



# Human Security and International Law: The Challenge of Non-State Actors

Cedric Ryngaert and  
Math Noortmann (eds.)

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# HUMAN SECURITY AND INTERNATIONAL LAW

## HUMAN SECURITY AND INTERNATIONAL LAW

### The Impact of Non-State Actors

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## PREFACE

Three sources have contributed to this edited volume on human security. The first was a research seminar held at Oxford Brookes University in 2011. The second source has been our activity as Co-Rapporteur and Chair of the International Law Association Committee on Non-State Actors. The third, a generous grant from the Flemish Scientific Research Fund. This grant enabled us to call for focused papers, to convene a worldwide group of international lawyers with a humanitarian/human security focus in their work, and to produce this book (one of three publications).

Seven of the papers presented were selected for this edited volume. They represent a broad range of subject matters that international legal scholars encounter in addressing the problematic inter-relationship between humanitarian law, human rights and human security; issues that revolve around the well-being of the individual human being.

This publication benefited from the comments made by other participants in the seminar, including: Noemi Gal-or, Samentha Goethals, Hans Jochen Heintze, Heike Montag, and David Sanderson. Jan Wouters and Tom Scheirs made this publication possible by accepting it into Intersentia's series on International Law. Finally, we would like to thank the two anonymous reviewers for their constructive and supportive comments, and Robin Morris for his invaluable assistance with editing, checking and cross-referencing our work.

Cedric Ryngaert and Math Noortmann  
Leuven and Oxford, September 2013

## LIST OF ABBREVIATIONS

ATCA	Alien Tort Claims Act
AI	Amnesty International
AOG	armed opposition group
ATT	Arms Trade Treaty
APF	Asia-Pacific Forum of National Human Rights Institutions
AHRC	Australian Human Rights Commission
BAPSC	British Association of Private Security Companies
BBC	British Broadcasting Company
CSCE	Commission on Security and Cooperation in Europe
CRC	Convention on the Rights of the Child
CPO	Croatian People's Ombudsman
SAAC	Defense Small Arms Advisory Council
DRMU	Disaster Relief Monitoring Unit
ECOWAS	Economic Community of West African States
EU	European Union
GATT	General Agreement on Tariffs and Trade
HRW	Human Rights Watch
HRBAP	Human Rights-Based Approach to Programming
ICHS	Independent Commission on Human Security
IASC	Inter-Agency Standing Committee
IDP	internally displaced person
IANSA	International Action Network on Small Arms
ICoC	International Code of Conduct for Private Security Service Providers 2010
ICRC	International Committee of the Red Cross
ICC	International Criminal Court
ICC NHRI	International Coordinating Committee of National Human Rights Institutions
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
ICG	International Crisis Group
IGO	international governmental organisations
ILC	International Law Commission
INGO	international non-governmental organisations
ISOA	International Stability Operations Association

LDC	least developing country
LTTE	Liberation Tigers of Tamil Eelan
LRA	Lord's Resistance Army
SUHAKAM	Malaysian National Human Rights Commission
MNC	multinational corporation
NHRI	national human rights institution
NLM	National Liberation Movement
NRA	National Rifle Association
NGO	non-governmental organisation
NSA	non-State actor
PGA	Parliamentarians for Global Action
PMSC	private military and security company
PSCAI	Private Security Companies Association of Iraq
R2P	responsibility to protect
SALW	small arms and light weapons
SLHRC	Sri Lanka Human Rights Commission
TCO	terrorist and criminal organisation
TNE	transnational enterprise
UN	United Nations
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNSC	United Nations Security Council
US	United States
UDHR	Universal Declaration of Human Rights
WTO	World Trade Organisation

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# HUMAN SECURITY AND INTERNATIONAL LAW: THE CHALLENGE OF NON-STATE ACTORS

Cedric RYNGAERT\* and Math NOORTMANN\*\*

In 1994, the United Nations Development Programme (UNDP) coined the term ‘human security’ in the seminal UNDP Human Development Report. This report approached ‘security’ for the first time from a holistic perspective. ‘Security’ would no longer be viewed from a purely military perspective, but would combine economic, food, health, environmental, personal, community and political security.<sup>1</sup> The concept has impacted on international policy and governance in a variety of ways – the transformation of peacekeeping from a military to a multi-dimensional endeavour along with the establishment of various ‘human security’ institutions as probably the most conspicuous examples.<sup>2</sup> Human security features prominently, as a separate section, in paragraph 143 of the 2005 World Summit Outcome Document (WSOD), which provides that ‘all individuals, in particular vulnerable people, are entitled to freedom from fear and freedom from want, with an equal opportunity to enjoy all their rights and fully develop their human potential.’ The same paragraph commits world leaders ‘to discussing and defining the notion of human security in the [UN] General Assembly.’

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<sup>1</sup> UNDP, Human Development Report: New Dimensions of Human Security (1994), pp. 24–25.

<sup>2</sup> See for the former: W. Benedek, M. Kettemann and M. Mostl (eds.), *Mainstreaming Human Security in Peace Operations and Crisis Management* (Oxford: Routledge, 2011); M. Kettemann, ‘The Conceptual Debate on Human Security and its Relevance for the Development of International Law, 1(3) Human Security Perspectives 39 (2006). See for the latter, e.g., the Human Security Network, an association of foreign ministers from 13 countries, which has set itself the task of promoting the concept of human security as a feature of all national and international policies, available at <[www.austria.org/humansecurity-network](http://www.austria.org/humansecurity-network)> (accessed 24 August 2013); the Civil Society Human Security Network (a global collaborative civil society platform) <[www.humansecuritynetwork.net/](http://www.humansecuritynetwork.net/)> (accessed 24 August 2013); and the Program on Humanitarian Policy and Conflict Research, an international research and policy program based at the Harvard School of Public Health, which offers a multidisciplinary approach to new challenges in the field of humanitarian affairs.

By 2011, as Mary Martin and Taylor Owen wrote, ‘the term ‘human security’ ha[d] all but vanished from the reports of the UN Secretary General and high-level panels and from branch organization use.’<sup>3</sup> As if wanting to defy the opinion that the concept had fallen into disuse, however, the UN General Assembly (UNGA) decided that very same year to ‘request the Secretary-General to seek the views of the Member States on the notion of human security, including on a possible definition thereof, and submit a report to the General Assembly at its sixty-sixth session.’<sup>4</sup> In 2012, the UNGA discussed the Report of the Secretary-General<sup>5</sup> in a set of plenary meetings<sup>6</sup> and adopted Resolution 66/290 (2012), entitled ‘Follow up to paragraph 143 on human security of the 2005 World Summit Outcome’. In this Resolution, the UNGA confirmed human security as ‘an approach to assist Member States in identifying and addressing widespread and cross-cutting challenges to the survival, livelihood and dignity of their people’, and decided to continue its discussion on human security. In light of the recent engagement of the UNGA with the concept of human security, it appears that, at least for the foreseeable future, human security will continue to be a concept used by international policy-makers.

Allow us to be clear from the outset – it is not the aim of this collection to offer the reader a historic overview of the genealogy of the concept of human security, nor to take stock of human security-based initiatives. Others have done so before, and rather well.<sup>7</sup> Instead, this collection problematises the continuous centrality of the State in human security discourses, and highlights the role of *non-State actors* (NSAs) as actors that both threaten human security and rescue, or provide relief to, those whose human security is endangered. The present book concentrates specifically on how such rights and rules interact with the concept of human security. The emphasis lies on how NSAs can be made legally accountable for the threats they pose to human security.

This emphasis on NSAs indeed distinguishes our research effort from previous studies on human security, which have given pride of place to the *State*, and paid only marginal attention to NSAs. The comprehensive ‘Human Security Now’ report of the Commission on Human Security (2003), for instance, in its own words, ‘seeks to forge a global alliance to strengthen the institutional policies that link individuals and the *state* with a global world.’<sup>8</sup> This centrality

<sup>3</sup> M. Martin and T. Owen, *The Second Generation of Human Security: Lessons from the UN and EU Experience*, 86 *International Affairs* 211 (2010).

<sup>4</sup> A/Res/64/291, 107<sup>th</sup> plenary meeting (16 July 2010).

<sup>5</sup> Entitled Follow-up to the General Assembly resolution 64/291 on Human Security, (A/66/763) (5 April 2011).

<sup>6</sup> See <[www.un.org/en/ga/president/66/statements/humansecurity040612](http://www.un.org/en/ga/president/66/statements/humansecurity040612)> (accessed 21 October 2012) and GA/11274 (10 September 2012).

<sup>7</sup> See notably G. Oberleitner, *Human Security: A Challenge to International Law?*, 11 *Global Governance* 185 (2005); E. MacLean, *Human Security and International Law: The Role of the United Nations* (London: Routledge, 2012).

<sup>8</sup> *Supra* note 7, p. 4 (emphasis added).

of the State is also highlighted in the 2010 Report on Human Security by the UN Secretary-General,<sup>9</sup> which has it that, among the institutions advancing human security, '[g]overnments retain the primary role in providing a rules-based system where societal relations are mutually supportive, harmonious and accountable.'<sup>10</sup>

Accordingly, it may appear that the mainstream human security discourse has considered the role that NSAs could play in promoting – or threatening – human security only in passing. In considering the State as the central actor in providing human security, these discourses are in fact not much different from classic international relations and international law discourses. This is surprising, as the human security discourse puts the human being front and centre in the international discourse on security.<sup>11</sup> As King and Murray have pointed out, 'the idea of human security is to improve the lives of people rather than improve the security of national borders and key issues cross these borders.'<sup>12</sup> Hence, it would make sense for actors crossing national borders to cooperate (with governments) to achieve human security, such as international organisations, transnational civil society groups, multinational corporations, and possibly transnational armed groups. This step-motherly treatment of NSAs was identified as early as 2000 by Claude Bruderlein, who, in a paper that focused mainly on non-State armed groups, wrote that NSAs 'are particularly well suited to engendering human security in the new world context. Indeed, in failed States, they are the only actors who are present to do so'.<sup>13</sup>

If one reads the 2003 'Human Security Now' report in more detail, it transpires, however, that the Commission on Human Security has not entirely overlooked the relevance of NSAs for the human security discourse. In fact, as one of the four respects in which human security complements State security, the Commission lists the fact that 'the range of actors is expanded beyond the state alone'.<sup>14</sup> But somewhat disappointingly, the report itself, in its chapters related to the freedom from fear (the pillar of human security which is the focus of this volume), contains

<sup>9</sup> Report of the UN Secretary General on Human Security (A/64/701) (2010).

<sup>10</sup> *Supra* note 9, para. 20 (emphasis added).

<sup>11</sup> See Commission on Human Security, Human Security Now Report (2003), p. 2: 'Human security complements state security, enhances human rights and strengthens human development. It seeks to protect people against a broad range of threats to individuals and communities and, further, to empower them to act on their own behalf.'

<sup>12</sup> G. King and C. Murray, Rethinking Human Security, 116(4) Political Science Quarterly 585, 607 (Winter, 2001–2002).

<sup>13</sup> C. Bruderlein, The role of non-state actors in building human security: The case of armed groups in intra-state wars, in: Human Security Network (2000), p. 2.

<sup>14</sup> Commission on Human Security, *supra* note 11, box 1.2. In so doing, the Commission does not merely describe the 'human' dimension of security – as it has already done so earlier on (the first identified characteristic is human security's 'concern is the individual and the community' – but appears to refer to the role of non-State actors in guaranteeing human security.

only few references to NSAs, such as: international organisations;<sup>15</sup> ‘partnerships’ that should be established with a view to assisting post-conflict recovery between various actors including multilateral organisations; non-governmental agencies and businesses;<sup>16</sup> and armed opposition groups (AOGs).<sup>17</sup>

This volume aims to fill this gap in human security studies and to map the exact role of NSAs in realising or undermining human security in conflict and post-conflict situations. It does so from a specific perspective: a *legal* one. So far the concept of human security was mainly the domain of scholars of security studies, and only recently have some international lawyers discovered it as a concept that might be relevant to their own discipline.<sup>18</sup> The interface between human security and the law is not that far-fetched, in fact. The 2003 Report on Human Security contains a substantial number of references to international law, and international human rights law in particular. International law is mainly conceived of as an *instrument to realise human security*.<sup>19</sup> It is viewed as a system of norms, processes and institutions, agreed on by the international community, that contribute to the protection of human security and to the empowerment of people to fend for themselves (empowerment being one of the pillars of human security).<sup>20</sup> At the same time, international law – and international human rights law – is also viewed as the material source or the guiding principle for human security-enhancing policies.<sup>21</sup>

In the first chapter of this anthology, Math Noortmann critically engages, among other issues, with the possible conceptual confusion between human *rights* and human *security*. The human security discourse takes not only international human rights law into account, however, but also international humanitarian law (the law applicable to armed conflicts) and international criminal law, branches of international law that undeniably impose obligations on NSAs given the risks their activities pose. In addition, the law regulating the

<sup>15</sup> *Supra* note 14, p. 25 (‘Regional security organizations can also do much for human security’).

<sup>16</sup> *Supra* note 14, p. 61.

<sup>17</sup> *Supra* note 14, p. 28.

<sup>18</sup> E. MacLean, *supra* note 7.

<sup>19</sup> Commission on Human Security, *supra* note 11, pp. 10–11: ‘Human security helps identify the rights at stake in a particular situation. And human rights help answer the question: How should human security be promoted? [...] To protect people – the first key to human security – their basic rights and freedoms must be upheld. To do so requires concerted efforts to develop national and international norms, processes and institutions, which must address insecurities in ways that are systematic not makeshift, comprehensive not compartmentalized, preventive not reactive’. See also A. Edwards and C. Ferstman (eds.), *Human Security and Non-Citizens: Law, Policy and International Affairs* (Cambridge: CUP, 2010); B. Tigerstrom, *Human Security and International Law: Prospects and Problems* (London: Hart, 2007).

<sup>20</sup> Commission on Human Security, *Human Security Now Report*, 2003, p. 11 (referring to the supportive environment created by the freedom of the press, freedom of information, freedom of conscience and belief and freedom to organise, with democratic elections and policies of inclusion, all of which are guaranteed by (international) law).

<sup>21</sup> See W. Benedek, M. Kettemann and M. Mostl, *Mainstreaming Human Security in Peace Operations and Crisis Management* (Oxford: Routledge, 2011).



use of force may come into play in a human security discourse, primarily in the context of the international community's possible responsibility to protect civilians who are victims of gross human rights violations committed by their own government. Such use of force may be exercised by NSAs such as international organisations and perhaps even insurgents.

In fact, the NSA perspective may be seen as a crucial link between international law and human security. The concept of human security needs international law as a regulatory instrument to achieve its goals of providing multi-dimensional security to all human beings, and, bearing in mind that many human security threats (but also opportunities) emanate from NSAs, it challenges international law to come to terms with the NSA phenomenon. The latter is not always self-evident, as international law, like security studies, has historically been State-centred.

This volume thus seeks to enhance, to understand and to explain the role and position of NSAs in human security from a legal perspective. It also seeks to clarify the interplay between the various actors, the expanding humanitarian system and human security. In particular, it investigates the multifaceted links between the legal norms and the various stakeholders. The legal approach aims to better understand the normative complexity of human security and the vast and changing nature of humanitarian situations. This implies that specific attention is devoted to human security in conflict and post-conflict situations, as arguably, human security is most at risk as a result of the disruptions caused by (armed) conflict.<sup>22</sup> By thus limiting our research, we heed the call from the human security studies literature that 'scholars working in the "human security branch" of security studies would not need to adjudicate the merit or validity of human security *per se*, but rather they would focus on more specific questions that could be clearly defined (and perhaps even answered).'<sup>23</sup>

The approach of this volume is thematic; it does not contain 'case studies' of post-conflict situations. Every chapter studies the relationship between one or more NSAs and a subfield of international law against the broader background of human security. The following NSAs will be discussed: multinational corporations (MNCs); armed opposition groups (AOGs); private military and security companies (PMSCs); non-governmental organisations (NGOs); national human rights institutions; and arms dealers. Their activities will be related to the following subfields of international law: international human rights law; international humanitarian law; international criminal law; international arms control law; and the law regulating the use of force.

<sup>22</sup> C. Bruderlein, *supra* note 13, p. 6 ('Currently, one of the most dramatic threats to human security is internal armed conflict').

<sup>23</sup> R. Paris, Human Security: Paradigm Shift or Hot Air?, 26 *International Security* 87, 101 (2001).



It ought to be borne in mind that, in respect of these subfields, and more broadly any conflict situation, the activities of NSAs may be considered as both *endangering* and, on the contrary, *furthering* human security. For instance, by investing in low-governance zones, multinational corporations may further economic development and thus contribute to the realisation of the freedom from want, an integral part of human security. Yet, at the same time, by partnering with repressive governments committing human rights violations, they may undermine the freedom from fear, another integral part of human security. This perspective of NSAs as ‘threat’ and/or ‘rescue’ actors, and the way international law has addressed, or should address these roles, pervades the entire volume.

This volume starts out with a conceptual study of the triangular relationship between human security, international law, and NSAs. Math Noortmann offers a critique of the fragmented engagement of specific subfields of international law (human rights and humanitarian law in particular) and specific NSAs, with human security. He urges us to take the *holistic* conception of human security seriously, and to explore links between human security and *other* fields of the law, such as environmental law, investment law and patent law. This approach will allow us to counter fragmentation in international law. Furthermore, Noortmann urges us to identify and to map the complexity of multiple accountabilities and responsibilities of various NSAs. In keeping with this State-centred conception of the international legal system, international obligations so far are seen as incumbent on States alone, and to a lesser extent also on international organisations (established by States). Such a legal conception no longer matches the reality of NSA activities that affect, at times adversely, the enjoyment of human security, as protected by a variety of international legal norms. Indeed, States no longer remain the only, or even principal, providers of governance and human security. Accordingly, a reconfiguration of the current legal system, which concentrates on the obligations, responsibilities or accountabilities at the State level, is urgently called for. Further research needs to be conducted, however, as to whether mirroring the holistic nature of the concept of human security – a transversal responsibility regime as regards all human security-threatening NSAs – is appropriate, or whether instead the development of multiple responsibility regimes governing specific actors and/or applying to subfields of international law should be encouraged. It also remains an open question what exact *type* of responsibility would be appropriate (hard legal, soft, private regulatory). Some of the more specific contributions in this volume address these issues.

Veronika Bílková examines the interface between international humanitarian law (IHL, understood as the law of armed conflict) and human security. More specifically, she examines whether, and to what extent, relevant NSAs in armed conflict interact with the three normative components of IHL – ‘rescue’, ‘rights’