicabit? The Security Council, its powers and its legal control' (2000) 11 *European Journal of International Law* 219
- Fassbender, B. 'Uncertain Steps into a Post-Cold War World: The role and functioning of the UN Security Council after a decade of measures against Iraq' (2002) 13 *European Journal of International Law* 273
- Fassbender, B. 'The United Nations Charter as Constitution of the International Community' (1998) 36 *Columbia Journal of Transnational Law* 529
- Fenwick, C. G. 'The United Nations: The Next Twenty-Five Years' (1970) 64 *American Journal of International Law* 348
- Foong Khong, Y. 'Human Security: A Shotgun approach to Alleviating Human Misery?' (2001) 7 *Global Governance* 231

- Forsythe, D. P. 'The United Nations and Human Rights, 1945 – 1985' (1985) 100 *Political Science Quarterly* 249
- Fox, G. H. 'International Law and the Entitlement to Democracy after War' (2003) 9 *Global Governance* 179
- Fox, G. H. and Roth, B. R. 'Democracy and International Law' (2001) 27 *Review of International Studies* 327
- Fox, G. H. and Nolte, G. 'Intolerant Democracies' (1995) 36 *harvard International Law Journal* 1
- Fox, H. 'International Law and Restraints on the Exercise of Jurisdiction by National Courts of States' in Malcolm D. Evans (ed), *International Law* (2<sup>nd</sup> edn OUP Oxford 2006)
- Fox, M. J. 'Girl Soldiers: Human Security and Gendered Insecurity' (2004) 35 *Security Dialogue* 465
- Franck, T. M. 'The Power of Legitimacy and the Legitimacy of Power: International Law in an Age of Power Disequilibrium' (2006) 100 *American Journal of International Law* 88
- Franck, T. M. 'Lessons of Kosovo' (1999) 93 *American Journal of International Law* 857
- Franck, T. M. 'The Emerging Right to Democratic Governance' (1992) 86 *American Journal of International Law* 46, 46
- Franck, T. M. 'Of Gnats and Camels: Is there a Double-Standard at the United Nations?' (1984) 78 *American Journal of International Law* 811
- Franck, T. M. and Rodley, N. S. 'After Bangladesh: The Law of Humanitarian Intervention by Military Force' (1973) 67 *American Journal of International Law* 275
- Gaer, F. D. 'A Voice not an Echo: Universal Periodic Review and the UN Treaty Body System' (2007) 7 *Human Rights Law Review* 109.
- Gallagher, A. 'United Nations Human Rights Field Operations' in Raija Hanski and Markku Suski (eds), *An Introduction to the International Protection of Human Rights: A Textbook* (2<sup>nd</sup> rev edn Åbo Institute for Human Rights Åbo 1999)
- Gallie, W. B. 'Essentially Contested Concepts' (1955-1956) *Proceedings of the Aristotelian Society* 167.

- Gallie, W.B. 'Art as an Essentially Contested Concept' (1956) 6 *The Philosophical Quarterly* 97
- Garfield, R. 'When Sanctions Don't Work' *The Economist* (14-18 April 2000).
- Ghanea, N. 'From the UN Commission on Human Rights to UN Human Rights Council: One step forwards or two steps sideways?' (2006) 55 *International and Comparative Law Quarterly* 695
- Ginsburg, T. 'Locking in Democracy, Constitutions, Commitment and International Law' (2006) 38 *New York University Journal of International Law and Politics* 707
- Glennon, M. J. 'Platonism, Adaptivism, and Illusion in UN Reform' (2006) 6 *Chinese Journal of International Law* 613
- Glennon, M. 'Why the Security Council Failed', (2003) 82 *Foreign Affairs* 16
- Glennon, M. J. 'The New Interventionism: The Search for a Just International Law' (May/June 1999) *Foreign Affairs* 2
- Glennon, M. J. 'Sovereignty and Community after Haiti: Rethinking the Collective Use of Force' (1995) 89 *American Journal of International Law* 70
- Goldberg, R. 'Financing Development and the Desperate Need for Debt Relief' (2001) 17 *New York Law School Journal of Human Rights* 969
- Goodman, L. W. 'Democracy, Sovereignty and Intervention' (1993) 9 *American University Journal of International Law and Policy* 27
- Goodman, R. 'Humanitarian Intervention and Pretexts for War' (2006) 100 *American Journal of International Law* 107
- Goodman, R. and Jinks, D. 'Toward an International Theory of Sovereignty' (2003) 55 *Stanford Law Review* 1749
- Goodman, R. 'Human Rights Treaties, Invalid Reservations, and State Consent' (2002) 96 *American Journal of International Law* 531
- Gould, C. C. 'Is International Law a Threat to Democracy? On the uneasy relationship between international law and democracy' (2006) 12 *ILSA Journal of International and Comparative Law* 559
- Grayson, K. 'A Challenge to the Power over Knowledge of traditional Security Studies' (2004) 35 *Security Dialogue* 357
- Griffin, M. 'The Helmet and the Hoe: Linkages between United Nations Development Assistance and Conflict Management' (2003) 9 *Global Governance* 199

- Grossman, C. and Bradlow, D.D. 'Are we being propelled towards a people-centred transnational legal order?' (1993) 9 *American University Journal of International Law and Policy* 1
- Gutter, J. 'Special Procedures and the Human Rights Council: Achievements and Challenges Ahead' (2007) 7 *Human Rights Law Review* 93
- Halperin, M. H. and Orentlicher, D. F. 'The New UN Human Rights Council' (2006) 13 *Human Rights Brief* 1
- Hamilton, R. J. 'The Responsibility to Protect: From document to doctrine – but what of implementation?' (2006) 19 *Harvard Human Rights Journal* 289.
- Hammerstad, A. 'Whose Security? UNHCR, Refugee Protection and State Security After the Cold War' (2000) 31 *Security Dialogue* 391
- Hampson, F. J. 'An Overview of the Reform of the UN Human Rights Machinery' (2007) 7 *Human Rights Law Review* 7
- Hampson, F. O. 'A Concept in Need of a Global Policy Response' (2004) 35 *Security Dialogue* 349
- Hampson, F. O. and Hay, J. B. 'Viva Vox Populi' (2004) 10 *Global Governance* 247 –
- Hannum, H. 'Reforming the Special Procedures and Mechanisms of the Commission on Human Rights' (2007) 7 *Human Rights Law Review* 71
- Hannum, H. 'Human Rights in Conflict Resolution: The Role of the Office of High Commissioner for Human Rights in UN Peacemaking and Peacebuilding' (2006) 28 *Human Rights Quarterly* 1
- Hannum, H. 'Human Rights' in Oscar Schachter and Christopher C. Joyner (eds) *United Nations Legal Order (Vol. 1)* (CUP Cambridge 1995)
- Haq, K. 'Human Security for Women' in Majid Tehranian (ed), *Worlds Apart: Human Security and Global Governance*. (I.B. Tauris Publishers London/New York 1999)
- Harris, H. 'The Politics of Depoliticalisation: International Perspectives on the Human Rights Council' (2006) 13 *Human Rights Brief* 8
- Hathaway, O.A. 'Do Human Rights treaties make a Difference?' (2002) 111 *Yale Law Journal* 1935
- Henkin, L. 'Kosovo and the Law of "Humanitarian Intervention"' (1999) 93 *American Journal of International Law* 824
- Herdegen, M. J. 'The "Constitutionalisation" of the UN Security System' (1994) 27 *Vanderbilt Journal of Transnational Law* 135

- Hicks, P. 'Correct Diagnosis, Wrong Prescription: The Human Rights Component of Security' (2005) 36 *Security Dialogue* 380
- Higgins, R. 'The United Nations: Still a force for Peace' (1989) 52 *Modern Law Review* 1
- Hoare, S. 'The Commission on Human Rights' in Evan Luard, *The International Protection of Human Rights* (Thames and Hudson London 1979)
- Hough, P. 'Who's Securing Whom? The Need for International Relations to Embrace Human Security', (2005) 1 *St Antony's International Review* 72
- Howland, T. 'UN Human Rights Field Presence as Proactive Instrument of Peace and Social Change: Lessons from Angola' (2004) 26 *Human Rights Quarterly* 1
- Hubert, D. 'An Idea that Works in Practice' (2004) 35 *Security Dialogue* 351
- Hudson, H. "'Doing" Security as though Humans Matter: A Feminist Perspective in Gender and the Politics of Human Security' (2005) 36 *Security Dialogue* 155
- Humphrey, J. P. 'The Universal Declaration of Human Rights: Its history, impact and juridical character' in Bertrand G. Ramcharan (ed), *Human Rights: Thirty years after the Universal Declaration: commemorative volume on the occasion of the thirtieth anniversary of the Universal Declaration of Human Rights* (Nijhoff The Hague 1979)
- Humphrey, J. P. 'The Right of Petition in the United Nations', (1971) 2/3 *Human Rights Journal* 463
- Humphrey, J. P. 'The United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities' (1968) 62 *American Journal of International Law* 869
- Humphrey, J. P. 'The UN Charter and the Universal Declaration of Human Rights' in Evan Luard. (ed), *the International Protection of Human Rights* (Thames and Hudson London 1967)
- Hylton, D. 'Default Breakdown: The Vienna Convention on the Law of Treaties' Inadequate Framework on Reservations' (1994) 27 *Vanderbilt Journal of Transnational Law* 419
- Imbert, P-H. 'Reservations to the European Convention on Human Rights before the Strasbourg Commission: The *Temeltasch* case' (1984) 33 *International and Comparative Legal Quarterly* 558

- Imbert, P-H. 'Reservations and Human Rights Conventions' (1981) *The Human Rights Review* 28
- International Service for Human Rights, Human Rights Monitor No. 64 2006. <[http://www.ishr.ch/hrm/hrm\\_documents/hrm\\_2006\\_complete1.pdf](http://www.ishr.ch/hrm/hrm_documents/hrm_2006_complete1.pdf)> accessed 28 August 2007
- Jackson, J. H. 'Sovereignty-Modern: A New Approach to an Outdated Concept' (2003) 97 *American Journal of International Law* 782
- Jasper, D. 'Securing Humanity: Situating "Human Security" as Concept and Discourse' (2005) 6 *Journal of Human Development* 221
- Jasper, D. and Truong, T-D. 'Deepening Development Ethics: From Economism to Human Development to Human Security' (2005) 17 *European Journal of Development Research* 372
- Jhabvala, F. 'The drafting of the Human Rights Provisions of the UN Charter' (1997) 44 *Netherlands International Law Review* 1
- Johnstone, I. 'US-UN Relations after Iraq: The end of the world (order) as we know it?' (2004) 15 *European Journal of International Law* 813
- Johnstone, I. 'Security Council Deliberations: The Power of the Better Argument' (2003) 14 *European Journal of International Law* 437
- Johnstone, R. L. 'Cynical Savings or Reasonable Reform? Reflections on a Single UNifed UN Human Rights Treaty Body' (2007) 7 *Human Rights Law Review* 173
- Jolly, R. 'UN Reform and Human Security - the need for broad perspectives' <[http://www.un-globalpolicy.org/pdf/Jolly\\_paper\\_UN\\_reform\\_efforts.pdf](http://www.un-globalpolicy.org/pdf/Jolly_paper_UN_reform_efforts.pdf)> accessed 10 November 2005
- Jonathan I. Charney, 'Anticipatory Humanitarian Intervention in Kosovo' (1999) 93 *American Journal of International Law* 834
- Jones, J. F. 'Human Security and Social development' (2004) 33 *Denver Journal of International Law and Policy* 92
- Joyner, C.C. 'The United Nations and Democracy' (1999) 5 *Global Governance* 333,
- Kahn, P. W. 'Speaking Law to Power: Popular Sovereignty, Human Rights, and the New International Order' (2000) 1 *Chicago Journal of International Law* 1

- Kaufmann, J. 'The Capacity of the United Nations Development Program: The Jackson Report' (1971) 25 *International Organisation* 938
- Kelsen, H. 'The Preamble of the Charter: A critical analysis', (1946) 8 *The Journal of Politics* 134
- Kennedy, D. 'Two sides of the same coin: Human Rights Pragmatism and Idolatry' (Keynote Address: Interdisciplinary Conference on Human Rights 24 March 2006) <[http://www.lse.ac.uk/Depts/human-rights/Documents/Crossing\\_the\\_boundaries\\_David\\_Kennedy.pdf](http://www.lse.ac.uk/Depts/human-rights/Documents/Crossing_the_boundaries_David_Kennedy.pdf)> accessed 17 July 2006
- Kennedy, D. 'The International Human Rights Movement: Part of the Problem?' (2001) 3 *European Human Rights Law Review* 245
- King, G and Murray, C. 'Rethinking Human Security' (2001) 116 *Political Science Quarterly* 585
- King, T. 'Human Rights in European Foreign Policy: Success or Failure for post-modern diplomacy?' (1999) 10 *European Journal of International Law* 313
- Kirgis Jr, F. L. 'The United Nations at Fifty: The Security Council's first fifty years' (1995) 89 *American Journal of International Law* 506.
- Klabbers, J. 'The Bustani Case before the ILOAT: Constitutionalism in Disguise?' (2004) 53 *International and Comparative Law Quarterly* 455
- Krause, K. 'Is Human security More than Just a Good Idea?' in Michael Brzoska and Peter J. Croll (eds), *Promoting Security: But How and For Whom?* (Bonn International Centre for Conversion Bonn 2004)
- Krause, K. 'The Key to a Powerful Agenda, if Properly Delimited' (2004) 35 *Security Dialogue* 367
- Kumm, M. 'The Legitimacy of International Law: A Constitutional Framework of Analysis' (2004) 15 *European Journal of International Law* 907
- Laing, E. A. 'Relevance of the Atlantic Charter for a New World Order', (1989) 29 *The Indian Journal of International Law* 298
- Landsberg, C. 'The UN High-Level Reports and Implications for Africa' (2005) 36 *Security Dialogue* 388
- Lenning, J. 'Psychological Well-being over Time' (2004) 35 *Security Dialogue* 354
- Lillich, R. B. 'The UN and Human Rights Complaints: U Thant as Strict Constructionist' (1970) 64 *American Journal of International Law* 610

- Liotta, P. H. 'A Concept in Search of Relevance' (2004) 35 *Security Dialogue* 362
- Liotta, P. H. 'Boomerang Effect: The Convergence of National and Human Security' (2002) 33 *Security Dialogue* 473
- Littlejohns, M. 'Annan Questions "Blunt Instrument" of Economic Sanctions' (18 November 2000) <<http://www.globalpolicy.org/security/sanction/gensanc/2000/1118sg.htm>> accessed 28 August 2007.
- Ljungman, C.M. 'Applying a Rights-Based Approach to Development: Concepts and Principles' (Paper presented at 'The Winners and Losers from the Rights-Based Approaches Development', University of Manchester, February 2005)
- Lord, J. E. 'The United Nations High Commissioner for Human Rights: Challenges and Opportunities' (1995) 17 *Loyola of Los Angeles International and Comparative Law Journal* 329
- Luck, E. C. 'How not to Reform the United Nations' (2005) 11 *Global Governance* 407
- MacFarlane, S. N. 'A useful Concept that Risks Losing its Political Salience' (2004) 35 *Security Dialogue* 368
- MacFarlane, S. N. 'The Pre-History of Human Security', (2005) 1 *St. Antony's International Review* 43
- MacIntyre, A. 'The Essential Contestability of Some Social Concepts' (1973) 84 *Ethics* 1
- Mack, A. 'A Signifier of Shared Values' (2004) 35 *Security Dialogue* 366
- Mack, A. 'The Concept of Human Security' in Michael Brzoska and Peter J. Croll (eds), *Promoting Security: But How and For Whom?* (Bonn International Centre for Conversion Bonn 2004)
- Maley, W. 'Twelve Theses on the Impact of Humanitarian Intervention' (2002) 33 *Security Dialogue* 265
- Maley, W. 'A More Secure World: Some Reflections' (2005) 36 *Security Dialogue* 364
- Malone, D. M. 'The High-Level Panel and the Security Council' (2005) 36 *Security Dialogue* 370
- Månsson, K. 'Integration of Human Rights in Peace Operations: Is there an Ideal Model' (2006) 13 *International Peacekeeping* 547.
- Marantis, D. J. 'Human Rights, Democracy, and Development: The European Community Model' (1994) 7 *Harvard Human Rights Journal* 1

- Marks, S. 'The Human Right to Development: Between Rhetoric and Reality' (2004) 17 *Harvard Human Rights Journal* 137
- Marks, S. 'Three Regional Human Rights Treaties and their Experience of Reservations' in J. P. Gardner (ed), *Human Rights as General Norms and a State's Right to Opt Out: Reservations and objections to human rights conventions* (British Institute of International and Comparative Law London 1997)
- Matthews, J. 'Redefining Security' (1989) 68 *Foreign Affairs* 162
- Maxwell, S. 'How to help Reform Multilateral Institutions: An eight-step program for more effective collective action' (2005) 11 *Global Governance* 415
- McBride, J. 'Reservations and the Capacity to Implement Human Rights Treaties' in J. P. Gardner (ed), *Human Rights as General Norms and a State's Right to Opt Out: Reservations and objections to human rights conventions* (British Institute of International and Comparative Law London 1997)
- McGuinness, M. E. 'Exploring the Limits of International Human Rights Law' (2006) *Georgia Journal of International and Comparative Law* 393
- McHale, C. 'The Impact of UN Human Rights Commission Reform on the Ground: Investigating extrajudicial executions of Honduran street children' (2006) 29 *Fordham International Law Journal* 812
- McIntyre, A. 'The Essential Contestability of Some Social Concepts' (1973) 84 *Ethics* 1
- McRae, R. 'Human Security in a Globalised World' in Rob McRae and Don Hubert (ed), *Human Security and the New Diplomacy: Protecting People, Promoting Peace* (McGill-Queen's University Press Montreal 2001)
- Mendes, E. 'Human Security, International Organisations and international Law: The Kosovo Crisis exposes the 'tragic flaw' in the UN Charter' (1999) <http://www.uottawa.ca/hrrec/publicat/bull38.htm> accessed 24 August 2007
- Meron, T. 'The Humanisation of Humanitarian Law' (2000) 94 *American Journal of International Law* 239
- Meron, T. 'Ideal to Law to Practice: The Universal Declaration today and tomorrow' (1999) 11 *Pace International Law Review* 89
- Meron, T. 'Enhancing the Effectiveness of the Prohibition of Discrimination Against Women', (1990) 84 *American Journal of International Law* 213
- Meron, T. 'Reform of Lawmaking in the United Nations: The Human Rights instance' (1985) 79 *American Journal of international Law* 664

- Mertus, J. 'From Legal Transplants to Transformative Justice: Human Rights and the Promise of Transnational Civil Society' (1999) 14 *American University International Law Review* 1335
- Milner, W. T. Poe, S. C. and Leblang, D. 'Security Rights, Subsistence Rights, and Liberties: A theoretical survey of the empirical landscape' (1999) 21 *Human Rights Quarterly* 403
- Möller, J. T. 'Petitioning the United Nations' (1979) 1 *Human Rights Quarterly* 57
- Moore, J. 'Collective Security with a Human Face: An International Legal Framework for Coordinated Action to Alleviate Violence and Poverty' (2004) 33 *Denver Journal of International Law and Policy* 43
- Morris, J. 'UN Security Council Reform: A Counsel for the 21<sup>st</sup> Century' (2000) 31 *Security Dialogue* 265
- Morsink, J. 'The Philosophy of the Universal Declaration' (1984) 6 *Human Rights Quarterly* 309
- Moss, L. C. 'Will the Human Rights Council have better Membership than the Commission on Human Rights?' (2006) 13 *Human Rights Brief* 5
- Muller, J. P. 'Fundamental Rights in Democracy' (1983) 4 *Human Rights Law Journal* 131.
- Murphy, R. and Månsson, K. 'Perspectives on Peace Operations and Human Rights' (2006) 13 *International Peacekeeping* 457
- Murphy, S. D. 'Democratic Legitimacy and the Recognition of States and Governments' in Gregory H. Fox and Brad R. Roth (eds), *Democratic Governance and International Law* (CUP Cambridge 2000)
- Mutua, M. 'The Ideology of Human Rights' (1996) 36 *Virginia Journal of International Law* 589
- Nanda, V. P. 'The Global Challenge of Protecting Human Rights: Promising new developments' (2006) 34 *Denver Journal of International Law and Policy* 1
- Nanda, V. P. 'Preemptive and Preventive Use of Force, Collective Security and Human Security' (2004) 33 *Denver Journal of International Law and Policy* 7
- Neuhaus, M.E. K. 'The United Nations' Security Role at Fifty: The Need for Realism' (1995) 49 *Australian Journal of International Affairs* 267
- Newman, D. 'A Human Security Council? Applying a "Human Security" Agenda to Security Council Reform' (1999/2000) 31 *Ottawa Law review* 213

- Newman, E. 'Human Security: Mainstreamed Despite the Conceptual Ambiguity?' (2005) 1 *St Antony's International Review* 24
- Newman, E. 'A Normatively Attractive but Analytically Weak Concept' (2004) 35 *Security Dialogue* 358
- Ni Aolain, F. 'The First Ten Years of the Office, and the Next: Looking Ahead: Strategic Priorities and Challenges for the United Nations High Commissioner for Human Rights' (2004) 35 *Columbia Human Rights Law Review* 469
- Niland, N. 'Human Security: Safeguarding Lives and Livelihoods, Insights from Taliban-era Afghanistan' (The Institute of Human Security, Scholar Practitioner Paper No. 3 2003) <<http://fletcher.tufts.edu/humansecurity/pdf/Niland.pdf>> accessed 5 May 2005
- Nowak, M. 'The Covenant on Civil and Political Rights' in Raija Hanski and Markku Suski (eds) *An Introduction to the International Protection of Human Rights: A Textbook* (Åbo Institute of Human Rights Åbo 1999)
- Nyamu, C. I. 'How should Human Rights and Development respond to Cultural Legitimation of Gender Hierarchy in Developing Countries?' (2000) 41 *Harvard International Law Journal* 381
- Nyamu-Musembi, C. and Cornwall, A. 'What is the 'rights-based approach' all about? Perspectives from international development agencies' (IDS Working Paper 234 2004) <<http://www.ids.ac.uk/ids/bookshop/wp/wp234.pdf>> accessed 19 July 2005
- O'Donovan, D. 'The Economic and Social Council' in Philip Alston, *The United Nations and Human Rights: A Critical Appraisal* (Clarendon Press Oxford 1992)
- O'Flaherty, M. and O'Brien, C. 'Reform of the UN Human Rights Treaty Monitoring Bodies: A Critique of the Concept Paper on the High Commissioner's Proposal for a UNified Standing Treaty Body' (2007) 7 *Human Rights Law Review* 141
- Oberleitner, G. 'Human Security: A Challenge to International Law?', (2005) 11 *Global Governance* 185
- Oberleitner, G. 'Porcupines in Love: The Intricate Convergence of Human Rights and Human Security' (2005) 6 *European Human rights Law Review* 588
- Odello, M. 'Commentary on the United Nations' High-Level Panel on Threats, Challenges and Change' (2005) 10 *Journal of Conflict and Security Law* 231
- Ogato, S. and Cels, J. 'Human Security – Protecting and Empowering People' (2003) 9 *Global Governance* 273

- Onuf, N. G. 'Professor Falk on the Quasi-Legislative Competence of the General Assembly' (1970) 64 *American Journal of International Law* 349
- Orakhelashvili, A. 'The Impact of Peremptory Norms on the Interpretation and Application of United Nations Security Council Resolutions' (2005) 16 *European Journal of International Law* 59
- Orakhelashvili, A. 'The Position of the Individual in International Law' (2001) 31 *California Western International Law Journal* 241
- Owen, IV, J. O. 'International Law and the 'liberal peace' in Gregory H. Fox and Brad R. Roth (eds), *Democratic Governance and International Law* (CUP Cambridge 2000)
- Owen, T. 'Human Security – Conflict, Critique and Consensus: Colloquium remarks and a Proposal for a Threshold-Based Definition' (2004) 35 *Security Dialogue* 373
- Owen, T. 'Human Security Mapping: A New Method for Measuring Vulnerability' (Paper presented at 4<sup>th</sup> Human Development and Capability Association Conference, Enhancing Human Security, 2004)
- Owen, T. 'A response to Edward Newman: Conspicuously Absent? Why the Secretary-General used Human Security in all but Name' (2005) 1 *St Antony's International Review* 37
- Paris, R. 'Human Security: Paradigm Shift or Hot Air?' (2001) 26 *International Security* 87
- Paris, R. 'Still an Inscrutable Concept' (2004) 35 *Security Dialogue* 370
- Paul, J. A. 'UN Reform: An analysis' (1996) <<http://globalpolicy.org/reform/analysis.htm> accessed 3 September 2007> accessed 3 September 2007
- Paul, J. C. N. 'The United Nations and the Creation of an International Law of Development' (1995) 36 *Harvard International Law Journal* 307
- Petersmann, E-U. 'Taking Human Dignity, Poverty and Empowerment of Individuals more seriously: A rejoinder to Alston' (2002) 13 *European Journal of International Law* 845
- Pitts III, J. W. and Weissbrodt, D. 'Major Developments at the UN Commission on Human Rights in 1992' (1993) 15 *Human Rights Quarterly* 122
- Pogge, T. 'Achieving democracy' (2001) 3 *Ethics and International Affairs* 25

- Quinn, J. 'The General Assembly into the 1990's' in Philip Alston, *The United Nations and Human Rights: A Critical Appraisal* (Clarendon Press Oxford 1992)
- Ramcharan, B. G. 'Contemporary Challenges of Human Rights Protection: A call for preventive strategies' (2006) 37 *Rutgers Law Journal* 495
- Raworth, K. 'Measuring Human Rights' (2001) 15 *Ethics and International Affairs* 111
- Redgwell, C. 'Reservations to Treaties and Human Rights Committee General Comment No. 24 (52)' (1997) 46 *International and Comparative Law Quarterly* 390
- Redgwell, C. 'The Law of Reservations in Respect of Multilateral Conventions' in J. P. Gardner (ed), *Human Rights as General Norms and a State's Right to Opt Out: Reservations and objections to human rights conventions* (British Institute of International and Comparative Law London 1997)
- Reed, L and Tehranian, M. 'Evolving Security Regimes' in Majid Tehranian (ed), *Worlds Apart: Human Security and Global Governance*. (I.B. Tauris Publishers London/New York 1999)
- Reisman, M. W. 'Sovereignty and Human Rights in Contemporary International Law' (1990) 84 *American Journal of International Law* 866
- Reisman, W. M. 'Expanding the Security Council: Much Ado' (2005) 36 *Security Dialogue* 373
- Reisman, W. M. 'Kosovo's Antinomies' (1999) 93 *American Journal of International Law* 860.
- Reisman, W. M. 'Sovereignty and Human Rights in Contemporary International Law' (1990) 84 *American Journal of International Law* 866
- Reisman, W. M. 'Unilateral Action and the Transformation of the World Constitutive Process: The special problem of humanitarian intervention' (2000) 11 *European Journal of International Law* 3
- Rich, R. Y. 'The Right to Development as an Emerging Human Right' (1983) 23 *Virginia Journal of International Law* 287
- Richard A. Falk, 'Kosovo, World Order, and the Future of International Law' (1999) 93 *American Journal of International Law* 847
- Roberts, A. 'The United Nations and Humanitarian Intervention', Jennifer Welsh (ed), *Humanitarian Intervention and International Relations* (OUP Oxford 2004)

- Roberts, D. 'Human Security or Human Insecurity? Moving the Debate Forward' (2006) 37 *Security Dialogue* 249
- Rodley, N. S. 'Human Rights and Humanitarian Intervention: The case law of the world court (1989) 38 *International and Comparative Law Quarterly* 321
- Rodley, N. S. 'United Nations Human Rights Treaty Bodies and Special Procedures of the Commission on Human Rights – Complementarity and Competition?' (2003) 25 *Human Rights Quarterly* 882
- Rodley, N. S. 'United Nations Non-Treaty procedures for Dealing with Human Rights Violations' in Hurst Hannum (ed), *Guide to International Human Rights Practice* (3<sup>rd</sup> edn Transnational Publishers Inc New York 1999)
- Rosas, A. and Scheinin, M. 'Categories and Beneficiaries of Human Rights' in Raija Hanski and Markku Suski (eds) *An Introduction to the International Protection of Human Rights: A Textbook* (Åbo Institute of Human Rights Åbo 1999)
- Roth, B. R. 'The Enduring Significance of State Sovereignty' (2004) 56 *Florida Law Review* 1017
- Rubin, B. R. 'Human Rights and Development: Reflections on Social Movements in India' in David P. Forsythe (ed), *Human Rights and Development: International Views* (Macmillan Basingstoke 1989)
- Rubin, B. R. 'The UN and the Prevention of Armed Conflict' (2005) 36 *Security Dialogue* 381
- Santiso, C. 'Promoting Democratic Governance and Preventing the Recurrence of Conflict: The role of the United Nations Development Programme in Post-Conflict Peace-Building' (2002) 34 *Journal of Latin American Studies* 555
- Sarooshi, D. 'The Essentially Contested Nature of the Concept of Sovereignty: Implications for the exercise by international organisations of delegated powers of government' (2004) *Michigan Journal of International Law* 1107
- Scannella, P. and Splinter, P. 'The United Nations Human Rights Council: A Promise to be Fulfilled' (2007) 7 *Human Rights Law Review* 41
- Schabas, W. A. 'Invalid Reservations to the International Covenant on Civil and Political Rights: Is the United States still a party?' (1995) 21 *Brooklyn Journal of International Law* 277
- Schelle, J. 'The High Commissioner's Achievements During the United Nations' 55<sup>th</sup> Session' (2001) 17 *New York Law School Journal of Human Rights* 905

- Schermers, H. G. 'We the Peoples of the United Nations' (1997) 1 *Max Planck Yearbook of United Nations Law* 111
- Schmidt, M. G. 'Does the United Nations Human Rights Program make a Difference?' (1997) *Proceedings of the ASIL* 462.
- Schmidt, M. G. 'Individual Human Rights Complaints Procedures based on United Nations Treaties and the Need for Reform' (1992) 41 *International and Comparative Law Quarterly* 645
- Schmidt, M. G. 'Reservations to United Nations Human Rights Treaties – the case of the two covenants' in J. P. Gardner (ed), *Human Rights as General Norms and a State's Right to Opt Out: Reservations and objections to human rights conventions* (British Institute of International and Comparative Law London 1997)
- Schmidt, M. G. 'The Office of the UN High Commissioner for Human Rights' in Raija Hanski and Markku Suski (eds) *An Introduction to the International Protection of Human Rights: A Textbook* (Åbo Institute of Human Rights Åbo 1999)
- Schorkopf, F. and Walter, C. 'Elements of Constitutionalisation: Multilevel Structures of Human Rights Protection in General International and WTO-Law' (2003) 4 *German Law Journal* 1359
- Schreuer, C. 'The Waning of the Sovereign State: Towards a New Paradigm for International Law?' (1993) 4 *European Journal of International Law* 448
- Schwartzberg, J. E. 'Entitlement Quotients as a Vehicle for United Nations Reform' (2003) 9 *Global Governance* 81
- Schwelb, E and Aston, P. 'The Principal Institutions and other Bodies Founded under the Charter' in Karel Vasak and Philip Alston (ed), *The International Dimensions of Human Rights Vol. I.* (Greenwood Press Westport Connecticut 1982)
- Simma, B. 'Reservations to Human Rights Treaties - some recent developments' in Gerhard Hafner, et al (eds) *Liber Amicorum Professor Seidl-Hohenveldern – in Honour of his 80<sup>th</sup> birthday* (Kluwer International Law: The Hague 1998)
- Simma, B. and Alston, P. 'The Sources of Human Rights Law: Custom, jus cogens and general principles' (1992) 12 *Australian Year Book of International Law* 82
- Slaughter, A-M. 'Security, Solidarity, and Sovereignty: The grand themes of UN reform' (2005) 99 *American Journal of International Law* 619
- Smith, A. M. 'From Democracy to Conflict: The UN's Search for Peace and Security' (2003) 34 *Security Dialogue* 357
- Smith, S. 'The Contested Concept of Security' (Working Paper Series No. 23, The Concept of Security before and after September 11, Institute of Defence and

Strategic Studies, May 2002)

<<http://ntu.edu.sg/idss/publications/WorkingPapers/WP23.PDF>> accessed 29 June 2006.

- Smith, S. 'The Increasing Insecurity of Security Studies: Conceptualising security in the last twenty years' (1999) 20 *Contemporary Security Policy* 72.
- Sohn, L. B. 'The United Nations at Fifty: How American International Lawyers prepared for the San Francisco Bill of Rights' (1995) 89 *American Journal of International Law* 540.
- Sohn, L.B. 'The Improvement of the UN Machinery on Human Rights' (1979) 23 *International Studies Quarterly* 186
- Sohn, L.B. 'The New International Law: Protection of the rights of individuals rather than states', (1982) 32 *American University Law Review* 1
- Ssekandi, F. M. and Johnson, P-L. 'UNDP's National Execution Modality: On the Road to Turning the Management of Development Programmes over to Programme Governments' (2000) 7 *ILSA Journal of International and Comparative Law* 39.
- Stahn, C. 'Responsibility to Protect: Political Rhetoric or Emerging Legal Norm' (2007) 101 *American Journal of International Law* 99
- Stamatopoulou, E. 'The Development of United Nations Mechanisms for the Protection and Promotion of Human Rights' (1998) 55 *Washington and Lee Law Review* 687
- Stamatopoulou, E. 'The Importance of the Universal Declaration of Human Rights in the Past and Future of the United Nation's Human Rights Efforts' (1999) 5 *ILSA Journal of International and Comparative Law* 281
- Stein, E. 'International Integration and Democracy: No love first sight' (2001) 95 *American Journal of International Law* 489
- Steiner, H. J. 'International Protection of Human Rights' in Malcolm D. Evans (ed), *International Law* (2nd edn OUP Oxford 2006)
- Stone, C. D. 'Common but Differentiated Responsibilities in International Law' (2004) 98 *American Journal of International Law* 276
- Suhrke, A. 'A Stalled Initiative' (2004) 35 *Security Dialogue* 365
- Swaine, E. T. 'Reserving' (2006) 31 *Yale Journal of International Law* 307
- Swanton, C. 'On the "Essential Contestedness" of Political Concepts' (1985) 95 *Ethics* 811.

- Tan, S-T. 'Human Security and the Development-Security Nexus: Learning from Southeast Asia's experience with Comprehensive Security' <[http://un-globalsecurity.org/pdf/Tan\\_paper\\_hum\\_security.pdf](http://un-globalsecurity.org/pdf/Tan_paper_hum_security.pdf)> accessed 10 November 2005.
- Tanguy, J. 'Redefining Sovereignty and Intervention', (2003) 17 *Ethics and International Affairs* 141
- Tay, S. S. C. 'A More Insecure World: Conflicting Perspectives for Asia' (2005) 36 *Security Dialogue* 392
- Thakur, R. 'A Shared Responsibility for a More Secure World' (2005) 11 *Global Governance* 281
- Thakur, R. 'A Political Worldview' (2004) 35 *Security Dialogue* 347
- Thakur, R. 'Intervention, Sovereignty and the responsibility to Protect: Experiences from ICISS' (2002) 33 *Security Dialogue* 33
- Thio, L-A. 'Developing a "Peace and Security" Approach towards Minorities Problems' (2003) 52 *International and Comparative Law Quarterly* 115
- Thomas, C. 'A Bridge Between the Interconnected Challenges Confronting the World' (2004) 35 *Security Dialogue* 353
- Thomas, C. 'Global Governance, Development and Human Security: Exploring the links' (2001) 22 *Third World Quarterly* 159
- Thomas, N. and Tow, W. 'The Utility of Human Security: Sovereignty and Humanitarian Intervention' (2002) 33 *Security Dialogue* 177
- Tierny, S. 'Reframing Sovereignty? Sub-state national societies and contemporary challenges to the nation-state' (2005) 54 *International and Comparative Law Quarterly* 161
- Tillson, J. 'Reservations and the Future of Inter-American Justice' (2006) 6 *Journal of International and Comparative Law* 82
- Tolley, Jr. H. 'The Concealed Crack in the Citadel: The United Nations Commission on Human Rights' response to Confidential Communications' (1984) 6 *Human Rights Quarterly* 420
- Tolley, Jr. H. 'Decision-Making at the United Nations Commission on Human Rights, 1979 – 85' (1983) 5 *Human Rights Quarterly* 27
- Tomuschat, C. 'Obligations arising for states without or against their will' (1993) *Receuil des Cours Académie de Droit International* 241: 195.

- Ullman, R.. 'Redefining Security' (1983) 8 *International Security* 129
- Upton, H. 'The Human Rights Council: First Impressions and Future Challenges' (2007) 7 *Human Rights Law Review* 29
- Uvin, P. 'A Field of Overlaps and Interactions' (2004) 35 *Security Dialogue* 352
- Vale, P. 'Challenges of Law and Development: Engaging the World's Marginalised and Promoting Global Change: Challenges for the United Nations at fifty' (1995) 36 *Harvard International Law Journal* 283
- van Boven, T. 'Human Rights and Development: The UN Experience' in David P. Forsythe (ed), *Human Rights and Development: International Views* (Macmillan Basingstoke 1989)
- van Boven, T. 'Distinguishing Criteria of Human Rights' in Karel Vasak and Philip Alston (ed), *The International Dimensions of Human Rights Vol. I.* (Greenwood Press Westport Connecticut 1982)
- van Boven, T. 'Survey of International Law of Human Rights' in Karel Vasak and Philip Alston (eds), *The International Dimensions of Human Rights (Vol. 1)* (Greenwood Press Westport Connecticut 1982)
- von Bogdandy, A. 'Constitutionalism in International Law: Comment on a Proposal from Germany' (2006) 47 *Harvard International Law Journal* 223
- Wallace, C. D. 'United Nations Development Programme' in Max Plank Institute for Comparative Public Law and International Law, *Encyclopedia of Public International Law* (North-Holland Amsterdam/New York/Oxford/Tokyo 1987)
- Walter, C. 'Constitutionalising (Inter)national Governance – Possibilities for and limits to the development of an international constitutional law' (2001) 44 *German Yearbook of International Law* 170
- Wedgwood, R. 'NATO's Campaign in Yugoslavia' (1999) 93 *American Journal of International Law* 828
- Weiss, T. G. 'An Unchanged Security Council: The Sky Ain't Falling' (2005) 36 *Security Dialogue* 367

- Weiss, T. G. 'The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era' (2004) 35 *Security Dialogue* 135
- Weiss, T. G. and Young, K. 'Compromise and Credibility: Security Council Reform?' (2005) 36 *Security Dialogue* 131
- Weissbrodt, D. and Bartolomei, M-L. 'The Effectiveness of International Human Rights Pressures: The Case of Argentina, 1976 – 1983' (1991) 75 *Minnesota Law Review* 1009
- Weissbrodt, D. 'The Three 'Theme' Special Rapporteurs of the UN Commission on Human Rights' (1986) 80 *American Journal of International Law* 685
- Weissman, D. M. 'The Human Rights Dilemma: Rethinking the Humanitarian Project' (2004) 35 *Columbia Human Rights Law Review* 259
- Whitman, J. 'Humanitarian Intervention in an Era of Pre-emptive self-defence' (2005) 35 *Security Dialogue* 259
- Williams, P. D. and Bellamy, A. J. 'The Responsibility to Protect and the Crisis in Darfur' (2005) 36 *Security Dialogue* 27
- Wills, S. 'Military Interventions on Behalf of Vulnerable Populations: The Legal Responsibilities of States and International Organisations engaged in Peace support Operations' (2004) 9 *Journal of Conflict and Security Law* 387
- Wilson, R. R. 'The united Nations as symbol and as Instrument' (1970) 64 *American Journal of International law* 139
- Winkelmann, I. 'Bringing the Security Council into a new Era: Recent Developments in the Discussion on the reform of the Security Council' (1997) 1 *Max Plank Yearbook of United Nations Law* 35
- Winslow, D. and Eriksen, T. H. 'A Broad Concept that Encourages Interdisciplinary Thinking' (2004) 35 *Security Dialogue* 361

## REPORTS AND UNITED NATIONS DOCUMENTS

- Amnesty International, 'Guatemala: Human Rights Violations and Impunity' <<http://web.amnesty.org/library/Index/ENGAMR340081997?open&of=ENG-2M2>> accessed 19 June 2007.
- Amnesty International, *Report 2006* <<http://web.amnesty.org/report2006/index-eng>> accessed 16 August 2006.

Brookings Institution, 'The Policy Implications of the Commission on Human Security's Report' (Brookings Institution Washington 2003) <<http://www.brookings.edu/comm/events/20030612.htm>> accessed 4 September 2007.

Carter, S. and Mucha, L. (eds), 'Report of the FCO-UNA National Engagement on UN Reform, 'In Larger Freedom in the UK: An Agenda for Action following the 2005 World Summit' (United Nations Association of Great Britain and Northern Ireland, London, 2005)

Commission on Global Governance, *Our Global Neighbourhood* (OUP Oxford 1995).

Commission on Human Rights, 'Effective Functioning of Bodies established pursuant to United Nations human rights instruments, final report on enhancing the long-term effectiveness of the United Nations human rights treaty system', (Philip Alston) (27 March 1997) E/CN.4/1997/74

Commission on Human Rights, 'Terms of Reference for Fact-Finding Missions by Special Rapporteurs/Representatives of the Commission on Human Rights' (20 November 1997) UN Doc E/CN.4/1998/45;

Commission on Human Security, *Human Security Now* (United Nations Publications New York 2003)

Committee on Africa, the War, and Peace Aims. *The Atlantic Charter and Africa from an American Standpoint* (Committee on Africa, the War and Peace Aims New York 1942).

Department of Foreign Affairs and International Trade (DFAIT), *Freedom from Fear: Canada's foreign policy for human security* (Department of Foreign Affairs and International Trade Ottawa 2002)

Department of Foreign Affairs and International Trade (DFAIT), *Human Security: Safety for People in a Changing World* (Department of Foreign Affairs and International Trade Ottawa 1999)

Department of Peacekeeping Operations (UN), 'Handbook on United Nations Multidimensional Peacekeeping Operations' December 2003

Department of Peacekeeping Operations, 'Handbook on United Nations Multidimensional Peacekeeping Operations' (United Nations Geneva 2003)

Deputy SG, 'Deputy Secretary-General Addresses Panel on Human Security marking Twentieth Anniversary of Vienna International Centre' (12 October 1999) Press Release

DSG/SM/70

<http://www.un.org/News/Press/docs/1999/19991012.dsgsm70.doc.html>

accessed 15 June 2004.

Economic and Social Council of the UN, 'Effective functioning of human rights mechanisms treaty bodies, note by the Office of the United Nations High Commissioner for Human Rights', (26 February 2003) E/CN.4/2003/126

Economic and Social Council of the UN, 'The Adverse Consequences of Economic Sanctions on the Enjoyment of Human Rights' (Working Paper prepared by Marc Bossuyt) (June 2000) E/CN.4/Sub.2/2000/33.

General Assembly of the UN, 'Report of the Panel on United Nations Peace Operations' (21 August 2000) A/55/305-S/2000/809

General Assembly of the UN, 'Vienna Declaration and Programme of Action' (12 July 1993) UN Doc A/CONF.157/23

General Assembly of the UN, *Report of the Secretary-General on the Work of the Organisation* (United Nations New York 2000)

High Commissioner for Human Rights (UN), 'Bridging the Gap between Human Rights and Development: From normative principles to operational relevance' (Presidential Address to the World Bank, 3 December 2001) <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/2DA59CD3FFC033DCC1256B1A0033F7C3?opendocument> accessed 11 August 2006.

High-Level Panel on Threats, Challenges and Change (HLP), *A More Secure World: Our shared responsibility* (United Nations New York 2004)

Human Rights Council (UN), 'Report to the General Assembly on the Fifth Session of the Human Rights Council' (Draft, 18 June 2007) UN Doc A/HRC/5/L.11

Human Rights Watch, *World Report 2005*. <http://hrw.org/wr2k5/wr2005.pdf> accessed 16 August 2006.

Human Security Centre, *Human Security Report 2005: War and Peace in the 21st century* (OUP Oxford 2005)

- Independent Commission on International Development Issues, *Common Crisis: North-South: Co-operation for world survival* (MIT Press Massachusetts 1983).
- Independent Commission on Disarmament and Security, *Common Security: A Programme for Disarmament* (Pan London 1982)
- Independent Commission on International Development Issues, *North-South: A programme for survival* (Pan Books London and Sydney 1981)
- Inter-Agency Standing Committee, 'Human Rights Guidance Note for Humanitarian Coordinators' <<http://www.ohchr.org/english/countries/field/docs/HRguidance-coordinators.pdf>> accessed 11 August 2006
- Inter-Agency Workshop on Implementing a Human Rights-Based Approach to Development, 'Report of the Second Interagency Workshop on Implementing a Human Rights-Based Approach to Development' (2003) <<http://www.undp.org/governance/cdromhr/homepage.html>> accessed 11 August 2006
- International Commission of Jurists, 'Reforming the Human Rights System: A Chance for the United Nations to Fulfil its Promise' (June 2005) <<http://www.icj.org/IMG/pdf/ICJUNreform05.pdf>> accessed 28 August 2007
- International Commission of Jurists, 'Establishing a Complaint Procedure in the Human Rights Council - Moving beyond the '1503 procedure' (November 2006) <[http://www.icj.org/IMG/complaint\\_final\\_paper.pdf](http://www.icj.org/IMG/complaint_final_paper.pdf)> accessed 3 June 2007
- International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (International Development Research Centre Ottawa 2001).
- International Institute for Democracy and Electoral Assistance, 'Reconciliation Lessons Learned from United Nations Peacekeeping Missions – Case Studies – Sierra Leona and Timor L'Este' (Report prepared by the International IDEA for the Office of the High Commissioner for Human Rights (OHCHR), Annual Head of Field Presences (HOFP) Meeting, Geneva, November 2004) 21 <[http://www.idea.int/conflict/sr/upload/policypaperReconciliation\\_ETimor\\_Sierra\\_Leone.pdf](http://www.idea.int/conflict/sr/upload/policypaperReconciliation_ETimor_Sierra_Leone.pdf)> accessed 29 July 2007
- International Law Commission, 'Report of the International Law Commission on the Work of its 58<sup>th</sup> Session (1 May - 9 June and 3 July - 11 August 2006) UN Doc A/61/10

International Law Commission, 'Report on the Draft Articles of the Vienna Convention on the Law of Treaties with commentaries 1966' <[http://untreaty.un.org/ilc/texts/instruments/english/commentaries/1\\_1\\_1966.pdf](http://untreaty.un.org/ilc/texts/instruments/english/commentaries/1_1_1966.pdf)> accessed 28 August 2007

International Service for Human Rights and Friedrich Ebert Stiftung, 'A New Chapter for Human Rights: A Handbook on issues of transition from the Commission on Human Rights to the Human Rights Council' (2006) <[http://www.crin.org/docs/ISHR\\_HRC\\_Handbook.pdf](http://www.crin.org/docs/ISHR_HRC_Handbook.pdf)> accessed 28 August 2007

International Service for Human Rights, Human Rights Monitor No. 64/2006, <[http://www.ishr.ch/hrm/hrm\\_documents/hrm\\_2006\\_complete1.pdf](http://www.ishr.ch/hrm/hrm_documents/hrm_2006_complete1.pdf)> accessed 28 August 2007

Jolly, R. and Ray, B. 'The Human Security Framework and National Human Development Reports' (National Human development Report Series NHDR Occasional Paper 5 2006) <[http://hdr.undp.org/docs/Human\\_Security\\_GN.pdf](http://hdr.undp.org/docs/Human_Security_GN.pdf)> accessed 4 September 2007

Luck, E. C. *Reforming the United Nations: Lessons from a History in Progress* (International relations Studies and the United Nations Occasional Papers 2003)

Maastricht Guidelines, 'Maastricht Guidelines on Violations of Economic, Social and Cultural Rights' (22 – 26 January 1999) <<http://www1.umn.edu/humanrts/instate/Maastrichtguidelines.html>> accessed 28 August 2007

Memorandum of Understanding between the Office of the High Commissioner for Human Rights and the Department of Peace-Keeping Operations (5 November 1999) [http://www.unhchr.ch/html/menu2/4/mou\\_dpko.htm](http://www.unhchr.ch/html/menu2/4/mou_dpko.htm) accessed 12 July 2007

Millennium Project (UN), *Investing in Development* (United Nations New York 2005) Nations Millennium Declaration' (Report of the Secretary-General) (6 September 2001) UN Doc A/56/326.

Office of High Commissioner for Human Rights, 'Annual Report 2005' <<http://www.ohchr.org/english/about/docs/annualreport2005.pdf>> accessed 3 September 2007

Office of the High Commissioner for Human Rights, 'High Commissioner's Strategic Management Plan 2006 – 7' <<http://www.ohchr.org/english/about/docs/strategic.pdf>> accessed 3 September 2007

Office of the High Commissioner for Human Rights, 'Manual of the United Nations Human Rights Special Procedures' (Draft June 2006) <[http://www.ohchr.org/english/bodies/chr/special/docs/Manual\\_English.pdf](http://www.ohchr.org/english/bodies/chr/special/docs/Manual_English.pdf)> accessed 28 August 2007

Office of the High Commissioner for Human Rights, *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation* (United Nations Geneva 2006)

Office of the High Commissioner for Human Rights, 'Report of the United Nations High Commissioner for Human Rights, 'The Right to Development' (16 December 2005) E/CN.4/2006/24

Office of the High Commissioner for Human Rights, *Human Rights and Poverty Reduction: A Conceptual Framework* (United Nations Geneva 2004)

Office of the United Nations High Commissioner for Human Rights, 'Note on Effective Functioning of Human Rights Mechanisms' (26 February 2003) E/CN.4/2003/126

Office of the United Nations High Commissioner for Human Rights, 'Human Rights: A Compilation of International Instruments Volume 1 (First Part) Universal Instruments', (New York and Geneva: United Nations, 2002) ST/HR/1/Rev.6 (Vol.I/Part 1)

Office of the High Commissioner for Human Rights, 'The Human Rights Impact of Economic Sanctions on Iraq' (5 September 2000) <<http://www.casi.org.uk/info/undocs/sanct31.pdf>> accessed 28 August 2007

Prove, P. N. 'Re-commissioning the Commission on Human Rights: UN Reform and the UN Human Rights Architecture' <[http://www.lutheranworld.org/What\\_We\\_Do/Olahr/issues\\_Events/UN\\_Reform-Human\\_Rights.pdf](http://www.lutheranworld.org/What_We_Do/Olahr/issues_Events/UN_Reform-Human_Rights.pdf)> accessed 12 June 2007.

Report of the inter-sessional open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights,

'Rationalisation of the Work of the Commission' (16 February 2000) UN Doc E/CN.4/2000/112

Rights and Democracy, 'Backgrounder on the Reform of the UN Commission on Human Rights' (International Centre for Human Rights and Democratic Development 2005) <<http://www.dd-rd.ca/site/PDF/publications/intHRadvocacy/UNHCRreform.pdf>> accessed 28 August 2007

Secretary-General of the UN, *In Larger Freedom: Towards development, security, and human rights for all* (UN Dept of Public Information New York 2005)

Secretary-General of the UN, 'Human Rights Council: Explanatory Note by the Secretary-General' in UN Secretary-General, *In Larger Freedom: Towards Security, Development and Human Rights for All* (UN Dept of Public Information New York 2005), Appendix 1

Secretary-General of the UN, 'Strengthening the Role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratisation' (14 October 2005) UN Doc. A/60/431

Secretary-General of the UN, 'The Secretary-General Statement to the General Assembly' (Speech delivered to the UN General Assembly, New York, 21 March 2005) <<http://www.un.org/webcast/ga/58/statements/sg2eng030923>> accessed 26 February 2006.

Secretary-General of the UN, 'Towards a Culture of Peace' <<http://www.unesco.org/opi2/lettres/TextAnglais/AnnanE.html>> accessed 11 October 2005

Secretary-General of the UN, 'Secretary-General salutes International Workshop on Human Security in Mongolia' (Two Day Session in Ulaanbaatar, 8-10 May 2002) (8 May 2002) Press Release SG/SM/7382

Secretary-General of the UN, 'Secretary-General Statement to the General Assembly on the presentation of the Millennium Report' (Speech delivered to the UN General Assembly, New York, 3 April 2000) <<http://www.un.org/millennium/sg/report/state.htm>> accessed 22 July 2004

Secretary-General of the UN, *We the Peoples: The Role of the United Nations in the 21<sup>st</sup> Century* (UN Department of Public Information United Nations 2000)

Secretary-General of the UN, 'Support by the United Nations system of the efforts of Governments to promote and consolidate new or restored democracies' (21 October 1997) A/52/513

Secretary-General of the UN, 'Support by the United Nations system of the efforts of Governments to promote and consolidate new or restored democracies' (18 October 1996) A/RES/51/512

Secretary-General of the UN, 'Support by the United Nations system of the efforts of Governments to promote and consolidate new or restored democracies' (7 August 1995) A/50/332 and Corr.1

Secretary-General of the UN, 'Renewing the United Nations: A Programme for Reform' (14 July 1994) UN Doc. A/51/950

Secretary-General of the UN, 'An Agenda for Development' (6 May 1994) UN DOC A/48/938

Secretary-General of the UN, 'An Agenda for Peace: Preventive diplomacy, peacemaking and peacekeeping' (17 June 1992) UN DOC A/47/277-S/2411

Stockholm Initiative on Global Security and Governance, *Common Responsibility in the 1990's* (Prime Minister's Office Stockholm 1991)

Independent International Commission on Kosovo, *The Kosovo Report: Conflict, international response, lessons learned* (OUP Oxford 2000)

UNCIO, Documents of the United Nations Conference on International Organisation, San Francisco, 1945 (United Nations Information Organisations London and New York 1945)

UNDP, *2006 Annual Report* (The UN's global development network) <[http://www.undp.org/publications/annualreport2006/un\\_global\\_dev\\_network.shtml](http://www.undp.org/publications/annualreport2006/un_global_dev_network.shtml)> accessed 30 November 2006

UNDP, 'Human Rights in UNDP' (Practice Note 2005) 4 <[http://www.undp.org/governance/docs/HRPN\\_English.pdf](http://www.undp.org/governance/docs/HRPN_English.pdf)> accessed 11 August 2006.

UNDP, 'Integrating Human Rights with Sustainable Human Development' (1998) <<http://magnet.undp.org/Docs/policy5.html>> accessed 11 August 2006.

UNDP, *Human Development Report 1990* (OUP Oxford 1990)

UNDP, *Human Development Report 1994* (OUP Oxford 1994)

UNDP, *Human Development Report 1995* (OUP Oxford 1995)

UNDP, *Human Development Report 2000* (OUP Oxford 2000)

UN Educational, Scientific and Cultural Organisation (UNESCO), 'What Agenda for Human Security in the Twenty-first Century?' (First International Meeting of Directors of Peace Research and Training Institutions) (UNESCO Paris 2000)

UNESCO, *What Kind of Security?* (UNESCO Paris 1998)

High Commissioner for Human Rights (UN), 'The OHCHR Plan of Action: Protection and Empowerment' (United Nations Geneva May 2005)  
<<http://www.ohchr.org/english/planaction.pdf>> accessed 16 July 2007

United Nations Philippines, 'Rights-Based Approach to Development Programming: Training Manual' (2002)  
<[http://www.crin.org/docs/resources/publications/hrbap/RBAmanuel\\_UN\\_Philippines.pdf](http://www.crin.org/docs/resources/publications/hrbap/RBAmanuel_UN_Philippines.pdf)> accessed 11 August 2006.

US Institute of Peace, 'American Interests and UN Reform' (Report of the Task Force on the United Nations, 2005) (United States Institute of Peace Washington 2005)

## **INTERNET SOURCES**

<http://www.africanreview.org> African Human Security Initiative

<http://www.globalpolicy.org/msummit/millenni/undocindex.htm> Global Policy Forum

<http://www.humansecurity.gc.ca> Canada's Human Security Website

<http://www.humansecurity-chs.org> Commission on Human Security

<http://www.humansecuritynetwork.org> Human Security Network

<http://www.humansecurityreport.info/> Human Security Report Project

<http://www.ir.jo/human> Regional Human Security Centre

<http://www.unmillenniumproject.org/> UN Millennium Project

<http://www.unhchr.ch/html/hchr.htm> Office of the High Commissioner for Human Rights