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Human security, human rights and international law, and interactions between them

Abstract: The author examines the nexus between international law and the concept of human security that emerged in the 1990s. The article proceeds in three parts. Part one outlines the concept of human security, its genesis and contents. Part two examines the nexus between human security and international law and briefly considers the most representative aspects of international law, including international jurisprudence, that, in the author's opinion, reflect human security imperatives. Finally, conclusions provide answers to the questions posed and indicate the increased value of the human security concept. The questions read as follows: How can human security strengthen international actions (actions based on international law)? Where in international law is human security reflected? In other words, what aspects of international law reflect a human security-centered approach? What is the role of international law in human security? Taking all this into account, what is the added value of adopting the concept of human security? This article is inevitably interdisciplinary, as it combines the perspectives of international law and international relations.

Key words: human security, international law, human rights

1. Introduction

Sometimes legal norms and policy concepts may reinforce and complement each other. This is the case for human security (a policy concept) and international law (which is of course a matter of legal norms). Human security may be treated as “a protective tool within the international law of human rights” (Estrada-Tanck, 2017) as its precepts are most clearly visible there. Human security places human beings at its center of analysis and actions and, as such, it coincides with the process of the gradual humanization of public international law described by Antonio A. Cançado Trindade in his important book *International Law for Humankind. Towards a New Jus Gentium* (2010) or by Theodor Meron in his equally influential book *The Humanization of International Law* (2006).

Accordingly, in the second half of the 20th century and at the beginning of the 21st century, the evolution of international law has moved towards a more clear focus on the human person and humankind (Cançado Trindade, 2010, p. 394).¹

Basic considerations of humanity permeate different areas of international law such as international human rights law, international humanitarian law and refugee law (Cassese, 2005, p. 396). Various issues and problems are governed by international law, problems that directly affect human beings and their rights, needs and ability to survive: arms, proliferation of light and small weapons, disarmament, terrorism, failed/fragile states, armed conflicts, international crimes and serious violations of human rights, poverty and environmental degradation. All of these issues constitute threats to human security. Recent years saw the adoption of fundamental treaties addressing at least some of these problems. Here, one should list such agreements as the International Criminal Court (ICC) Statute of 1998, the International Convention on the Protection of All Persons from Enforced Disappearance of 2006, the Convention on Cluster Munitions of 2008, the Arms Trade Treaty (ATT) of 2013² and the Paris Climate Agreement of 2015. As Barbara von Tigerstrom (2007, p. 61) emphasizes in this context, “[o]ne of the most important examples of the way the law can be used as an instrument for ensuring human security is the establishment of international criminal tribunals and especially the International Criminal Court.”

The aim of this paper is to analyze the mutual relationship between the concept of human security and international law. In order to achieve that goal it is necessary to answer a few basic questions: How can human security strengthen international actions (actions based on international law)? Where in international law is human security reflected? In other words, what aspects of international law reflect a human security-centered approach? What is the role of international law in human security? Taking all this into account, what is the added value of adopting the concept of human security?

The research methods used include an institutional-legal analysis and critical examination of the literature. The first method serves to examine

¹ Anne Peters (2009, p. 540) argues that “[...] the humanization of sovereignty has shifted the focus from rights of states to the needs of humans and has thus promoted a significant evolution of international law.”

² For more details see also: Yihdego, 2007; Fleck, 2013; Kellman, 2013–2014; Worster, 2014–2015.

the legal texts, documents and international jurisprudence, while the latter will analyze the relevant literature, mostly in the fields of international relations and international law.

The article proceeds in three parts. Part one outlines the concept of human security, its genesis and contents. Part two examines the nexus, including the differences, between human security and international law and briefly considers the most representative aspects of international law, including international jurisprudence, that in my opinion reflect human security imperatives. Finally, in *Concluding remarks*, I will try to answer the questions posed and indicate the added value of the concept of human security. This article is inevitably interdisciplinary, combining aspects of international law and international relations.

2. The genesis and concept of human security and its normative antecedents

Traditionally, security pertained to relations between states and was of a predominantly military character. This meant that an individual had, first and foremost, obligations of service towards the state, for example as a member of the army. Threats to security came from other states, for example in the form of external aggression. After the end of the Cold War, states became more secure. This, however, was not necessarily true with reference to their nationals. New threats to the security of the latter emerged, which were of a non-military character. Ramesh Thakur (2006, p. 73) notices that “[t]o many poor people in the world’s poorest countries today, the risk of being attacked by terrorists or with weapons of mass destruction is far removed from the pervasive reality of the so-called soft threats – hunger, lack of safe drinking water and sanitation and endemic diseases – that kill millions every year, far more than the so-called ‘hard’ or ‘real’ threats to security” (see also the *Millennium Development Goals Report*, 2015, p. 7). In the 1990s, a new security paradigm emerged, namely that of human security (on the historical roots of the doctrine of human security see Peou, 2014). However, this did not mean that military security lost its leading role. Nowadays, strong, stable and democratic states remain the best guarantors of national and international security, including the security of their own citizens (Peou, 2014, p. 1). One of the most important contributions to the emergence of the concept of human security was the influential work of Barry Buzan, Ole Wæver and Jaap

de Wilde *Security. A New Framework for Analysis*, published in 1998, in which the authors indicated five security sectors and corresponding threats: “the military sector is about relationships of forceful coercion; the political sector is about relationships of authority, governing status and recognition; the economic sector is about relationships of trade, production, and finance; the societal sector is about relationships of collective identity; and the environmental sector is about the relationships of human activity and the planetary biosphere” (p. 7). That book marked the new approach to national security, which questioned the pivotal significance of military level of security (Buzan, Wæver, de Wilde, 1998, p. 1).

The novelty of the idea of human security lies in its innovative approach aimed at holistically and in a complex manner addressing the sources of threats affecting people all over the world. Those threats are of global reach and consequence, and very diverse in nature (Bruderlein, 2001, p. 358). Human security focuses on humans as the beneficiaries and – at the same time – providers of security. It takes into account the needs of and opportunities for human populations. According to the precepts of this concept, armed conflicts are rooted in social and political exclusion, structural violence and inequality. In order to ensure human security, it is not sufficient only to build institutions of liberal democracy and a free market, but also to assure the social protection of citizens. Accordingly, a strong state is capable of providing its citizens with the means to survive and have a decent standard of living, as well as being capable of meeting their other basic social needs (*Research Brief. Towards a Human Security...*, 2010, pp. 3–5). This was strongly emphasized by Judge Antonio A. Cançado Trindade in his separate opinion stated in the ICJ Advisory Opinion on the *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*: “[t]he basic lesson is clear: no State can use territory to destroy the population. Such atrocities amount to an absurd reversal of the ends of the State, which was created and exists for human beings, and not vice-versa” (2010, para. 176).

Human security was intended to provide answers to new threats and challenges. Its main focus is on the human being, who is placed at the center of debate, analysis, policy and interest. Accordingly, human beings are important, they are the ultimate point of reference for all security efforts, and a state is an instrument for ensuring their welfare. Elementary goods and values protected in the framework of human security, including life and personal security, may be threatened not only by external aggression but also by internal factors. The human security concept is rooted

in the human rights tradition that is supposed to protect individuals from abuse at the hands of their own state and – on the other hand – in the concept of development, which envisions a state as a necessary instrument of promoting human security (Thakur, 2006, p. 72; Gomes, Gaspar n.d.). However, to increase human security, concrete actions must be taken not only by states but also by the individuals themselves and their collectives. In this regard, the latter are also subjects of human security (Szpak, 2015, pp. 121–122).

The concept of human security has its roots on one hand in the famous Declaration by President Roosevelt in 1941 (*Annual Message to Congress – Four Freedoms Speech*), in which he explicitly mentioned freedom from want and fear together with freedom of expression and religion, and his *State of the Union Address* of January 11, 1944, and on the other in the UN *Universal Declaration of Human Rights* of 1948. The Universal Declaration states in the preamble that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” The same statement is included in the preamble to the *International Covenant on Civil and Political Rights* of 1966. Hence, the normative antecedents of human security may be found in the first universal legal sources of international human rights law (Szpak 2015, p. 122; Szpak, 2016, p. 373). Thus, the concept is unavoidably linked to the United Nations itself.

For the first time the notion of human security was expressly introduced in the 1993 *Human Development Report* published by the United Nations Development Program. It was included as one of the five pillars of the global order focused on humans (*Human Development...*, 1993, p. 2). Then, in the 1994 *Human Development Report*, the concept as a whole was developed considerably. In the Report it was indicated that “[t]he threats to human security are no longer just personal or local or national. They are becoming global: with drugs, AIDS, terrorism, pollution, and nuclear proliferation. Global poverty and environmental problems respect no national border. Their grim consequences travel the world” (*Human Development...*, 1994, p. 2). Human security embraces two fundamental components – freedom from fear and freedom from hunger (ibid., p. 24). Freedom from fear is a narrower approach to human security and as such it encompasses freedom from violence, armed conflicts and external military aggression, whereas freedom from want represents a broader approach in accordance to which personal, community, economic, environmental, food and health securities are emphasized. Hence, the first concentrates

on the politico-military realm, including lack of violence, and the latter concentrates on the socio-economic development of people and their living conditions. In this article, human security is construed in the broader sense, in the same way as in the 1994 *Human Development Report*, as will be indicated below (Tajabakhsh, Chenoy, 2007, pp. 40–49).

Human security contains seven categories: economic security, food security, health security, environmental security, personal security, community security and political security (*Human Development...*, 1994, pp. 24–25). Consequently, human security is, and in order to be a novel and effective concept must be, understood broadly – in a holistic and integrative manner (Szpak, 2015, pp. 122–123; Szpak, 2016, p. 374). The 1994 *Human Development Report* also considers the most serious threats to human security in the 21st century and mentions among them unchecked population growth, disparities in economic opportunities, excessive international migration, environmental degradation, drug production and trafficking and international terrorism (*Human Development...*, 1994, p. 34).

Afterwards, numerous UN organs and other international organizations acted as a forum for debate, expression and the promotion of alternative concepts of security. UN organs and agendas such as UNHCR and the Secretary General took the new concept into account in their actions. Hence, the UN became a key instrument for legitimizing the new concept of security (Thakur, 2006, p. 91). For example, in 2003, the Commission on Human Security published its *Human Security Now* report; in 2004, the concept of human security was given prominent place in the *High Level Panel on Threats, Challenges and Change. A more secure world: our shared responsibility*; in the same year, the European Union also contributed to the shaping and disseminating of the concept of human security by issuing its *A Human Security Doctrine for Europe*; in 2005 a Report of the Secretary General *In Larger Freedom: towards development, security and human rights for all* (para. 133) and the *World Summit Outcome* (para. 143), were published.

Bearing in mind all of the above considerations and various definitions of human security given by different bodies, one should try to define human security. Human security is a state and process that aims at the certainty of survival and existence and the opportunity for development, as well as meeting the elementary needs of humans. This is a process, because security is not given forever; it has evolved and fluctuated, and constant efforts must be taken in order to maintain it. It is important to em-

phasize that the achievement of human security for some cannot deprive others of the same security, as this concept is universal and recognizes no territorial boundaries. As a concept that should be implemented in practice, human security places human beings and their needs center stage. The results of activities and projects undertaken within the framework of human security should contribute to the global prosperity of all people. National and international security is instrumental for human security, thus ensuring the former should ultimately serve people. For that reason, human security should not be regarded as contradicting national security and should not replace it. Those two dimensions of security are complementary (Thakur, 2006, p. 89). From the perspective of human security, national security is valuable, but treated as one of many tools used for promoting individuals' interests (Kutz, 2009, pp. 233–234; Szpak, 2015, p. 124; Szpak, 2016, p. 375). As well as states, other subjects are responsible for or may contribute to human security, most of all international organizations, governmental and non-governmental, and the individuals themselves, who are treated as both subjects and objects (providers and beneficiaries) of human security simultaneously. The achievement of human security requires cooperation between an interconnected network of subjects: states, international organizations with the primary role of the United Nations, and the private and public sector at the local, national, regional and international levels (*Human Security in Theory and Practice. An Overview...*, p. 14; McRae, Hubert, 2001, p. 236).

3. Reflections of human security from international law

Security is an essential value for every human, and ensuring security is a task and aim of all legal systems. In this context, many questions about the importance of international law for human security have been raised. The law is the main tool used to ensure security. It is also worth noting that the focus on human beings is noticeable in several areas of international law, for instance in refugee law, international humanitarian law and, naturally, in human rights law (von Tigerstrom, 2007, p. 65). All, or almost all, of the threats to human security are regulated by international law to a greater or lesser extent. As such, it may be treated as a tool for ensuring human security. Human security has as its normative basis in human rights, and therefore international human rights law is extremely important for this concept. As noted by Stéphanie Ménard, the concept of

human security links security with human rights and development (Mé-
nard, 2008, p. 10).

Among the most important international law treaties and instruments aimed at ensuring international peace and security is the United Nations Charter. It is probably the most clear example of law expressing directly a specific concept of security (namely collective security), but the principles, rules, and institutions of international law provide the resources and environment to ensure security in less direct ways. Regarding human rights, the concept of human security does not constitute a set of legal norms, but an instrument which can be used, among others, to interpret and develop legal norms. Taking into account the conclusion that international law is a tool to ensure human security, and human security can be used to interpret and develop legal norms, the relationship of human security and international human rights law is actually an interaction. Those two complement and reinforce each other. Human security is narrower than human rights, as it focuses on the most basic or fundamental human rights necessary for the survival of individuals and their human dignity. It does not include more advanced human rights, which accrue to a person when he or she is safe.

International law and international human rights law govern most of the issues discussed within the framework of human security. International law is – alongside international organizations – one of the most important institutions shaping international relations and security. Institutionalization – including through international law – protects the international order by contributing to the mitigation of tensions in international relations. International law upholds sovereign equality and thereby protects primarily small and weak states that do not have at their disposal significant military or economic power (Polcikiewicz, 2012, p. 105). Ramesh Thakur (2006, pp. 361–362) argues that

[I]aw thereby mediates relations between the rich and the poor, the weak and the powerful, by acting as a constraint on capricious behaviour and setting limits on the arbitrary exercise of power. It is our one big safety net for civilised conduct. Conversely, the greater the gap between power and authority, the closer we are to anarchy, to the law of the jungle where might equals right, and the greater is the legitimacy deficit. Equally, the greater the gap between power and justice in world affairs, the greater is the international legitimacy deficit.

In this way, international law sets the standards of conduct for its subjects and reflects the values desired by the international community. Interna-

tional law thus contributes to international security. It should be pointed out that one of the many functions of international law is the peaceful settlement of disputes, which directly impacts international security. As Tadeusz Jasudowicz rightly notes, all laws – be they national or international – are based upon the dignity of the human person and should serve, more or less directly, its protection. Laws should be evaluated by the measure of human dignity, and with this dignity in mind they should be adopted and implemented (Jasudowicz, 2015, p. 85). Good international law, from the time of Cicero to the philosophers of the Enlightenment and to Immanuel Kant and his successors, was seen as one of the important preconditions of peace between nations. Today, it is still the basic element of the infrastructure of peace (Balcerowicz, 2002, p. 55). Barbara von Tigerstrom (2007, p. 65) rightly stated that “the concept of human security cannot simply be equated with any particular area of the law. However, one would expect to find some important parallels between the concept of human security and the legal recognition and protection of human rights in international law.”

Sometimes sovereignty is seen as an obstacle to human security, mirroring the tension between human rights and state sovereignty (Reisman, 1990, pp. 866–876; Nagan, Hammer, 2004–2005, pp. 141–187). Principles in international law, such as the sovereign equality of states (Art. 2.1 of the UN Charter) and the prohibition of the threat and use of force (Art. 2.4 of the UN Charter) protects the state, its territorial integrity, independence and central position in the international arena. This may suggest that national security should have priority over human security (von Tigerstrom, 2007, p. 64). However, as already mentioned, those two concepts are rather – or ideally should be – complementary and not contradictory. The same argument applies to the tension between human rights and sovereignty. Keeping this in mind, human security serves as “a framework or impetus for rethinking key aspects of the international legal order, especially state sovereignty” (von Tigerstrom, 2007, p. 63). Within this line of argument, as Anne Peters brilliantly claimed, the fundamental international law category of sovereignty has been completely humanized, because human rights are not merely a normative limit of its exercise but its very content and essence. Sovereignty is qualified and determined by ‘humanity’ and is of value only as much as it respects human rights (Peters, 2009, p. 514). Hence, sovereignty needs justification, rooting it in a higher axiological order as – on its own – sovereignty is an ‘empty vessel’ (Peters, 2009, p. 518). This justification for sovereignty

is to be found in the ‘humanity’ encompassing “the principle that public power must serve human rights, interests, and needs” as an axiological foundation of a legal system (Peters, 2009, p. 518). Still quoting Anne Peters: “[i]t has become clear that the normative status of sovereignty is derived from humanity, understood as the legal principle that human rights, interests, needs, and security must be respected and promoted, and that this humanistic principle is also the *telos* of the international legal system. Humanity is the A and Ω of sovereignty” (Peters, 2009, p. 514). It seems that such an interpretative nexus between sovereignty and humanity is reflected in the ‘responsibility to protect’ (R2P) concept (*Responsibility to Protect. Report...*, 2001; Stahn, 2007, pp. 99–120; Popovski, 2010, pp. 204–219). R2P and humanitarian intervention are sometimes regarded as “human security in action” (von Tigerstrom, 2007, p. 96; on humanitarian intervention see also: Holzgrefe, Keohane, 2003; Welsh, 2004). But, as the same author rightly argues, “[p]roperly understood, R2P does not cover all human security issues, but its application is limited to extreme, conscience-shocking cases of mass atrocities” (Peters, 2009, p. 523). She concludes that the old concept of sovereignty has been thoroughly transformed by the much newer concept of human rights. This transformation reflects the shift in our perception of the nature of the political order that was caused by the emergence of the human rights discourse. This led to a paradigm shift, as traditional relations between the state and the citizen were reversed: the fundamental rights of citizens are considered a priority (Peters, 2009, p. 543). Peters claims that “sovereignty has already been relegated to the status of a second-order norm which is derived from and geared towards the protection of basic human rights, needs, interests, and security” (2009, p. 544). Lauterpacht also claimed that “[f]undamental human rights are rights superior to the law of the sovereign State ... [and must lead to the] consequent recognition of the individual human being as a subject of international law” (McCorquodale, 2003, p. 302). Respect for human rights is an obligation of every state, flowing from the principle of sovereignty. Sovereign states are, first and foremost, instruments to ensure human security, which includes respect for basic human rights. They should serve the prosperity of their populations, not hide behind the curtain of the principle of non-intervention and sovereignty.

As mentioned in the beginning of this article, basic or elementary considerations of humanity permeate different areas of international law. They are also recognized in the jurisprudence of the International Court of Justice (ICJ) and the International Criminal Tribunals for former Yugosla-

via (ICTY) (Cañado Trindade, 2010, p. 393). The most important judgments merit attention, as they indicate clear expressions of the elementary considerations of humanity, which may be treated as the normative foundation of human security. As such, this foundation may, and in some cases does, even pre-date the emergence of the concept of human security. But there is nothing extraordinary in new concepts being rooted in earlier normative precepts and then gradually being shaped and developed to reach a mature form. For the first time the ICJ evoked “the elementary principles of humanity” in the *Corfu Channel* case (1949, p. 22). The same pertained to the ICJ judgment in the *Nicaragua* case (1986, pp. 112, 114) when the Court stated – referring to the *Corfu Channel* case – that Common Art. 3 of the Geneva Conventions of 1949 reflected “elementary considerations of humanity.” In the *Genocide advisory opinion* of 1951 the ICJ mentioned “the special characteristics of the Genocide Convention” stating that

the principles underlying the Convention are principles which are recognized by civilized nations as binding on states, even without any conventional obligation. A second consequence is the universal character both of the condemnation of genocide and of the co-operation required “in order to liberate mankind from such an odious scourge” (Preamble to the Convention). The Genocide Convention was therefore intended by the General Assembly and by the contracting parties to be definitely universal in scope (p. 23).

Finally, in the *Legality of the Threat or Use of the Nuclear Weapons* advisory opinion, the ICJ referred to “the overriding consideration of humanity” that permeates the principles and rules of international law of armed conflict (*Legality of...*, 1996, para. 95). Apart from the ICJ, some significant conclusions or aspects of the jurisprudence of the ICTY (International Criminal Tribunal for the former Yugoslavia) should be emphasized. For example, the Appeals Chamber of the ICTY stated in the *Tadić Interlocutory Appeal* of 1995 that:

the impetuous development and propagation in the international community of human rights doctrines, particularly after the adoption of the Universal Declaration of Human Rights in 1948, has brought about significant changes in international law, notably in the approach to problems besetting the world community. A State-sovereignty-oriented approach has been gradually supplanted by a human-being-oriented approach. Gradually the maxim of Ro-

man law *hominum causa omne jus constitutum est* (all law is created for the benefit of human beings) has gained a firm foothold in the international community as well (para. 97).

In the *Kupreskić* case (2000, para. 527) – interpreting the Martens clause – the ICTY argued that

[i]n the light of the way States and courts have implemented it, this Clause clearly shows that principles of international humanitarian law may emerge through a customary process under the pressure of the demands of humanity or the dictates of public conscience, even where State practice is scant or inconsistent. The other element, in the form of *opinio necessitatis*, crystallising as a result of the imperatives of humanity or public conscience, may turn out to be the decisive element heralding the emergence of a general rule or principle of humanitarian law³.

Finally, in the *Čelebići* case of 2001, the Appeals Chamber of the ICTY – following the ICJ judgment in the *Nicaragua* case – ruled that Common Article 3 reflects “elementary considerations of humanity” (*Delalić, Mucić, Delić, Landžo*, 2001, para. 140).

Some of those decisions may be seen as historical precedents to human security, as they predate the emergence of this concept, and still others may be regarded as judicial expressions of the relationship between human security and the principle of humanity. This relationship requires a few comments. As mentioned, basic or elementary considerations of humanity permeate different areas of international law such as international human rights law or international humanitarian law. Those branches of law have as their common aim the protection of the life, health and dignity of human beings, hence their implementation contributes to the realization of human security. The principle of humanity is rooted in the concept and common experience of sameness, meaning that all people are part of the human race and as such all deserve respect for their human rights and dignity (Fast, 2016, p. 113). This experience also constitutes the underpinnings of the concept of human security. The principle of humanity is of a normative character, although it is rather general in scope. Its concretization is expressed in particular norms of international law, especially human rights law and international humanitarian law.

³ This argument has been criticized in legal literature. See for example: Kalshoven, 2003. On the Martens clause see: Pustogarov, 1999; Ticehurst, 1997; Meron, 2006, pp. 16–29.

Finally, I would like to mention one factor that may bind together international law, human rights and human security – that of solidarity. International solidarity should be the basis for a new international order. According to Makarewicz (2006, p. 743), the concept of solidarity should be regarded as one of the fundamental organizing principles of the international community. It should be the basis for the moral and legal organization of the world order in the era of globalization. Macdonald (1996, pp. 259–260) claims that solidarity constitutes, most of all, the principle of cooperation, which is identified as the goal of all the state actions, common as well as separate, which is to the benefit of all states, and at least does not seriously endanger the interests of other states. In his opinion, solidarity as a principle of international law provides a context for “meaningful cooperation that goes beyond the concept of a global welfare state; on the legal plane, it reflects and reinforces the broader idea of a world community of interdependent states.” As such, solidarity is connected to other values present in international law and the international community, such as human rights, peace, security, sustainable development and justice. All of them may be achieved on the basis of solidarity. It should be the guiding principle in international relations. Anne Peters refers to solidarity in the context of R2P, the latter being treated as “a kind of social contract between the state and the international community as a whole. The state commits itself to protect its population in exchange for respect of its sovereignty by the community. [...] This principle is apt to bolster populations’ claims for humanitarian assistance by other states” (Peters, 2009, pp. 535–536). In 2013, the UN Human Rights Council adopted resolution 23/12 *Human rights and international solidarity* where it called upon “the international community to promote international solidarity and cooperation as an important tool to help to overcome the negative effects of the current economic, financial and climate crises, particularly in developing countries” (point 5). It also reaffirmed that “international solidarity is not limited to international assistance and cooperation, aid, charity or humanitarian assistance; it is a broader concept and principle that includes sustainability in international relations, especially international economic relations, the peaceful coexistence of all members of the international community, equal partnerships and the equitable sharing of benefits and burdens” (point 2). Accordingly, international solidarity should be the pillar upon which international cooperation, humanitarian and developmental aid should be based, and as such contribute to the human security. International soli-

curity should also lead to all people universally benefiting from human security, not some at the cost of others.

4. Concluding remarks

The concept of human security has been criticized for its lack of a universally accepted definition and for weakness of analysis. Most of the definitions focus on basic human rights, but there is no consensus on the types of threats to individuals that should be included in the definition. The most serious complaint concerning the concept of human security refers to its overly extensive and vague scope. This makes it of little use for political decision-makers (von Tigerstrom, 2007, p. 36; Paris, 2001, p. 88). This claim, however, does not seem to be accurate, because individual issues falling under the ‘umbrella of human security’ are very specific and measurable problems, such as international terrorism, migration, environmental threats, etc. One may also add that the new term ‘human security’ is treated as an analytical tool allowing a more adequate recognition of the global situation, the identification of needs and the development of solutions for their more effective fulfillment. In this context Alex Bellamy notes that practice of human security (hence, concrete actions undertaken within it) has developed faster than accompanying theories and concepts (Bellamy, 2016, p. 132). He adds that “while the policy utility of human security was forthrightly criticised for lacking precise definition and for being excessively expansive and vague, practices of human security have progressed apace, with the international human protection regime being only one manifestation” (Bellamy, 2016, p. 113).⁴ As an example of the use of human security in policy frameworks, one may suggest the *Madrid Report of the Study Group on Human Security* (see also: Chandler, 2008, p. 465; Acharya, Singhdeo, Rajaretnam, 2011, pp. 2–3; Mentan, 2014, p. 18).

Regardless of the discussions on the scope and definition of human security, there is a broad consensus on the issues that should be considered in the context of human security. The following are usually mentioned: landmines, organized transnational crime, international terrorism, small and light weapons, illicit drug trafficking, environmental degra-

⁴ For more critical voices on the concept of human security and its practical meaning see: Paris, 2004; Chandler, 2008; Alkire, 2003.

dition, infectious diseases (especially HIV/AIDS), poverty, sexual and gender-based violence, child victims of armed conflicts, the protection of civilians in armed conflicts, refugees and the internally displaced, peacebuilding and peacekeeping operations, humanitarian intervention, punishing international crimes, corporate social responsibility and the role of transnational actors (Newman, 2013, pp. 145–146; Ravelona, 2006, p. 5). These discussions and definitional dilemmas do not preclude the taking of action in the policy field in order to ensure human security in practice.

The above list clearly indicates that human security has legal and political aspects and is a multidimensional and interdisciplinary research problem. The concept of human security is considered a unifying concept that combines under one notion various issues. What value does this concept have? Most of these issues, if not all, are not new. Indicating that certain issues fall under the concept of human security allows one to look at them from a new perspective. Moreover, as human rights are individualistic, in all of their subsets (civil, political, economic, social and cultural), and are also enforced by way of individual petitions to international bodies, human security is of a more collective dimension, encompassing only basic human rights and without the mechanism of individual petitions. The former are legal norms, whereas the latter are rather a policy concept. Still, as such, they are complementary and mutually reinforcing (Estrada-Tanck, 2017e). Accordingly, individualistic human rights may not be sufficient to protect people globally from structural human rights violations. “Human security-inspired policy changes and normative reforms may provide widespread solutions to a widespread situation” (Estrada-Tanck, 2017). Human security provides a framework for actions and sets goals to be achieved, and international law serves as a tool for its implementation. This is an added value and a reason to pursue it.

We need to understand that we live on the same planet and are all mutually interdependent. The security of the entire human race is interdependent – what happens on the other side of the world affects us, like a system of connected vessels. We will not be safe until ‘they’ will be, as long as there are people who are hungry, tortured, persecuted or arbitrarily imprisoned. The concept of shared responsibility for ensuring human security suggests that states are responsible for the security of individuals, even when they are outside their jurisdiction. On one hand, this is in contradiction to the basic principle of international law, according to which states have obligations to other countries, and not individuals. Despite the dynamic development of international human rights law, this statement

is rarely questioned (von Tigerstrom, 2007, p. 74). According to this line of argument, obligations under agreements on the protection of human rights are the commitments of states to other states, and not international obligations of states towards individuals that they can assert directly on an international level (Berezowski, 1966, p. 26; Cassese, 2005, p. 150). Hence, the individual is only the beneficiary of the norm and not the addressee. On the other hand, human rights have ceased to be an internal affair for an individual state, and every state has the right to demand from another state respect for the human rights of people falling under the latter's jurisdiction, even if they are on territory outside the jurisdiction of the former. In this context, the question of humanitarian intervention and 'responsibility to protect' is relevant.

Human security and international law, particularly international human rights law and international humanitarian law, may be recognized as embodying what Alex Bellamy calls "an international human protection regime" which comprises "'principles, norms, rules, and decision-making procedures' [...] focused on the protection of individuals and groups from the most immediate threats to survival: widespread and systematic arbitrary violence" (Bellamy, 2016, p. 113). This claim reflects the trend of increasing complementarity between international human rights law and international humanitarian law (Provost, 2004; Droege, 2007, pp. 332, 346; Droege, 2008, pp. 501–548; Hampson, 2008, pp. 549–572; Heinze, 2004; pp. 789–813). Within this regime, human security may be analogized to a strategy or an overarching goal, and international law as a tactical tool utilized to further the former. In *Human Security in Theory and Practice*, human security has been regarded as a policy tool for analysis, explanation and programming of foreign policies and international development assistance (*Human Security...*, p. 12). According to the former UN Secretary General, Ban Ki-Moon, "[h]uman protection is a subset of the more encompassing concept of human security. The latter reminds us that the security of 'we the peoples' matters every bit as much as the security of states. Human protection addresses more immediate threats to the survival of individuals and groups" (Ki-Moon, 2011). Hence, international law may be used as an instrument contributing to human security, and human security as a tool to interpret and develop legal norms.

I will conclude with the words of Cançado Trindade (2010, p. 400): "Despite the recurrence of atrocities in the last decades, human conscience has reacted in fostering the current process of *humanization* of International Law. Basic considerations of humanity, nowadays permeating the

whole of its *corpus juris*, constitute yet further indications of the path to follow.” This clearly shows that the international legal system does not exist for its own sake, and that its ultimate goal is the good, welfare and security of human beings, in other words human security.

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Human security, prawa człowieka i prawo międzynarodowe – relacje między nimi

Streszczenie

Autorka analizuje związek między prawem międzynarodowym a koncepcją bezpieczeństwa ludzkiego, które pojawiła się w latach 90-tych XX wieku. Artykuł jest podzielony na trzy części. Część 1 przedstawia pojęcie bezpieczeństwa ludzkiego, jego genezę i treść. Część 2 analizuje relacje między bezpieczeństwem ludzkim a prawem międzynarodowym i krótko rozważa najbardziej reprezentatywne aspekty prawa międzynarodowego, w tym międzynarodowego orzecznictwa, które w opinii autorki odzwierciedlają imperatywy bezpieczeństwa ludzkiego. Wreszcie wnioski końcowe dostarczają odpowiedzi na postawione pytania i wskazują na wartość dodaną koncepcji bezpieczeństwa ludzkiego. Pytania brzmią następująco: W jaki sposób bezpieczeństwo ludzkie może wzmocnić działania międzynarodowe (działania oparte na prawie międzynarodowym)? Gdzie w prawie międzynarodowym odzwierciedlone jest bezpieczeństwo ludzkie? Jaka jest rola prawa międzynarodowego dla bezpieczeństwa ludzkiego? Biorąc to wszystko pod uwagę, jaka jest wartość dodana przyjęcia koncepcji bezpieczeństwa ludzkiego? Artykuł ten jest nieuchronnie interdyscyplinarny, ponieważ łączy perspektywy prawa międzynarodowego i stosunków międzynarodowych.

Słowa kluczowe: bezpieczeństwo ludzkie, prawo międzynarodowe, prawa człowieka