Human Security and International Law

Prospects and Problems
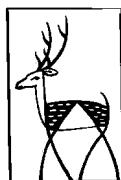
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Contents

Introduction

IN THE YEARS since the Cold War, there have been many attempts to reconceptualise security. Among the most prominent of these is the concept of human security. Since its introduction in the mid 1990s, this concept has been taken up and promoted by several national governments, most notably those of Canada and Japan, as a key part of their foreign policies. The concept has been proposed as a new 'paradigm' for foreign policy, a 'template' to assess policy and practice.[1] A dozen states from various regions are currently members of the Human Security Network, an informal coalition dedicated to advancing human security.[2] Human security has also found its way into the discourse and practice of some international organisations. In addition, a major international commission was formed in 2001 to study and promote human security, and other recent international commissions have also referred to the concept in their reports.[3] In the words of one scholar,

> by [the year] 2000 debate, advocacy, and thinking about human security had breached a significant threshold. It was well developed conceptually, was being advocated widely by policymakers and academics, and was feeding into some areas of defence and foreign policy.[4]

The *Human Development Report*'s prediction that the 'idea of human security . . . is likely to revolutionize society in the 21st century'[5] may be

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[1] Canada, Department of Foreign Affairs and Trade (DFAIT), *Freedom from Fear: Canada's Foreign Policy for Human Security* (Ottawa, DFAIT, 2000) <http://www.humansecurity.gc.ca/pdf/freedom_from_fear-en.pdf> (accessed 27 February 2007), at 1; Canada, DFAIT, *Human Security: Safety for People in a Changing World* (Ottawa, DFAIT, 1999), at 8.

[2] Human Security Network, 'The Human Security Network' (2006) <http://www.humansecuritynetwork.org/network-e.php> (accessed 25 April 2007). See ch 1, n 94 and accompanying text.

[3] Commission on Human Security, *Human Security Now: Protecting and Empowering People* (New York, Commission on Human Security, 2003) <http://www.humansecurity-chs.org/finalreport/index.html> (accessed 26 February 2007); Commission on Global Governance, *Our Global Neighborhood: The Report of the Commission on Global Governance* (Oxford, Oxford University Press, 1995); International Commission on Intervention and State Sovereignty (ICISS), *Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Ottawa, International Development Research Centre, 2001) <http://www.iciss.ca/pdf/Commission-Report.pdf> (accessed 26 February 2007). See ch 1, nn 109–20 and accompanying text.

[4] A Burke, 'Caught between National and Human Security: Knowledge and Power in Post-crisis Asia' (2001) 13 *Pacifica Review* 215, at 219.

[5] United Nations Development Programme (UNDP), *Human Development Report 1994* (Oxford, Oxford University Press, 1994), at 22.

somewhat exaggerated, but it has already had a significant impact that merits attention.

The concept of human security has been used in different ways, but some common distinctive features can be identified. At the core of the concept is the shift from states' security to the security of individuals as the primary concern. Security can be understood very generally to mean freedom from threats, including both the objective reality of protection and the subjective sense of feeling secure. From this starting point, different concepts of security can be distinguished by identifying the referent object, threats, and means with which we are most concerned. As we will see, the concept of human security was developed as a reaction to 'traditional' realist notions of national security that had been dominant throughout the Cold War. These conceptions of security emphasise the security of the nation-state from external military threats. Human security, in contrast, focuses on the security of the individual human beings who inhabit states, and their protection from a wide range of threats, from military and criminal violence to hunger and disease.

Human security is an integrative concept that is relevant to a wide range of areas. It has been invoked in a variety of contexts including development, peace-building, the International Criminal Court, anti-personnel mines, and assistance to displaced persons. A former Secretary-General of the United Nations referred to human security as the 'unifying concept' of the organisation, and called on scholars to generate knowledge about the concept and its application.[6] It is not clear whether the concept's popularity in political discourse will continue to rise or has already passed its peak, but it has already made a sufficient impact to suggest that it will have some lasting significance. During the period of research for this book, the quantity of secondary literature on the subject has increased exponentially, making the task of reviewing the relevant literature both challenging and exciting. One significant gap has existed in the literature and analysis, however, and to a large extent remains today. Despite the increasing breadth and depth of discussion in related disciplines, the concept of human security has received relatively little attention from legal scholars.[7] This book is intended to contribute to this dimension of the literature—or more precisely, to begin to forge links between international relations and foreign policy writings on the concept and the literature on various aspects of international law. Certainly, not everyone agrees that

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[6] K Annan, 'The Quiet Revolution' (1998) 4 *Global Governance* 123, at 136–7.

[7] Notable exceptions include: G Oberleitner, 'Human Security: A Challenge to International Law?' (2005) 11 *Global Governance* 185; C Bruderlein, 'People's Security as a New Measure of Global Stability' (2001) 842 *IRRC* 353; BG Ramcharan, *Human Rights and Human Security* (The Hague, Martinus Nijhoff, 2002); D Newman, 'A Human Security Council? Applying a "Human Security" Agenda to Security Council Reform' (1999–2000) 31 *Ottawa Law Review* 213.

the concept of human security is a useful or positive addition, and the most significant concerns or objections will be considered in later chapters. However, its influence demands that we have a better understanding of the implications of using a 'human security approach'.

This book, then, is concerned with the significance of this new approach to security for international law. We might pause to ask, though: why should human security matter for international law? Why, indeed, should international law matter for human security? Whether, and in what ways, they matter will be explored through the chapters that follow, but a few points are worth noting at the outset. Security is an important human value—although of course not the only one—and the provision of security is one of the central purposes of legal systems.[8] The law is a major instrument and framework for the pursuit of security. Our understanding of what security means will determine what we demand from the law in this role, the kind of framework for action that we want it to provide, and what we want it to achieve. In international law, the UN Charter is perhaps the clearest example of the law giving expression to a particular concept of security (collective security), but the principles, rules, and institutions of international law provide the means and the environment for our pursuit of security in many other less obvious ways.

An attempt to reconceptualise security also raises questions about law because it inevitably has a normative dimension.[9] Since security is a social construction more than an objective fact, defining security amounts to making a normative claim about when we should consider ourselves to be secure. Even when the reformulation of security concepts is presented as a response to changing external conditions, it reflects judgements of value that are no less important for being unstated. Security is sometimes treated as a distinct area of study and practice, but the way security is defined reflects and has profound implications for our view of society, including law as part of society. As political theorist RBJ Walker reminds us, 'claims about security are a serious matter. They cannot be dissociated from even more basic claims about who we think we are and how we might act together.'[10] For example, as we will see, the shift from a state-centred to a human-centred approach to security is linked to a particular view of the relative moral value of states and individuals, and of the value of

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[8] At least one legal philosopher has suggested that security is the essential foundation and purpose of law: see N Duxbury, 'Human Security and the Basic Norm' (1990) 76 *Archiv fur Rechts- und Sozialphilosophie* 184, discussing the work of Luis Recaséns Siches. One need not go this far to accept that security is one important purpose of the law, among others.

[9] See, eg, DA Baldwin, 'The Concept of Security' (1997) 23 *Review of International Studies* 5, at 5; RBJ Walker, 'The Subject of Security' in K Krause and MC Williams (eds), *Critical Security Studies: Concepts and Cases* (Minneapolis, University of Minnesota Press, 1997), at 62; B McSweeney, *Security, Identity and Interests: A Sociology of International Relations* (Cambridge, Cambridge University Press, 1999), at 84–8.

[10] Walker, above n 9, at 66.

individuals in relation to each other. Our preference for one security concept over another is based not only on assessments of their conceptual clarity and empirical soundness, but also on moral judgements about the policies they can be used to justify and the views of society they reflect.

Attempts to redefine security must therefore be understood to have potentially significant implications for how we see the law, and since human security is primarily a concept for use in foreign policy, it seems particularly important to understand what it means for international law. In addition to being a goal of foreign policy, human security is sometimes described as an approach or orientation, one that makes the security of individual human beings our central concern. This idea can be used as a perspective from which to examine international law. Put another way, studying human security provides us with an opportunity to explore how international law might be different if we thought differently about security. Especially considering the increasing influence of human rights, in many ways the concept of human security is not new to international law. It has been suggested that 'the political project represented by the human security agenda may be built on the already existing precedents within international law'.[11] Some of these precedents will be explored in later chapters. We will see that the conceptual framework of human security has many parallels in international law, and that in various respects the concept is also reminiscent of certain theoretical perspectives familiar to international lawyers.

The general question to be explored in this book, then, is how human security might be used to inform the analysis of international law. What functions or roles might the concept have in relation to international law? How can the concept be used to analyse particular areas of the law, and what insights does this analysis yield? Is the existing framework of international law compatible with this new concept of security? How does the law enable or resist the pursuit of human security as a goal or orientation of foreign policy? As these questions suggest, there are two interconnected levels of inquiry simultaneously operating throughout the book: the first seeks to determine what observations we can make about international law by examining it from the perspective of human security, while the second attempts to evaluate this analysis, asking whether and how the concept is useful in this context.

Chapter one will introduce the concept of human security, describing its origins and its use in international political discourse. Chapter two will then discuss debates in the literature relating to the definition of the concept, its utility, and its relationship to existing frameworks. The key aspects of the concept as understood and used in this book are also

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[11] H Owens and B Arneil, 'Human Security Paradigm Shift: A New Lens on Canadian Foreign Policy?' (1999) 7(1) *Canadian Foreign Policy* 1, at 9.

outlined, including the implications of taking a 'human-centred' approach to security and acknowledging that human security is a common global concern. In chapter three, the relationship between human security and international law will be explored across a range of different areas. This chapter will review examples of international law being used as an instrument in the pursuit of human security and examine some views of the compatibility of human security with international law. It will also identify parallels between certain norms and principles of international law, on one hand, and the central elements of the human security concept, on the other.

The next four chapters will look at what the concept might contribute to discussions of particular topics within contemporary international law. Chapter four examines the debate on humanitarian intervention; chapter five focuses on the protection of internally displaced persons; chapter six deals with the proliferation of small arms and light weapons; and chapter seven discusses global disease surveillance and control. The four areas selected represent different kinds of concerns relevant to human security, and areas in which the concept of human security has been used in different ways. Each of them has already been the subject of considerable discussion and debate, but they present different types of problems in international law, including the development, interpretation, and application of legal norms. Together the four chapters will serve to illustrate and critique some of the ways in which the concept of human security may be used in analyses of international law. Finally, the Conclusion will offer some observations on these questions and draw together common themes that emerge from the preceding chapters.

1

Origins and Development of the Concept of Human Security

INTRODUCTION

HUMAN SECURITY IS a relatively new concept, and although it has become familiar to many in recent years, it is still not widely known or well understood outside certain academic and policy circles. Before beginning to explore its relationship with international law, it is important to have a sense of its origins, meanings, and uses. This chapter will trace the genesis of the concept, making note of some of its most important precursors, and provide a brief account of the ways in which human security has come to be used in international affairs.[1] Chapter two will then discuss the scholarly debate surrounding the definition and utility of human security.

HISTORY AND ANTECEDENTS OF THE CONCEPT

The concept of human security, as currently used in scholarship and policy discussions, is a product of the convergence of ideas from security studies and international development.[2] In both areas, there were calls for attention to the impact that policies were having on individuals. Debates about the meaning of security yielded new conceptual frameworks, while 'human development' introduced a 'people-centred' paradigm for designing and evaluating policy.

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[1] For a recent extensive discussion of the concept's history, see SN MacFarlane and YF Khong, *Human Security and the UN: A Critical History* (Bloomington, Indiana University Press, 2006). See also K Bajpai, 'Human Security: Concept and Measurement' (Kroc Institute Occasional Paper 19:OP:1, August 2000).

[2] King and Murray call the publication of the *Human Development Report 1994* (see below nn 55 and 66*ff*), which is usually credited with introducing the concept into modern discourse, a 'unifying event' at the intersection of the development and security communities: G King and CJL Murray, 'Rethinking Human Security' (2001–2002) 116 *Political Science Quarterly* 585, at 589.

Rethinking Security

In very general terms, 'security' refers to freedom from danger or, in its subjective sense, from fear. It involves the protection of some referent object by reducing its vulnerability and by eliminating or lessening threats to its survival or well-being.[3] Efforts to define and redefine security have been 'something of a cottage industry' in recent decades, producing an enormous quantity of literature.[4] There are many ways of classifying concepts of security,[5] but three main dimensions can be used to organise a discussion: the referent object (who or what is being secured); the nature of the threat from which the object is being secured; and the means of seeking security. These dimensions are often indicated by modifiers to the term 'security' (for example, 'national security', 'environmental security' or 'collective security', respectively). Although the dimensions are distinct, common usage or accepted definitions of a term may import other aspects; for example, national security means security of the nation-state but has also traditionally meant security of the state from external military threats, protected by military means.

Human security seeks to reorient the pursuit of security by placing individual human beings at the centre of security concerns. This idea and its implications can best be understood in the context of larger debates about the meaning of security. These debates generally take as their starting point what is referred to as the 'traditional' conceptualisation of security, by which is meant a realist view of national security. Given its long-standing dominant position in international relations theory, realism has been the traditional or orthodox view against which others have been shaped and defined.[6] Unsurprisingly, it has also had an overriding influence on security studies and prevailing understandings of national and international security. Although there is considerable diversity within realism,[7] it is usually associated with a view that emphasises power poli-

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[3] B Buzan, *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, 2nd edn (New York, Harvester Wheatsheaf, 1991) [*People, States and Fear*], at 112*ff*.

[4] DA Baldwin, 'The Concept of Security' (1997) 23 *Review of International Studies* 5.

[5] See, eg, *ibid*, at 13–17; Buzan, *People, States and Fear*, above n 3, at 116*ff*; E Rothschild, 'What is Security?' (1995) 124(3) *Daedalus* 53, at 55; D Fischer, *Nonmilitary Aspects of Security: A Systems Approach* (Aldershot, Dartmouth, 1993), at 14–15.

[6] B Buzan, 'The Timeless Wisdom of Realism?' in S Smith, K Booth and M Zalewski (eds), *International Theory: Positivism and Beyond* (Cambridge, Cambridge University Press, 1996) ['Timeless Wisdom'], at 47–8; S Burchill, 'Realism and Neo-realism' in S Burchill and A Linklater (eds), *Theories of International Relations* (New York, St Martin's Press, 1995), at 67; J Steans, *Gender and International Relations: An Introduction* (Cambridge, Polity Press, 1998), at 38.

[7] J Donnelly, *Realism and International Relations* (Cambridge, Cambridge University Press, 2000), at 6. Donnelly suggests a typology of realist paradigms (at 11*ff*). The description here draws in particular from Donnelly, at ch 1; Buzan, 'Timeless Wisdom', above n 6; Burchill, above n 6; M Sheehan, *International Security: An Analytical Survey* (Boulder, Colorado, Lynne Rienner, 2005), at ch 2.

tics among states as the central feature of international relations. In this view, states are the dominant actors in the international system and they can be analysed as unitary actors within that system, largely without regard for their internal characteristics. Due to the egoistic and conflict-prone nature of human beings and the anarchical nature of the international system, states are driven to pursue power as their primary goal. The realist view is sceptical of moral constraints on states' behaviour and of the possibility of preventing war, so states must prepare for war and maximise their own power in order to ensure their survival.[8] The national interest is therefore defined in terms of strategic power, especially military power. The understanding of security that flows from this view takes the state as its primary or sole referent, and is chiefly concerned with defending the state from external military threats: 'a nation is secure to the extent to which it is not in danger of having to sacrifice core values, if it wishes to avoid war, and is able, if challenged, to maintain them by victory in such a war.'[9] The realist view emphasises both military threats and military power as the means to guard against these threats. In the anarchical system, self-help and the accumulation of military power are the keys to security. National security, defined in these terms as the 'preservation of state independence and autonomy' from external threats, has dominated analyses of security.[10]

Although some of the difficulties with this view of security were apparent much earlier,[11] it was primarily in the 1980s and 1990s that a large body of literature emerged seeking to question various aspects of it.[12] A number of reasons for this have been cited, among them dissatisfaction with the resulting security framework, including security dilemmas, the arms race, and nuclear deterrence as a policy of national security.[13] Increasing concern with economic and environmental issues led to calls for consideration of non-military threats.[14] With the end of the Cold War came the need to reformulate security policy in a way that

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[8] JA Tickner, *Gender in International Relations: Feminist Perspectives on Achieving Global Security* (New York, Columbia University Press, 1992), at 32.

[9] A Wolfers, 'National Security as an Ambiguous Symbol' in A Wolfers, *Discord and Collaboration: Essays on International Politics* (Baltimore, Johns Hopkins Press, 1962), at 150, citing W Lippmann.

[10] Sheehan, above n 7, at 6.

[11] See, eg, Wolfers, above n 9, originally published in 1952.

[12] For an overview of critiques and the 'traditionalist counterattack', see B Buzan, 'Rethinking Security after the Cold War' (1997) 32 *Cooperation and Conflict* 5 ['Rethinking Security'], at 6–12. See also the discussion in MacFarlane and Khong, above n 1, at 127*ff*.

[13] K Booth, 'Security and Emancipation' (1991) 17 *Review of International Studies* 313, at 318. Tickner suggests that security policies in the nuclear age 'stretched the traditional concept of national security to its limit' by making state security dependent on the insecurity of citizens (above n 8, at 52). See also Buzan, *People, States and Fear*, above n 3, at 49: 'deterrence policy displays the divorce between individual and national security at the highest and most visible level.'

[14] Buzan, 'Rethinking Security', above n 12, at 6–7.

would be more appropriate in the new context. Realism had been presented as an objective and neutral framework, in opposition to 'idealist' approaches to international relations,[15] but as its critics have pointed out, the realist approach to security has both practical and normative implications of its own. Concerns about these implications sparked interest in rethinking the traditional concept of national security.[16] Some critiques focus primarily on one dimension of security, while more radical ones engage all of them.

Typically, at least in the early stages, critiques called for the 'broadening' of the concept of security, in particular expanding the range of threats that were considered relevant to national security.[17] In its most limited form, this means taking account of the role of environmental, resource, human rights and other issues in precipitating conflict.[18] In this approach, even if we are primarily concerned with military threats to national security, attention must be paid to problems that, left unaddressed, may lead or contribute to military conflict. Hence, it is legitimate to widen the ambit of security threats to include these causal factors. This approach can to some extent be accommodated even within a 'traditionalist' framework of national security, since it is concerned with issues that 'bear directly on the likelihood and character of war'.[19]

Taking this a step further, writers such as Jessica Tuchman Mathews and Richard Ullman argued that non-military threats including economic and environmental problems could be just as serious in their own right as military ones, and so should receive attention as security issues.[20] Ullman

[15] Burchill, above n 6, at 82; Sheehan, above n 7, at 7.

[16] Regarding practical and 'intellectual' concerns, see KR Nossal, 'Seeing Things? The Adornment of "Security" in Australia and Canada' (1995) 49 *Australian Journal of International Affairs* 33, at 45–6; on the normative or moral concerns, see B McSweeney, *Security, Identity and Interests: A Sociology of International Relations* (Cambridge, Cambridge University Press, 1999), at 91.

[17] See Sheehan, above n 7, at ch 4.

[18] On environmental change and conflict, see, eg, T Homer-Dixon, 'Environmental Scarcity and Intergroup Conflict' in MT Klare and DC Thomas (eds), *World Security: Challenges for a New Century*, 2nd edn (New York, St Martin's Press, 1994); D Deudney, 'The Case Against Linking Environmental Degradation and National Security' (1990) 19 *Millennium: Journal of International Studies* 461, at 469–74; MS Soroos, 'Global Change, Environmental Security, and the Prisoner's Dilemma' (1994) 31(3) *Journal of Peace Research* 317, at 318–19. On human rights, see, eg, V Wiebe, 'The Prevention of Civil War through the Use of the Human Rights System' (1995) 27 *New York University Journal of International Law and Politics* 409, at 410–12; Canada, Department of Foreign Affairs and Trade (DFAIT), *Freedom from Fear: Canada's Foreign Policy for Human Security* (Ottawa, DFAIT, 2000) <http://www.humansecurity.gc.ca/pdf/freedom_from_fear-en.pdf> (27 February 2007) [*Freedom from Fear*], at 5.

[19] SM Walt, 'The Renaissance of Security Studies' (1991) 35 *International Studies Quarterly* 211, at 213.

[20] RH Ullman, 'Redefining Security' (1983) 8(1) *International Security* 129; JT Mathews, 'Redefining Security' (1989) 68(2) *Foreign Affairs* 162; JT Mathews, 'The Environment and International Security' in MT Klare and DC Thomas (eds), *World Security: Challenges for a New Century*, 2nd edn (New York, St Martin's Press, 1994).

proposed defining a threat to national security as 'an action or sequence of events that (1) threatens drastically and over a relatively brief span of time to degrade the quality of life for the inhabitants of a state, or (2) threatens significantly to narrow the range of policy choices available to the government of a state or to private, nongovernmental entities (persons, groups, corporations) within the state'.[21] The first category includes war but also internal conflict, blockades, raw materials shortages, terrorist attacks, and natural disasters; the second a situation in which there are fewer opportunities for trade, investment, and cultural exchange, and in which important values are threatened.[22] In a leading work, Barry Buzan identified five areas of national security issues: military, political, economic, societal, and ecological.[23] The concept of 'comprehensive security', which has been influential especially in the Asia–Pacific context, includes reference to a broader range of non-military threats, and in that respect is considered an important precursor to human security.[24]

The well-known concepts of collective security and common security provide variations on the traditional model of state security in terms of the *means* of seeking security. Collective security, exemplified in the UN Charter, involves members of a group agreeing to renounce the use of force against each other and to defend any member of the group who is attacked.[25] It therefore remains situated in the military sphere in terms of both threats and means, and depends on military deterrence to enhance states' security, but emphasises cooperation among group members rather than individual self-help—a strategy viewed with scepticism by realist theorists. The later concept of common security is a more significant shift because it entails not only cooperation between states but also the reconsideration of military means of seeking security. The concept of common security as formulated by the Palme Commission is grounded in the recognition that in a nuclear age, nations cannot achieve security at

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[21] Ullman, above n 20, at 133.

[22] *Ibid*, at 133–4.

[23] Buzan, *People, States and Fear*, above n 3, at 116–33.

[24] A Acharya and A Acharya, 'Human Security in Asia Pacific: Puzzle, Panacea or Peril?' (2000) 27 *CANCAPS Bulletin/Bulletin du CONCSAP* 1 <http://www.cancaps.ca/cbul27.pdf> (accessed 6 March 2007); W Kim and I Hyun, 'Toward a New Concept of Security: Human Security in World Politics' in WT Tow, R Thakur and I Hyun (eds), *Asia's Emerging Regional Order: Reconciling Traditional and Human Security* (Tokyo, United Nations University Press, 2000), at 39.

[25] See, eg, Commission on Global Governance, *Our Global Neighborhood: The Report of the Commission on Global Governance* (Oxford, Oxford University Press, 1995), at 80; R Väyryen, 'Multilateral Security: Common, Cooperative or Collective?' in MG Schechter (ed), *Future Multilateralism: The Political and Social Framework* (Tokyo, United Nations University Press, 1999), at 59. The notion of collective security is reflected in the UN Charter, arts 1(1), 2(4), and 2(5); note, however, that the Charter does not preclude individual self-defence in the event of an armed attack on a UN member, pending measures by the Security Council (art 51). On art 1(1) and collective security, see R Wolfrum, 'Article 1' in B Simma (ed), *The Charter of the United Nations: A Commentary*, 2nd edn, (Oxford, Oxford University Press, 2002), vol I, at 42–3.