Human Security and Human Rights under International Law: Crossroads and Possibilities

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It is undoubtedly true that development rarely takes root without security; it is also true that security does not exist where human beings do not have access to enough food, or clean water, or the medicine they need to survive. It does not exist where children cannot aspire to decent education or a job that supports a family. The absence of hope can rot a society from within.

Barack Obama,
Remarks at the Acceptance of the Noble Peace Prize, 10 December 2009, Oslo, Norway

1. Introduction

The broad spectrum of perils that people confront in this global era cannot be understood nor fully attended by traditional public policies and concepts of national and State security.¹

Long-established concepts of national or military security, focusing on the territorial State, are unfit to analyze many factors of risk, threat or sudden change in the daily lives of persons caused by other insecurities such as poverty, environmental hazards, global epidemic diseases, natural disasters, and gender-based violence. All these elements of menace that affect people’s rights and dignity, have usually not been considered as risks which can be related to security which the State has an obligation to prevent or ameliorate. Such threats often become invisible in the public debate that generally centers its concerns on national security of the State, or in some cases on public security related only to combating crime or exposed violent conflict.

It can be alleged that the fragmented attention to each of these problems does not offer a holistic approach to phenomena that are actually interrelated and therefore limits the development of more structural solutions to the violation of human rights that may derive from such situations.² Thus, the concept of human security, centered on the individual instead of the State, emerges as a possible means to review and attend all these conditions, whether or not they result from conflicts between States and independent of

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² In this sense, see Alkire, Sabine, “Concepts of Human Security”, in Human Insecurity in a Global World, op. cit., pp. 33-34.
the fact that they occur within armed conflict.

The notion of human security, constructed and advocated for in the international arena, offers an interesting opportunity to further analyze its relationship to human rights, another concept which enjoys strong international relevance, largely in the legal terrain. However, as it has been stressed, “[D]ifferent from other academic disciplines, international law has been reluctant to respond to the rise of human security, and the potential of human security as a possible global normative framework has attracted less attention”; a fact worth noting if it is considered that “human security...does indeed pose a challenge to international law”.3 Given that “despite its relevance to central questions of international law, human security has until recently received little attention from international lawyers”;4 it seems important to examine the possible relevance of the notion of human security for the understanding and practice of human rights under International Law.

Reviewing the points of connection between human security and International Law may also contribute to the understanding of the idea of human security and assessment of its possible utility, as there are still many disperse definitions in academic circles and among international organizations and States that promote this idea of security.5

Therefore, the central aims of this paper are to: 1) Present an overview of the different conceptions of human security, of the critiques towards the human security approach, of the practical exercises of measurement of human security, and the assessment of the most useful definition of human security to adopt it as a working definition; and 2) To analyze critically how human security relates to International Law and if the elements of the working definition of human security are reflected in International Law in general, and International Human Rights Law in particular (even if the notion is not named a such). This analysis is carried out through looking at the intersections between human security and human rights in certain concrete areas considered of interest: i) security as a human right; ii) the concept of citizen security developed in the Inter-American system of human rights; iii) the particular links of human security to economic, social and cultural rights (ESC Rights); and iv) the correlation of human security to gender issues and feminism.

By means of studying these points, the paper presents some ways in which human security may contribute to a more integrated and holistic understanding of the State’s human rights obligations, and at the same time, suggests approaches by which the notion of human security would become more precise from an analysis through International Law, especially International Human Rights Law, and thereby define more clearly its scope and content. By way of this examination, the paper intends to evaluate

5 Alkire, Sabine, op. cit., p. 34.
some of the limitations and potentials of the notion of human security at the international, national and local level, beyond its political dimensions, by exploring it through the lenses of International Law.

2. Changing conceptions of security and the evolution of human security

Traditionally, security has been considered a State matter, both as the subject in charge of providing it to the persons under its jurisdiction, as well as the object worthy of protection and regulation through laws and policies. The security of individual human beings, in contrast, was largely ignored.6

Thus, modern form of human security emerges as a post-Cold War answer to threats that had been overlooked by State-centered conceptions of national, military and territorial security,7 as well as to new risks posed by the process of globalization and the intensification of transnational relations, such as violent conflicts within States (and not only between States as had usually been the focus),8 sudden economic downturns, environmental dangers and global infectious diseases as HIV/AIDS, all of which create mutual and interlinked vulnerabilities for persons around the world.

This contemporary idea of human security was first briefly referred to in 1993 by the United Nations Development Program (UNDP) and then fully articulated by Mahbub ul-Haq through the 1994 UNDP Annual Report on Human Development.9

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7 MacFarlane and Foong Khong, op. cit., p. 20.
8 Unless otherwise specified, the term “violent conflict” is understood in this document as a situation in which armed force is used by the State or by any other actor(s) in the context of contended issues. Although it should be noted that this is a narrow definition and that there are other forms of “violent conflict” or of “violence” in general (as will be referred to further on), given that this is the meaning attributed to the term in the report Human Security Now and other documents on this issue, it will be employed for the effect of coherence and clarity. See Commission on Human Security, Human Security Now, Commission on Human Security, New York, 2003, in particular Chapters 2 “People caught up in violent conflict” and 4 “Recovering from violent conflict”, Box 2.1 “Conflict data are state-centred, not people-centred” at p. 22, which also highlights that estimates of the number of people killed as a result of violent conflict usually reflect only battle-related deaths: From 1945 to 2000 more than 50 million people are estimated to have died in wars and conflicts. But many more die from the consequences of conflict—from the destruction of infrastructure, the collapse of essential health services and the lack of food. However, those data are not available or included. See also Box 2.2 “Conflict and interpersonal violence” at p. 23 and Table 4.1 “Key human security clusters following violent conflict” at p. 60; as well as documents published by the Human Security Report Project: Human Security Report 2005. War and Peace in the 21st Century, Human Security Centre, University of British Columbia, Canada, Oxford University Press, 2005; Human Security Brief 2006, Human Security Centre, University of British Columbia, Canada, both of which refer to violent conflict, whether stemming from criminal or from political violence, as one that uses armed force; and Miniatlas on Human Security 2008, Simon Fraser University-School for International Studies, The World Bank-Human Security Research Group, Notes on Terminology, p. 66, that specifically equates “violent conflict” to “armed conflict”, which is defined as “political violence between two parties involving armed force, and causing at least 25 reported battle-deaths a year”.
We must recall that precisely in 1993, the Vienna Declaration and Program of Action had put an end to the historical discussion carried out during the Cold War regarding the hierarchy of civil and political rights with respect to ESC Rights or vice versa, and clarified that “all human rights are universal, indivisible and interdependent and interrelated”, adopting an integral understanding of human rights. Therefore, it should not strike us as a mere coincidence that the UNDP also promoted a holistic view of human development and included within its scope the consideration of human security.

For the UNDP, following the original wording of the 1945 United Nations (UN) Charter (which expressed in its Preamble the Parties' commitment “to promote social progress and better standards of life in larger freedom”), there are two conditions that can foster human security, freedom from fear and freedom from want.  

Therefore, human security as defined by the UNDP, has two main aspects: 1) safety from such chronic threats as hunger, disease and repression; and 2) protection from sudden and hurtful disruptions in the patterns of daily life -whether in homes, in jobs or in communities. Such threats can exist at all levels of national income and development. Based on this definition, according to the Human Development Report of 1994, the threats to human security can be grouped in seven categories:

1. Economic security  
2. Food security  
3. Health security  
4. Environmental security  
5. Personal security  
6. Community security  
7. Political security

Institutional prioritization has been given to human security at the international level, for example, through the United Nations Trust Fund for Human Security (UNTFHS), created in 1999 mainly with contributions from Japan, and the informal group of 13 countries, the Human Security Network, also formed in 1999 and lead by Canada.

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14. Canada also assumed a leadership in the promotion of human security and initiated in 1999 the Human Security Network, a group of 13 countries –of which Japan is not a part- united informally to jointly promote in various international forums, including the current Human Rights Council, a series of actions in the name of human security. The Network includes Austria, Canada, Chile, Costa Rica, Greece, Ireland, Jordan, Mali, the Netherlands, Norway, Switzerland, Slovenia, Thailand and South Africa as an observer. This Network promotes issues such as the universalization of the Ottawa Convention on Anti-personnel Landmines (a treaty which was adopted in 1997 due in part to the active promotion of several NGOs and the Human Security Network itself), the establishment of the International Criminal Court, the protection of children in armed conflict, the control of small arms and light weapons, the fight against trans-national
In 2003, the Commission on Human Security (CHS), a group of experts co-chaired by Amartya Sen, Nobel Laureate in Economics 1998, and Sadako Ogata, former UN High Commissioner for Refugees, published the report Human Security Now, which also draws upon the original positions surrounding the UN creation with reference to freedom from fear and freedom from want.\(^\text{15}\)

The CHS provides the following definition:

Human security means to protect the vital core of all human lives in ways that enhance human freedoms and human fulfillment. Human security means protecting fundamental freedoms—freedoms that are the essence of life. It means protecting people from critical (severe) and pervasive (widespread) threats and situations. It means using processes that build on people's strengths and aspirations. It means creating political, social, environmental, economic, military and cultural systems that together give people the building blocks of survival, livelihood and dignity.\(^\text{16}\)

It also proposes that human security is realized by joint strategies of protection, by crafting institutions that protect and advance human security, and empowerment, and in dealing with this second key to human security, the Report emphasizes an additional category to freedom from fear and from want, given that empowerment means enabling people to exercise the “freedom to act on one’s own behalf – and on behalf of others”.\(^\text{17}\)

The Report also stresses that State security and human security are complementary, given that the latter addresses insecurities that have not been considered as State security threats.\(^\text{18}\)

The CHS refers to threats coming from violence, but also from poverty, ill health, illiteracy and other maladies, and highlights the fact that conflict and deprivation are interconnected.\(^\text{19}\) However, the CHS underlines abrupt change as a risk to security, rather than absolute levels of deprivation, for example, in the case of “sudden economic downturns”.\(^\text{20}\) Many threats affect people at all levels—the affluent as well as the poor,
for example, environmental hazards and lack of water\textsuperscript{21} or the spread of HIV/AIDS, which is high in poor countries, as well as in countries in transition to democracy and market economies.\textsuperscript{22} However, the Report also notes that among other factors that may condition exposure to threats, such as gender, age, or ethnicity, people in a situation of poverty or marginalization are in a higher level of risk and vulnerability to confront these threats.\textsuperscript{23}

In referring to the relationship between human security and human rights, the Report affirms that

\begin{quote}
\ldots human rights and the attributes stemming from human dignity constitute a normative framework and a conceptual reference point which must necessarily be applied to the construction and putting into practice of the notion of human security. In the same manner, without prejudice to considering the norms and principles of international humanitarian law as essential components for the construction of human security, we emphasize that the latter cannot be restricted to situations of current or past armed conflict, but rather is a generally applicable instrument.\textsuperscript{24}
\end{quote}

However, it must be noted that in developing its findings, the Report focuses its analysis more on the factual situations valued as threats, than on a normative assessment related to the condition of enjoyment of human rights and the risks faced with regards to their protection.

Two years after the CHS Report, in 2005, Kofi Annan, then UN Secretary General (SG), issued the report \textit{In larger freedom: towards development, security and human rights for all},\textsuperscript{25} as a guideline for the global reforms needed to face the pressing challenges of

\begin{footnotesize}
\footnote{\textit{Ibid.}, pp. 15-19.}
\footnote{\textit{Ibid.}, p. 96.}
\footnote{\textit{Ibid.}, p. 95.}
\footnote{\textit{Human Security Now, op. cit.}, p. 145.}
\footnote{\textit{The report recovers the original idea of a ‘larger freedom’ referred to in the Preamble of the United Nations Charter of 1945, and places the concepts of freedom from fear and freedom from want, emphasized both in the 1994 UNDP report and in the 2003 CHS report, in the current world scenario: “The threats to peace and security in the twenty-first century include not just international war and conflict but civil violence, organized crime, terrorism and weapons of mass destruction. They also include poverty, deadly infectious disease and environmental degradation since these can have equally catastrophic consequences. \ldots On this interconnectedness of threats we must found a new security consensus, \ldots [W]hatever threatens one threatens all.} Once we understand this, we have no choice but to tackle the whole range of threats. We must respond to HIV/AIDS as robustly as we do to terrorism and to poverty as effectively as we do to proliferation. We must strive just as hard to eliminate the threat of small arms and light weapons as we do to eliminate the threat of weapons of mass destruction. Moreover, we must address all these threats preventively, acting at a sufficiently early stage with the full range of available resources.”}\end{footnotesize}
today, and referred to similar and interrelated world-wide threats. It is worth noting that this report includes a third pillar, apart from freedom from fear and from want, that of freedom to live in dignity, under which it deals with the rule of law, human rights and democracy.26

There have been several questions and criticisms drawn in relation to the notion of human security as being conceptually inaccurate, too broad and vague to be useful in practice,27 or even as an idea susceptible to be abused in detriment of some of the most vulnerable persons, such as refugees (specially in the light of post-9/11 security discourse).28 On a more constructive note, one can underline that the contribution of human security reside in having successfully moved away the focus, at least in some aspects, from State-centered conceptions of national security to people-centered considerations of security.29

Also, we may find in human security a strong political potential to provoke a renewal in the debate of security that includes a more human rights-based approach, and act as a counterbalance particularly after 9/11 and the risks to the enjoyment of human rights derived from the current struggle for security at the international level, as well as more localized challenges at the national or local levels through the use of concepts of State security (used in the case of the occupied Palestinian territory) or public security (as in


26 Thus, it is interesting to note that the structure of the 2005 Secretary General’s Report reflects the conceptual links the UN is making with these goals and principles. Conversely, the CHS Report doesn’t specifically refer to freedom to live with dignity, although as was mentioned, it does indicate that human security entails the creation of conditions to give people the building blocks of “survival, livelihood and dignity”.

27 For a provocative call for reflection, see Tadjbakhsh, Shahrbanou, who introduced seven challenging questions on the concept of human security on September 13, 2005 at the “Human Security: 60 minutes to Convince” discussion held at UNESCO.

28 Freitas, Raquel, “Human Security and Refugee Protection after September 11: A Reassessment”, in Refugee: Canada’s periodical on refugees, Vol. 20, No. 4, 2002, quotes from pp. 37 and 36. In the same sense, see the chart related to the axes of expansion of the concept of human security, in which an incremental conception of security places migrants and alien culture as a threat to the values of national unity and national identity, in Møller, Bjørn, “National, Societal and Human Security. A General Discussion with a Case Study from the Balkans”, Paper for the First International Meeting of Directors of Peace Research and Training Institutions on What Agenda for Human Security in the Twenty-first Century?, UNESCO, Paris, 27-28 November 2000, p. 11. It is true that the notion of “risk” is based on the interpretation of a set of empirical facts as constituting danger, and in that sense security is an intersubjective phenomenon rather than an objective condition. Because it relies heavily on perceptions of safety and well-being, which are socially constructed, it can be used by different societal and power groups in destructive ways. However, the language of human rights or human development, for example, have also been used in ways which in fact challenge the underlying values of such concepts and may have a negative effect on their fulfillment, which does not seem as a strong enough reason to abandon these concepts; see MacFarlane and Foong Khong, op. cit., in particular Chapter 1, “The prehistory of human security”; and Freeman, Michael, “Beyond capitalism and socialism”, in Human rights and Capitalism. A Multidisciplinary Perspective on Globalisation, edited by Janet Dine and Andrew Fagan, United Kingdom, Edward Elgar, 2006, pp. 3-27.

the Latin American context), both of which will be described in this paper.

It must be noted that in spite of the fact that the UN documents have adopted a broad understanding of human security, the positions of States, the academic debate, as well as the measurement exercises of human security have been fragmented basically into two positions.

Summarizing such positions, we find the following conceptions: 1) Human security as the protection from violent conflict, whether or not it stems from armed conflict between States, that is, also conflict deriving from political or criminal violence (usually referred to as the ‘narrow definition’ related more to ‘freedom from fear’), which one could consider mainly to affect the right to life, liberty and personal security, and physical integrity. Under this category, we may locate the Human Security Report, issued by the University of British Columbia in Canada. 30 While recognizing that “hunger, disease and natural disasters kill far more people than war, genocide and terrorism combined”, 31 this Report has been measuring since 2005 the world’s conditions of human security relating it to violent conflict and emphasizing (previously neglected) intra-State conflict. 2) Human security as the defense from risks related to development aspects and socio-economic conditions (the ‘broad definition’ related more to ‘freedom from want’), an approach that remains closer to ESC Rights. Under this view, we find for example, the proposal of G. King and C. Murray who try to narrow down the human security definition to one's "expectation of years of life without experiencing the state of generalized poverty". 32

Therefore, it would seem that the human security debate has reproduced to a certain extent the Cold War division related to human rights (civil and political/ESC Rights), from the point of view of hierarchical importance of rights (risks), as well as related to the usefulness and viability (political or practical) of the fulfillment of such rights or the protection from those risks.

In this context, a final mention deserves to be made in relation to a recent measuring exercise of human security. It may have been a point of criticism that even when the UNDP proposed the notion of human security in 1994, the truth is that in the last fifteen years it has not been used to evaluate or measure situations being analyzed by this body. In view of these critiques, it is very relevant to note that the Arab Human Development Report 2009: Challenges to Human Security in Arab Countries 33, and especially the

30 The Human Security Report Project, coordinated by Andrew Mack, was transferred in May 2007 from the Human Security Centre at the Liu Institute for Global Issues, University of British Columbia, to the School for International Studies of Simon Fraser University in Canada. This School has continued the task of issuing the annual report.
32 King, Gary and Christopher J.L. Murray, “Rethinking Human Security”, in Political Science Quarterly, 2004, pp. 586-610. In their definition, the "generalized poverty" means "falling below critical thresholds in any domain of well-being"; for which they also provide a review and categories of “Domains of Well-being”.
Human Development Report 2009/10, occupied Palestinian territory: Investing in Human Security for a Future State, just published, revisit the notion of human security as one that has proved “particularly relevant to the occupied Palestinian territory (oPt) because much of the narrative surrounding the conflict has focused on State security to the detriment of other concerns”.  

This Palestinian Human Development Report, the fifth in its type, introduces “human security as a new concept for advancing development in the oPt...This concept is most simply described as a strategy through which to pursue a perfected triangle of development, freedom and peace as a necessary prerequisite to the achievement of full and secure Statehood”. To achieve this “triangle”, the report focuses on freedom from fear, freedom from want and freedom to live in dignity as the main pillars on which to construct human security.

The Report builds on the threats indicated in the 1994 UNDP Report and on the concept and strategies expressed in the 2003 CHS Report, when it affirms that “human insecurity is the result of pervasive, recurrent or intense threats, and can only be remedied by the protection and empowerment of people. While the human security paradigm places a concern with human life and dignity at the fore, it is...the rearguard of human development. This Report explores the facets of human security (economy, food, health, environment, political, personal, community) from the perspective of establishing freedom from want, freedom from fear and freedom to live in dignity”. Interestingly enough, the section of “Freedom to live in dignity” includes the issues of “Health security” and “Environmental security” (differing from the 2005 UN SG Report, In larger freedom, which related this pillar to aspects of democracy, human rights and rule of law). However, these two types of insecurities are approached from the point of view of the Palestinian occupation, given that “as in other cases of occupation, the freedom to live in dignity is palpably absent”, whereby the lack of autonomy and self-determination over health services, environmental resources and access to land, have played a major role in creating a condition of human insecurity in these specific areas.

This Report on the occupied Palestinian territory constitutes a very concrete and recent example of an application of the notion of human security, constructed internationally, to a regional and local case, with implications and consequences for International Law in the topics of development and human rights.

As may be observed, in whichever of its conceptions, the fact is that human security

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36 Ibid., p. 15.
37 Ibid., quote from p. 16. See pp. 91-93 with regard to environmental insecurity. In relation to health insecurity, the Report also highlights the state of psychological health and the qualitative measures that expose rising feelings of fear, humiliation and depression, indicating that “81% of Palestinian youth are either extremely depressed or depressed”, and that the “realities of occupation and...conflict profoundly threaten long term physical, emotional and social well-being”, pp. 86-87.
plays a key function in different international and national institutional arrangements, in academic literature and activities and in NGO agendas. Therefore, the utility of exploring its connections with International law and human rights seems evident, for which a starting-point definition is necessary.

2.1 Working definition: a bridge to connect the crossroad

There are some consensual definitions that intend to surpass the debate already described and which remain true to the integrated approach of human security, while at the same time searching for a workable notion that enables practical impact.

Taylor Owen has proposed a threshold-based conceptualization, one rooted in the original UNDP definition that in his view offers a conciliatory way forward to what is often characterized as a fractured debate. He suggests that limiting threat inclusion by severity, rather than by cause, bridges the divide between the broad and narrow proponents, addresses the many critiques of the concept, and provides a clear policy agenda operating on various scales. Thus, based on the 1994 UNDP classification of insecurities as well as the idea of threats drawn by the 2003 Report of the Commission on Human Security, he provides a useful definition of human security as “the protection of the vital core of all human lives from critical and pervasive environmental, economic, food, health, personal and political threats”.

As to the criteria for drawing the line of the threshold (whether number of deaths or monetary costs, for example), the author’s proposal is that this line is best seen as political. In a similar way to the fact that “there is no set list for what is and is not a

38 To give an example, the UN Trust Fund in Human Security is one of the largest trust funds of its kind established in the United Nations. According to its own data, since its foundation in 1999 to the present, the trust fund has dedicated USD 340 million to projects in over 70 countries in the world, see http://ochaonline.un.org/Home/tabid/2097/Default.aspx In comparison, for 2008, the annual budget of the UN Office of the High Commissioner for Human Rights was roughly USD 177 million (including the corresponding percentage of the UN regular budget and voluntary contributions), see http://www.ohchr.org/EN/AboutUs/Pages/FundingBudget.aspx The regular funding of the Office for the 2008-2009 biennium was USD 115.3 million, and the voluntary contributions in 2008 were USD 119.9 million. With relation to refugees, see Box 2.3 “Compassion fatigue and humanitarian action”, in Human Security Now, op. cit., for an account of the decrease in expenditures per refugee by the Office of the UN High Commissioner for Refugees (UNHCR) from $25 in 1998 to $19 in 2001 due to the significant decline in donor contributions to the UNHCR (although one should bear in mind that this analysis only presents the existing situation until 2001). Hence, it is interesting to contrast the amount of financial resources and political will dedicated internationally in the last few years to the concept of human security which doesn’t exist as such in any binding legal instrument, with the amounts officially destined at the same level to human rights, which have a solid tradition of international legal instruments developed over more than half a century. This could motivate us towards evaluating the possibility of building stronger bonds of feedback between human rights and human security, some of which are explored through this paper.


40 Ibid., p. 383. The category of “community security” proposed by the UNDP is purposely not included in Owen’s definition, as he explains, because “I feel it conflicts with the first part of the definition, limiting human security to critical and pervasive threats to the vital core. I do not feel that integrity of culture, while undeniably important, fits within this conception”, footnote 17 on p. 383.
traditional security threat, human security threats would be decided by international organizations, national governments, and NGO's. Just as with traditional security, what is a threat to the world community is different from what is a threat to a nation or region. The line is therefore set by political priority, capability, and will”. In this sense, he underlines that the first opportunity and main responsibility for ensuring human security should fall on national governments. However, if threats crossing the human security threshold are caused by governments or if governments are unable to protect against them, the international community should carry out actions.41

One could point out that in order to perform this last option (which still remains a debated topic), the criteria set forth in the UN Charter and general International Law would have to be observed.42 In any case, it seems coherent to agree that the idea of human security “as a threshold beyond which a wide range of issues become something similar, something requiring the unified policy response granted to security threats, can be applied to any of the existing conceptualizations”.43

As will be further explained in the section on human security and human rights, it seems that a proper focus of Owen’s definition as to what aspects of social and political life enter under human security and which are left out, is centering on the issue of risk, rather than on the issue of rights. Thus, one could look at situations (factual element) and assessments (evaluative element) of levels of risk and vulnerability and relate them to levels of enjoyment of human rights, in order to draw useful conclusions. To do this, one would build on the jurisprudence and interpretive work that has been carried out by human rights mechanisms and analyze these norms and interpretations through the orienting notion of human security, thus placing an emphasis of the State’s obligation to carry out primarily actions of prevention, as well as actions of attention, against risks and vulnerabilities that affect the rights of people and their overall security.

In an attempt to take into account the main elements described, we may adopt as a useful working definition of human security the protection from severe risks, vulnerabilities and sudden changes that puts human beings, their daily lives, their human rights and their dignity, into the center of attention.

3. Human security and International Law

One may broadly think of the normative and legal dimensions of security in trying to address the question of how the law responds to risk.44 Following from this, there are different reflections we could undertake in order to analyze the possible relationship

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41 Owen, Taylor, op. cit., p. 384.
42 In this sense, one of the options to set criteria for humanitarian intervention has been proposed by the ICSSI through The Responsibility to Protect, op. cit., although this still remains a highly contested issue.
43 Owen, Taylor, op. cit., p. 384.
specifically between human security and International Law in a globalized scenario.\textsuperscript{45} 

It has been indicated that “\textit{I}nternational law has been largely silent, although the concept [human security] might well have considerable impact on its future development in some...key areas”: 1) the understanding of security in international law; 2) the place of human security in the UN Charter; 3) the role of the Security Council, state sovereignty, and humanitarian intervention; 4) the creation of new norms; and 5) the place of non-state actors in international law. It has also been noted that although “human security has left traces in these areas, the challenge to international law might well reach further and comprise both international law as an operating system (that is, its role as a "constitution" for international society) and the normative system (that is, the values and goals international law considers worth pursuing)”.\textsuperscript{46}

In exploring some of the ways in which human security has been and could be used in International Law, Barbara Von Tigerstrom has identified and studied main areas of intersection: 1) humanitarian intervention; 2) forced displacement; 3) small arms control; and 4) global public health.\textsuperscript{47} These issues are examined deeply in her work through analyzing specific legal instruments or an “evolving legal framework” (as in the case of small arms and light weapons), that cover the basic elements of human security –the identification of risks and threat with reference to each of these four global phenomena. At the same time, she explains the current legal debates and re-evaluates them “through the lens of human security”. Finally, she explores the mutual advantages both human security and International Law could attain from this kind of legal analysis that underlines the crossroads between the notion of human security and some of its concrete normative expressions.

Human security may also be important for International Law in the determination and evaluation of the parties involved in a legal matter. Because of its people-centered view, it provides guidance as to the actors apart from the State, whose participation is relevant in relation to security and which would probably not be considered in traditional security strategies, for example, transnational corporations or non-State armed groups.\textsuperscript{48}

\textsuperscript{45} For example, in relation the process of globalization and the way this has impacted human rights, the specific link between trade agreements, international investment law, arbitration and the human rights normative framework, has recently started to be examined and is a field of increasing analysis which will surely influence our understanding of the impact of these agreements and institutions on the enjoyment of ESC Rights, and the risks they are undergoing in the context of a globalized economy; see Dupuy, Pierre-Marie, Francesco Francioni and Ernst-Ulrich Petersmann (editors), \textit{Human Rights in International Investment Law and Arbitration}, Oxford, Oxford University Press, 2009. This relationship may well be viewed also under the notion of human security, given that one of its focal points is the economic vulnerability of individuals due to new phenomena such as global economic crises and global financial volatility; see See Griffith-Jones Stephany and Jenny Kimmis, “Human Insecurity of International Financial Volatility”, in \textit{Human Insecurity in a Global World}, op. cit., pp. 163-181.

\textsuperscript{46} Oberleitner, Gerd, \textit{op. cit.}, available in http://www.accessmylibrary.com/article-1G1-132847591/human-security-challenge-international.html

\textsuperscript{47} See Von Tigerstrom, \textit{op. cit.}, in particular, the four chapters dedicated to each of these issues, pp. 91-192.

\textsuperscript{48} See Von Tigerstrom, \textit{op. cit.}, p. 60.
Another aspect with implications for International Law that has recently been highlighted as an area of study under the ‘broad notion’ of human security is that of non-citizens. *Human Security and Non-Citizens: Law, Policy and International Affairs*, looks at not only refugees, asylum seekers and displaced persons, as has already been analyzed to a certain extent by current literature, but also at stateless persons and moreover, irregular migrants, who suffer from lack of protection due to the existing gaps in International Human Rights Law in this subject.⁴⁹

Thus, generally speaking, if one looks at the human security agenda, many of its elements have been enclosed in one way or another by international norms and principles. The central component of human insecurity as the existence of risk and the related situation of vulnerability is dealt with in International Law through instruments directed to different groups of persons, for example, women victims of discrimination or violence,⁵⁰ or more recent concerns in the international arena, such as children in armed conflict.⁵¹

It has been argued that a notion of human security that is wholly informed by international human rights law, international humanitarian law, international criminal law and international refugee law, and which considers the relevant international legal norms prohibiting the use of force in international relations, will probably prove more valuable to international legal theory and practice in the longer term, than a concept of human security which does not meet these conditions because these areas of law embody the objectified political will of States rather than the more subjective preconceptions of scholars.⁵²

With the intention of contributing to the discussion mainly on one of these legal intersections, the focus of this paper will concentrate on the relationship between human security and human rights viewed from International Law.

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⁴⁹ Alice Edwards and Carla Fertsman (editors), *Human Security and Non-Citizens: Law, Policy and International Affairs*, Cambridge University Press, 2010. This publication aims at adopting a broad definition of human security to “combine both traditional security issues and their impact/intersection with non-citizens (e.g. terrorism and armed conflict), with issues that have not been traditionally seen within a security framework (e.g. development, poverty and the environment)”, p. 24.


3.1 Human security and human rights

In looking at the development within International Law of ideas with a human-centered versus a State-centered approach, one can find the norms and principles relating to human rights, humanitarian intervention and, to some extent, international peace and security.54

In looking at our issue of analysis, the connections between human security and human rights, it is necessary to refer to the strategic importance of respect for human rights in the maintenance of international peace and security in general, the core objective of the Charter of the United Nations:

Security is a condition or feeling of safety, of being protected. International human rights norms define the meaning of human security... Article 28 of the Universal Declaration of Human Rights is of crucial importance from this point of view. It provides that everyone is entitled to a social and international order in which the rights recognized in the Declaration can be realized... Individual security must be the basis for national security, and national security grounded in individual security must be the basis of international security. National security and international security cannot be achieved without respect for individual security in the form of respect for human rights and fundamental freedoms... conflicts cannot be prevented or peace maintained in a world of wanton violations of human rights.55

In this sense, with respect to the international attention paid to security matters within the UN framework,

there has been an increasing tendency over time for the General Assembly and the Security Council to deal in parallel with the same matter concerning the maintenance of international peace and security... It is often the case that, while the Security Council has tended to focus on the aspects of such matters related to

53 A critical analysis of the connections between human security and human rights may be carried out along the following main lines: if human security covers the whole range of human development and well being of individuals, then is it not a kind of ‘human rights reloaded’? Is it a concept that is more fashionable or politically convincing, but that essentially aims at fulfilling the same objectives that the whole normative structure of human rights has been trying to attain for more than half a century? In this sense, one might borrow from feminist ideas that the contribution of “successful social theories is that they provide a novel twist to an old problem” and help to refuel the terms of discussion; see Davis, Kathy, “Intersectionality as buzzword. A sociology of science perspective on what makes a feminist theory successful”, Feminist Theory, vol. 9, n. 1, Sage Publications, 2008, pp. 69 and 72. This is not to say that human security is a full range social theory or that any social theory under these parameters is sufficient basis alone to inform legal doctrine or practice, but it is true that many of the norms which are reflected today in International Law, especially if we review the development of International Human Rights Law, were originally debated at the political level partly as a component of emancipatory discourses and only later found their way into international legal expressions; see Freeman, Michael, “Beyond capitalism and socialism”, in Human rights and Capitalism. A Multidisciplinary Perspective on Globalisation, op. cit.

54 See Von Tigerstrom, op. cit., pp. 40 and subsequent.

international peace and security, the General Assembly has taken a broader view, considering also their humanitarian, social and economic aspects.\(^{56}\)

However, the reformulation of the notion of security under the human security elements could have important institutional consequences in the exercise of the legal functions of the different UN bodies, especially of the Security Council, the organ entrusted by the Charter to maintain precisely international peace and security. As has been mentioned, this is one of the areas of potential analysis of the relationship between human security and International Law, and this may be clearly appreciated if one thinks of the UN’s role in conflict prevention or peace-keeping and peace-building, for example, and the ways in which this would be modified with a widespread shift in the security paradigm.

As a proposal for further analysis, one could reflect that if we are to accept the protection of all human rights – civil, political, economic, social and cultural- as the central element of security concerns, and combine it with the principle of interdependence of all human rights in an integrated approach, then we might consider that at least a ‘minimum core’\(^{57}\) of each human right would have to be incorporated into the different functions of the Security Council.\(^{58}\)

Another point of encounter may be found in looking at human security under the light of legal rights as recognized by International Law, in a similar way to the human rights-based approaches that have been suggested in relation to development, especially in relation to ESC Rights,\(^{59}\) an analysis that might bear fruitful results as this view has

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\(^{56}\) Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 9 July 2004, International Court of Justice, Reports 2004, p. 136, para. 27. Italics not in original. For a study regarding some similar consequences on human rights related to the construction of another wall, allegedly for security reasons, see Miller, Nicole, “How property rights are affected by the Texas-Mexico border fence: a failure due to insufficient procedure”, Texas International Law Journal, 45, Spring 2010, pp. 631-654.

\(^{57}\) This concept has mainly been developed in relation to ESC Rights, but the possibility to use it in relation to other rights could be explored further; see UN Committee on ESC Rights, General Comment No. 3, “The nature of States parties obligations (Art. 2, par.1)”, 14 December 1990, especially para. 10.

\(^{58}\) In a similar sense, see Erika de Wet, “Human Rights Limitations to Economic Enforcement Measures Under Article 41 of the United Nations Charter and the Iraqi Sanctions Regime”, in 14 Leiden Journal of International Law, 2001, pp. 277-300. The article examines if and to what extent the Security Council may limit human rights norms when imposing economic sanctions. In the process it distinguishes between non-derogable and derogable human rights. With respect to the latter, it supports limitation in accordance with a proportionality principle that protects the core of the rights involved, while at the same time allows the Security Council the flexibility required by its unique role in the maintenance of international peace and security. The author argues in favor of a broad interpretation of the core of rights, for example, of the right to life, correlated to the right to health, following jurisprudence and interpretation of the relevant international human rights mechanisms.

seldom been explored. In line with the recent emphasis on focusing on human rights implementation, the connection between human security and human rights under this perspective, would also contribute to the possibility of constructing public policies with a human rights-based approach, which include the aspect of prevention and attention to risks and situations of vulnerability.

As it has been observed, in whichever of its conceptions, the fact is that human security plays a key function in international and national institutional arrangements, frequently related to the legal dimension of human rights. The evolution of human rights has had a great influence on the development of modern International Law, and in this context it can be observed that human security, in the same way than human rights, is human-centered, as opposed to State-focused. Thus, it is possible to conclude that both constructs, human security and human rights, serve common purposes and are therefore “mutually reinforcing”.

Despite this, as has been explained, while most human security ideas relate to human rights, they do not adopt a human rights-based approach when measuring levels of human security. Human security and human rights share common values, they overlap and coincide in their interest of placing human beings at the center of concern. Human rights have a normative basis expressed through a strong legal architecture, while human security is more of an orienting notion, a unifying or transformative concept that contributes to the interpretation of such normative legal framework. However, the relevant intersecting point between human security and human rights -which is at the same time the distinctive characteristic that sets them apart as different notions-, is precisely the element of risk or vulnerability. In this sense, it does not seem appropriate when answering the question of which human rights should enter under the human security umbrella, to observe that only a limited set of rights, those “basic rights” directly related to “survival, livelihood and dignity”, should be considered within human security.

The point that can be raised is why is it necessary to make a distinction? The need for specifying rights would appear either to fall back into the classical hierarchical division


As Cassese has pointed out, historical development shows that “international law increasingly covers issues of human rights and binds States not only among each other, but moreover States in respect to the persons subject to their jurisdiction”, Cassese, Antonio, *International Law*, Oxford, Oxford University Press, second edition, 2005, p. 45.


Von Tigerstrom, *op. cit.*, p. 43.
between civil-political rights/ESC Rights, generally surpassed by now, or to point in favor of considering that all rights have a relationship with human security, in which case the distinction might not be necessary in the first place. Additionally, to adopt the first position of differentiating “basic rights” would seem somewhat dangerous given there already exists a legal regime, through International Human Rights Law and International Humanitarian Law, that defines the suspendable/non-suspendable and derogable/non-derogable rights in situations of peace and armed conflict. In any case, human security could serve a purpose in advancing a protective interpretation of such rights or of the non-derogable elements of rights, but not in substituting the set of rights to be upheld in each of these situations.

In this sense, following from the universality, interdependence and indivisibility of human rights, it seems more adequate and useful to propose in an integrated approach, that all human rights are at the center of human security, and that the differentiating element, the one that unites the two notions and therefore makes it significant both for rights and for security, is the component of risk or vulnerability, as was pointed out in the working definition.

### 3.1.1 Security as a human right

Turning to the State’s obligations within the international legal order, it can be observed that there are various international human rights instruments which refer to security. Although there are several regional human rights instruments that draw this same connection, for purposes of summarizing the main elements of this relationship, it will be examined mainly within the UN system for human rights’ protection.

In this context, the Universal Declaration of Human Rights (UDHR), as well as the two main Covenants within the UN human rights system, on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights, recognize the right to security in

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64 In this sense, the UN Human Rights Committee in a progressive interpretation considered that the requirement of court review over the lawfulness of detention forms a non-derogable element in Article 9 of the ICCPR, even when this article is not referred to in Article 4, para. 2, of the ICCPR, as a non-derogable right during a state of emergency, General Comment No. 29, CCPR/C/21/Rev.1/Add.11, 2001, para. 16.

65 A paradigmatic illustration of the intersection between human rights and security may also be found in humanitarian intervention, in the understanding that this type of international action is triggered by extreme threats to the rights of individuals usually in the context of violent conflict. In relation to this last concern, we may also find the relatively recent proposal of considering sovereignty of the State as a ‘responsibility to protect’ individuals, as set forth by the International Commission on Intervention and State Sovereignty, established by the Government of Canada in September 2000 and supported by former UN Secretary General, Kofi Annan. According to this idea, the protection of individuals is required in cases of large-scale humanitarian crises and situations of the worst atrocities: genocide, ethnic cleansing and crimes against humanity. Also, this responsibility may and should be carried out even when these individuals are not under the jurisdiction of a State; in cases where the State primarily exercising jurisdiction is unwilling or unable to protect its people, the responsibility to protect means engaging in collective action in order to prevent further violations or to attend the ones already taking place. See The Responsibility to Protect; Report of the International Commission on Intervention and State Sovereignty, December 2001.

66 Adopted and opened for signature, ratification and accession by UN General Assembly resolution 2200A (XXI) of 16 December 1966 and entered into force 23 March 1976.
one way or another. Therefore, one of the most important legal intersections between the two concerns in this paper is considering security as a human right.

The ICCPR acknowledges the “right to liberty and security of person” and indicates that no person “shall be subjected to arbitrary arrest or detention” nor “shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law” (article 9, 1.).

On the other hand, the ICESCR recognizes “the right of everyone to social security, including social insurance” (article 9) and prescribes the widest possible protection and assistance by the State to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children (article 10, 1.). It also stipulates the obligation of granting special protection to mothers during a reasonable period before and after childbirth and mentions that during such period working mothers should be accorded paid leave or leave with adequate social security benefits (article 10, 2.).

Therefore, we may see the different contents determined for the right to security, depending on the nature of the Covenant and the values each one wishes to protect with regards to human dignity, in one case, more related to physical liberty and integrity, and in the other, more linked to social support networks and socio-economic well-being. However, these are both expressions of an individual right to safeguards and certainties enjoyable in different spheres of human life, in relation to which the State has positive obligations of protection.

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67 Italics not in original. Emphasis added in this and all of the subsequently quoted instruments. The right to personal liberty and security is also recognized by regional human rights instruments, in article 5, 1. of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), CETS No. 005, opened for signature by the member States of the Council of Europe on 4 November 1950 and entered into force on 3 September 1953; article I of the American Declaration on the Rights and Duties of Man (ADRM), Organization of American States (OAS) Res. XXX 1948; article 7, 1. of American Convention on Human Rights (ACHR), OAS Treaty Series no.36; 114 UNTS 123; and article 6 of the African Charter on Human and People’s Rights (ACHPR), adopted on June 27, 1981, Organization of African Unity Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), and entered into force 21 October 1986.

68 This same right is recognized in regional human rights instruments, in articles 12, 13, 16, 17 and 27 of the Revised European Social Charter (ESC), opened for signature on 3 May 1996 and entered into force 1 July 1999; article XVI of the ADRDM; article 9 of the Additional Protocol in the Area of Economic, Social and Cultural Rights to the ACHR (Protocol of San Salvador), signed 17 November 1988 and entered into force 16 November 1999; and article 18, 4. of the ACHPR. The right to social security, or of non-discrimination in relation to social security, is also confirmed in other UN treaties, such as in various conventions of the International Labor Organization (ILO): Conventions 35, 36, 38, 39, 40, 48, 67, 70, 71, 102, 103, 118, 128, 131, 156, 157, 167, 165, 168 and 183, available at http://www.ilo.org/ilolex/english/convdisp1.htm; in article 5, e), iv. of the International Covenant on the Elimination of Racial Discrimination (ICERD), adopted by UN General Assembly resolution 2106 (XX) of 21 December 1965 and entered into force 4 January 1969; articles 11 and 13 of CEDAW; article 24 of the Convention relating to the Status of Refugees, adopted on 28 July 1951 by the UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V), and entered into force on 22 April 1954; and article 24 of the Convention relating to the Status of Stateless Persons, adopted on 28 September 1954 by the Conference of Plenipotentiaries convened by the Economic and Social Council Resolution 526 A (XVI), and entered into force 6 June 1960.
These aspects of the right to security were originally conceived since the 1948 UDHR,\(^{69}\) which affirmed that “Everyone has the right to life, liberty and security of person” (article 3), and that “Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality” (article 22). It also set forth that “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control” and that “Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection” (article 25, 1. and 2.).

Security is also mentioned in both Covenants as a justifiable restriction to the exercise of certain rights, under the face of ‘national security’ and generally prescribing that these rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security in a democratic society, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the Covenant (articles 12, 3.; 13; 14; 19; 21; and 22, 2. of the ICCPR; and article 8, 1., a) and c) of the ICESCR). However, it is important to note that the possibilities of using security of the State as a legitimate restriction of rights, was not mentioned at all in the UDHR, which sheds light on the fact that in the Cold War period in which the two Covenants were adopted, the fear of threats posed by the exercise of rights such as liberty of movement, freedom of expression or freedom of association (in the case of the ICCPR), or the right to form trade unions (in the case of the ICESCR), was probably higher than in the immediate aftermath of the war, or than (arguably) it is today.

Following the human-centered view already described, if we understand security as the protection from risks, threats and sudden changes that can negatively affect the daily lives, rights and dignity of people at the individual level (and indirectly at the community level), and not only the menaces involving the State, then we can observe the necessary relationship between human security and human rights.

Going one step further, in this integral conception of human security, we can consider not only the threats stemming from physical violence which harm the human rights to life, liberty or personal integrity, but we may also affirm that there is a case for viewing security in relation to the risks to ESC Rights (whether they originate from violent conflict or not), as is considered in the right to social security, for example.

Thus, we may observe that there is legal basis to affirm that security is a human right, but limited to the right of personal security and the right to social security, as well as a certain notion of a right to international security as set forth in Article 28 of the UDHR.

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\(^{69}\) Adopted by the UN General Assembly on 10 December 1948, resolution 217 A (III).
Human security as such has also been considered as “an emerging right”, which would consist of the individual’s claim to the protection against the seven types of threats correlated to the categories of insecurities identified by the 1994 UNDP Report. However, from the analysis carried out in the present paper, it may be observed that there is not enough basis at this moment to consider there exists a right to human security and it may not even be desirable (arguably) for that to become so, if we wish for human security to retain its power as a unifying, transforming concept.

3.1.2 Human security, citizen security and democratic security: the Inter-American conception

In view of the fact that the people-centered notion of human security has aimed at highlighting, among other aspects, violent conflict that occurs within States and not only between States, it is interesting to note the consideration of crime -common, organized and/or transnational-, as one of the most pressing security challenges States have to meet today. In this context, the recently issued report of the Inter-American Commission of Human Rights (IACHR), Citizen Security and Human Rights, sheds an interesting light on this debate, and thereby is included as an issue of consideration. The Report provides the following definition:

Citizen security is one of the dimensions of human security and therefore of human development and is linked to the interrelated presence of multiple actors, conditions and factors. Among these factors are:...the relevance of economic, social and cultural rights; and the international and regional level. Citizen security is undermined whenever States fail to protect their population from crime and social violence, signaling a breakdown in the relationship between those governing and the governed...

The countries of the region have some of the highest rates of crime and violence in the world and their young population has been the most affected, both as victims and as perpetrators. For the first time in decades the population of Latin America lists crime as a major concern, even greater than unemployment...

..[C]itizen security must be regarded as a public policy, understood as the guidelines or courses of action established by the authorities to achieve an objective and that serve to create or transform the conditions in which individuals or groups in society carry out their activities. A public policy cannot be fully understood without establishing a nexus to human rights. 71

The Report also explains that the right to security from crime or interpersonal or social violence is not expressly protected under the international system of human rights law,

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70 Fernández Pereira, Juan Pablo, La seguridad humana: un derecho emergente, Ariel, Barcelona, 2006, pp. 107 and 118.
but that the right to such protection can be inferred from the obligation of the State to guarantee the security of the individual as set forth in the articles which refer to the right to personal security, as will be explained further on. However, “the Commission considers that the current basis of the obligations incumbent upon States is a normative core demanding the protection of rights particularly vulnerable to criminal or violent acts that citizen security policies are intended to prevent and control”. This group of rights includes mainly the right to life, the right to physical integrity, the right to freedom, the right to due process and the right to the use and enjoyment of one’s property”.72

Additionally, it clarifies that the expression citizen security emerged, for the most part, as a concept in Latin America, as governments made the transition to democracy, as a way to distinguish the concept of security under a democracy from the notion of security under the earlier authoritarian regimes. In the latter case, the concept of security was associated with concepts like “national security”, “internal security” or “public security”, all of which refer specifically to the security of the State. Under democratic regimes, the concept of security against the threat of crime or violence is associated with “citizen security” and is used to refer to the paramount security of individuals and social groups.73

The report also examines the member states’ positive and negative obligations vis-à-vis their policies on citizen security and looks at how the principles of human rights are put into practice in the measures the member states take to deal with the problem of violence and crime in the region. In this context, the Commission presents the main elements that, in its view, characterize public policy on citizen security in light of international standards on human rights. Afterwards, an examination is made regarding each individual human right directly at stake in policies on citizen security.

Therefore, it may be seen how at the regional level, the notion of human security has also been used as a reference point for the development not only of people-centered approaches to security, but also of legally binding obligations and public policies on security with a human rights-based approach. This concept of citizen security provided by the IACHR comes from a tradition of people-centered and broad ideas of security, such as that of “democratic security”, developed mainly in the last fifteen years in the region of the Americas, and in a more extended manner, in the Latin American context.74

72 Ibid., para. 18.
73 Ibid., para. 21. However, it is worth noting that the Report explains in the same paragraph that “the concept of “public security” is still widely used in the United States and Canada to also refer to the security of the individuals and groups who make up society. By contrast, as noted above, in Latin America the very same expression, “public security”, refers to a different concept altogether, alluding to the security built by the State or, on occasions, the security of the State”.
74 For an account of the development of “the multidimensional concept of security” that considers “the human dimensions of security” and departs from the traditional State-focused conception, in the Americas in general and in the Latin American scenario, see the Interventions of the delegations of Argentina and Uruguay, under Issue 167 of the agenda: “South-American Zone of Peace and Cooperation”, 57 period of sessions of the UN General Assembly, 11 and 14 November 2002, respectively; the Declaration on Security in the Americas (Declaration of Nuevo León), OAS/Ser.K/XXXVIII, CES/DEC. 1/03 rev.1, adopted by all States of the Organization of American States (including the United States and Canada) on 28 October 2003; and the Guidelines for the Policy of External Common Andean Security, Decision 587, adopted at the
In this sense, it should be highlighted that the 1995 Framework Treaty on Democratic Security in Central America (adopted a year after the UNDP Report that formulated the idea of human security), affirms that the objective of the Central American Democratic Security Model is to respect, promote and safeguard all human rights, and with this objective in mind, it regulates a series of duties of the Parties with relation to external armed aggressions (incorporating partly the traditional view of State-security but changing the focus to a people-centered justification). The Treaty specifically points out in article 10, a) and d) that “Democratic security is absolute and indivisible. Resolution of human security problems in the region shall therefore reflect a comprehensive and interrelated vision of all aspects of sustainable development in Central America, in its political, economic, social, cultural and ecological aspects” and “The belief that poverty and extreme poverty are threats to the security of their peoples and to the democratic stability of Central American societies”.\(^75\)

More importantly, the Framework Treaty expressly contains positive obligations of the State that refer to some of the defining elements of the notion of human security, when it lays down that the Security Commission (composed of the Deputy Ministers for Foreign Affairs and Deputy Ministers in the areas of defence and public security of the Central American States) has the responsibility to “Strengthen operational coordination mechanisms in the areas of defence, public security and humanitarian cooperation to deal with emergencies, threats and natural disasters” (article 52, e.).

This constitutes an example of how the analysis proposed in this paper could be explored further, through the method of decomposing the elements or ‘building blocks’ of the notion of human security and searching for their expression in international legal instruments, which may have been developed more through regional instruments than universal ones, as in the present case.\(^76\)

**3.1.3. Human security and ESC Rights**

It is considered that ESC Rights deserve a particular mention in relation to human security for various reasons: 1) the historical difficulties faced in relation to the conceptualization or to the justiciability of these human rights, which has in itself represented a risk to their confirmation as proper legal rights; 2) the fact that within the debate on human security, some of the on-going and influential practical measuring

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\(^{76}\) In this context, the importance of the direction the discussion on human security takes in different regions, as well as human rights education at the regional level which includes the perspective of human security, has been an aspect highlighted by the United Nations Educational, Scientific and Cultural Organization (UNESCO) as one of the key factors for the reinforcement of the notion of human security as a useful tool in relation to rights; see Benedek, Wolfgang, “Human security and human rights interaction”, in Goucha, Moufida and John Crowley (editors), *Rethinking Human Security*, op. cit, pp. 9-12.
exercises focus on the `narrow definition’ of human security, only concentrating on the aspect of violent conflict (*freedom from fear*), whereby an integrated consideration that also incorporates socio-economic aspects (*freedom from want*), or even the overarching pillar of *freedom to live in dignity*, seems to need further attention; 3) the close relationship that has recently been highlighted between poverty, especially extreme poverty, and human rights, which calls for deeper analysis of issues of inequality, but viewed from International Law and translated into the legal terminology and criteria of rights. At this point, only some of the reflections that could be made under this subject will be mentioned, to leave an open path for following discussions.

Through the adoption on December 10, 2008, by the UN General Assembly, of the Optional Protocol to the ICESCR, all of the rights encompassed in the two main human rights treaties, and which were all recognized on equal footing since the UDHR, may enjoy equal defense. The Optional Protocol establishes a procedure of communications by individuals or groups of individuals relating to the violation of ESC Rights (article 12), similar to that existing for the ICCPR since its creation. With this, the historic gap between the mechanisms for international legal protection of civil and political rights and those of economic, social and cultural rights is narrowed, thus recognizing the fact that “there is no water-tight division between categories of human rights”, but rather “interdependence and overlap”. 79

It has been noted that as of 2004, economic disparities were widening across the globe, more than half the world’s population was on the move as political refugees, asylum seekers, or economic migrants, and education, health care, and the environment were being eroded in the service of privatization and open markets. States, viewed in the early 1990s as accountable for the economic and social security and rights of their citizens, were increasingly stepping back from such responsibilities, especially to the poor.80

Therefore, there seems to be a pressing call to examine further the possible relationship of human security with ESC Rights. To do this, we must mention the scope of the State’s general obligations in relation to ESC Rights. In this respect, the legally competent body to interpret the Covenant, the UN Committee on ESC Rights, has indicated that the State has, as minimum duties towards these rights that are immediately enforceable: 1) the obligation of taking steps to apply all the provisions of the Covenant observing the principles of progressivity and non-regressivity; and 2) the obligation of non-discrimination.81

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78 Adopted by the UN General Assembly, A/RES/63/117.
81 Specifically the Committee has clarified that “Non-discrimination is an immediate and cross-cutting obligation in the Covenant. Article 2(2) requires States parties to guarantee non-discrimination in the exercise of each of the economic, social and cultural rights enshrined in the Covenant and can only be
From the point of view of human security, the lack of full justiciability is in itself a risk for the realization of ESC Rights, given that the absence of access to justice (not only at the factual but also at the institutionalized level) underscores the whole concept of legal right. Because of the obstacles some have opposed to the possibility of judicial demand of these rights, it has been noted that one methodology to deal with the issue of justiciability in the context of economic and social rights is the integrated approach which underlines the interdependence and interaction of all human rights.82

The positive and negative obligations with regards to ESC Rights have been extensively analyzed,83 and within the legal analysis carried out by human rights bodies, the scope of these obligations has also been developed further.84 However, a concept that deserves deeper legal analysis and which could prove useful in terms of the relationship of human security to human rights, is that of a continuum of obligations (ranging from negative to positive) regarding all human rights, that has been proposed especially in the context of applied in conjunction with these rights. It is to be noted that discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights [for a similar definition see Article 1, I CERD, Article 1, CEDAW and Article 2, Convention on the Rights of Persons with Disabilities. The Human Rights Committee comes to a similar interpretation in General Comment No. 18, paras. 6 and 7]...In order to eliminate substantive discrimination, States parties may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination. Such measures are legitimate to the extent that they represent reasonable, objective and proportional means to redress de facto discrimination and are discontinued when substantive equality has been sustainably achieved. Such positive measures may exceptionally, however, need to be of a permanent nature, such as interpretation services for linguistic minorities and reasonable accommodation of persons with sensory impairments in accessing health care facilities", UN Committee on Economic, Social and Cultural Rights, General Comment No. 20 “Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2)”, E/C.12/GC/20, 10 June 2009, paras. 7 and 9. See also General Comment No. 3 of the same Committee.


84 Within the Inter-American system of human rights, the basis for justiciability of ESC Rights has recently been emphasized and steps have been taken to make this goal operational through a work of systematization of best practices in the region, which indicates as a starting point that: “1. International human rights law has developed standards on the right of access to judicial and other remedies that serve as suitable and effective grievance mechanisms against violations of human rights. In that sense, States not only have a negative obligation not to obstruct access to those remedies but, in particular, a positive duty to organize their institutional apparatus so that all individuals can access those remedies. To that end, states are required to remove any regulatory, social, or economic obstacles that prevent or hinder the possibility of access to justice. 2. In recent years, the inter-American system of human rights...has recognized the need to outline principles and standards on the scope of the rights to a fair trial and effective judicial protection in cases involving violation of economic, social and cultural rights...”, Inter-American Commission of Human Rights, Access to justice as a guarantee of economic, social, and cultural rights: a review of the standards adopted by the Inter-American system of human rights, Organization of American States, OEA/Ser.L/V/II.129, Doc. 4, 7 September 2007. Italics not in original.
ESC Rights, and which reaffirms the interdependent nature of all human rights.\textsuperscript{85}

If we look at some of the legal expressions of the relationship between security and ESC Rights, we may find that, for example, the International Court of Justice has concluded that the UN International Covenant on Economic, Social and Cultural Rights is applicable independent of the existence of a situation of peace and stability and should also be implemented in all its terms during times of armed conflict or in general in a “conflict situation”.\textsuperscript{86}

Thus, if we take into account the legal and political instruments that have been used in modern law and discourse to forward social justice and equality, and the theoretical background on which they have been based, we may find strong connections between human security and all human rights.

Consequently, apart from the conceptual validity of the connection, there seems to be a clear strategic advantage in exploring further the links in International Law between human security and human rights, specifically ESC Rights or women’s rights, as will be subsequently reviewed, and analyzing the possibility of viewing them as part of a shared ethical project based on the common value of human dignity. This quest for the most fundamental values of humanity has been worked upon, among other disciplines, through International Law (especially in its more recent development throughout the twentieth and twenty-first century), in using the theoretical and methodological approach of placing the individual, and not the State, at the center of these norms.\textsuperscript{87}


\textsuperscript{86} Contrary to the view that only International Humanitarian Law -which requires a lower set of obligations regarding human rights-, is applicable during time of conflict, and that the higher standard of International Human Rights Law is a suitable legal regime only for times of peace, the Court has recently affirmed that: “106..the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of the kind to be found in Article 4 of the International Covenant on Civil and Political Rights. As regards the relationship between international humanitarian law and human rights law, there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law. In order to answer the question put to it, the Court will have to take into consideration both these branches of international law, namely human rights law and, as lex specialis, international humanitarian law...” And then, in examining the validity of Israel’s argument that only International Humanitarian Law applies in times of conflict and concerning the legal status of ESC Rights in such times: “For the reasons explained in paragraph 106 above, the Court cannot accept Israel’s view. It would also observe that the territories occupied by Israel have for over 37 years been subject to its territorial jurisdiction as the occupying Power. In the exercise of the powers available to it on this basis, Israel is bound by the provisions of the International Covenant on Economic, Social and Cultural Rights. Furthermore, it is under an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities”, in Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, International Court of Justice, op. cit., paras. 106 and 112.

\textsuperscript{87} See the explanation on the use of these same arguments in favor of a common responsibility for the security of individuals in different parts of the world as an interrelated and mutually dependant phenomenon, and therefore as a matter of shared concern and common values, in Von Tigerstrom, op. cit.,
This is why it is not strange to think of the viability of trying to use international legal tools to forward some of the new challenges for humanity that the notion of human security has helped to identify by applying this same approach. On the contrary, it would seem only natural, since the notion itself has been built to a great extent upon the logic behind International Law, in particular, International Human Rights Law and International Humanitarian Law.

3.1.4 Human security, gender and feminism

Feminist theory shares the view of non-State approaches to security; however, it has a more emancipatory perspective on security. It begins with the security of the individual rather than the State and defines security as freeing individuals and groups from the social, physical, economic, and political constraints that prevent them from carrying out what they would freely choose to do, but draws a specific focus on the constraints placed on women. For example, it has been pointed out that military spending has impacted negatively on the whole of society and disproportionately on women. Through these insights of feminist theory, other more general critiques can be made, given that growing ‘awareness of insecurities particular to women has also revealed the extent to which the realist focus on the state and national interest has obscured the diversity of identities and interests within states’.

It has been affirmed that the integrated approach of the notion of human security as proposed in the 2003 report Human Security Now, through linking security to empowerment, contributes to the idea of looking at victimization and agency as two parts of a reality that should be addressed together rather than as opposites, as is usually the case. But, although the Report includes gender as a mainstreaming issue, it has been considered that not paying specific attention to women as a subject or constituency means that issues that predominantly affect women may become invisible or sidelined, as in the case with the complex issues that surround women’s bodily integrity, especially with regard to reproductive health and violence, at both domestic and state levels. A failure to address violence against women specifically, Charlotte Bunch asserts, allows the connection between violence against women and other kinds of domination and insecurity in the world to be masked. Bunch, like other feminists, asserts that a culture of violence at the domestic level accepts the violence of war, militarism, and other forms of domination discussed in the human security report.

Certain thematic issues have also been underlined under this framework, such as the highly destructive impacts of HIV/AIDS in some parts of the world, particularly in

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88 Although one should be aware of the conceptual differences between gender-based approaches and feminism, for the effect of this analysis, they are used in a similar manner following the existing positions on the subject.
89 See Von Tigerstrom, op. cit., p. 13.
countries of the global South, and its disproportionate impact on young women. Geeta Rao Gupta has analyzed the ways economic insecurity and gender norms of sexuality increase the vulnerability of young women to the disease, which she argues, is exacerbated by globalization. It is interesting to note that as one of the strategies for disrupting this process, it is emphasized that health must be conceived as a human right with mechanisms of accountability that will hold governments and international organizations responsible.91

In this context, the notion of human security aims at contributing to focus on the serious neglect of gender concerns under the traditional security model. Classical security visions focus on external military threats to the State, which has meant that the majority of threats women face has been overlooked. By looking at the individual, the human security model aims to address the security concerns of both women and men equally. Women are often the worst victims of violence and conflict: they form the majority of civilian deaths; the majority of refugees; and, are often the victims of cruel and degrading practices, such as rape. Women's security is also threatened by unequal access to resources, services and opportunities. Human security seeks to empower women, through education, participation and access, as gender equality is seen as a necessary precondition for peace, security and a prosperous society.92

It has also been pointed out that the concept of human security looks at a broader range of insecurities that individuals and communities face in the context of violence, whether interpersonal, intergroup or international. Perspectives on gender through the lens of human security — rather than or in addition to rights-based or empowerment-centered frames — may raise new questions or offer different strategic choices, some of which are currently being analyzed in academic settings.93

In this sense, the 2003 CHS Report highlights that:

In and immediately following conflict, crime rates soar. So do incidents of gender-based and sexual violence...The increases arise from the trauma of conflict and its impact on interpersonal relations and community networks, and from the broader issues of the breakdown of law and order...But the influence works both ways. High levels of interpersonal violence also appear to affect the likelihood for violent conflict. High rates of communal violence may reflect growing inequalities among communities as well as the manipulation of identity politics...Increases in gender-based and sexual violence may mark a rise in poverty and the collapse of social safety nets. And although by itself interpersonal violence will not lead to conflict, combined with other factors it leads to a widespread sense of insecurity easily manipulated along identity lines.94

92 Basch, Linda, ibid., p. 12.
93 See “New Perspectives on Gender and Human Security Workshop” at the University of Wisconsin-Madison, carried out on March 19 and 20, 2010, in http://genderhumansecurity.wordpress.com/
Within this context, there are ways that can be identified in which the concepts of International Human Rights Law, some developed historically in a parallel way to the notion of human security, may contribute to clarifying and strengthening certain elements of this notion. For example, the conceptualization of violence frequently referred to in human security could well benefit from the legal definition of violence contained in the 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará). This Convention, based on the conception of discrimination provided by the earlier 1979 UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), (applicable also to private parties), determines in article 6, a), that the right of women to live free from violence includes the right to be free from all forms of discrimination. Thus, violence against women is also a form of discrimination. This view could consolidate the analysis of gender human security and would help to classify and assess the types of risks that law and policy are aiming to attend, as well as the appropriate mechanisms to do so.

To give an example of a legal analysis which draws some of these connections, the recent case of Cotton Fields v. Mexico, resolved by the Inter-America Court of Human Rights, recently issued a very relevant resolution for the right of women to live free of violence. The Court set forth that, in relation to the State's responsibility with regard to the women members of the victim's families (who had died as a result of gender violence):

...expert evidence provided to the proceedings before the Tribunal determined that they suffer constant fear owing to the dangers and the different threats they have experienced, reflected in acts that occurred in public places, which have jeopardized their safety and their integrity, and in the absence of a prompt and adequate response to their complaints by the authorities. They have also suffered feelings of loneliness and isolation, as a result of their growing lack of confidence in the authorities.97

Thus, in a similar way to what was highlighted in the UNDP Report on Palestine (already referred to in relation to the growing state of juvenile depression and its effect on psychological health), the Court underlines the feelings of the women involved as the victim's family within a generalized situation of gender-based violence and government

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96 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted 18 December 1979 by the UN General Assembly resolution 34/180 and entered into force on 3 September 1981, defines discrimination as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field” (article 1).
97 Inter-American Court of Human Rights, Case of González et al. (“Cotton Field”) v. Mexico, Judgment of November 16, 2009 (Preliminary Objection, Merits, Reparations, and Costs), para. 434.
negligence, as elements directly related to the perception of security.

The recent Report of the IACHR, *Citizen Security and Human Rights*, already referred to, dedicates a chapter precisely to this specific type of violence, reviewing it from the perspective of reinforced obligations of the State in the area of violence against women pursuant to the Convention of Belém do Pará.  

The notion of human security, being broad and people-centered, offers a door of entry to push forward a more comprehensive definition of violence that does not only comprise armed means of coercion that threaten or harm physical integrity, but also other means of coercion that cause other types of harm. The Convention of Belém do Pará defines violence against women “as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere” (article 1). This wider definition would then have to be taken into account by the State and actors engaging in the construction of security norms and policies, as an issue worthy of concern in evaluating risks, as well as in facing and reducing situations of vulnerability of persons. At the same time, and closing the loop of this circle, the notion of human security itself, which emphasizes an expansive and inclusive view of risks and vulnerabilities, would gain conceptual precision by looking at International Human Rights Law and therefore framing its proposals and agenda in terms of rights and the interpretation of these rights provided by international human rights mechanisms.

4. **Some conclusions: does human security give any added value to human rights law?**

Human security has been used as an element of foreign or of domestic policy, as a tool for measuring levels of risk in situations of violent conflict, as an instrument for highlighting the State’s obligations in relation to the rights of those in a situation of severe vulnerability. Can all these views and applications be combined under one same notion that is useful for describing and shaping certain realities?

In this respect, we may think of human security as a useful concept and set of criteria for orientation in legal regulation and practice, as well as in the formulation of public policies,

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98 IACHR, *Report on Citizen Security and Human Rights*, op. cit. See Chapter IV., A., 4, on this point. See also Fernández Pereira, Juan Pablo, op. cit, who suggests domestic violence connected to gender should be included in general evaluations of human security, and provides some statistics of the state of the matter (as of 2006), pp. 130-132.

99 There are also examples of implementation of international human rights standards at the national and local level, for example, the concepts of “psychological violence”, “economic violence” and “institutional violence” are taken into account by the Mexican General Law for the Access of Women to a Life Free of Violence (and similar laws at the state level), as types of violence it protects women against, *Ley General de Acceso de las Mujeres a una Vida Libre de Violencia*, published in *Diario Oficial de la Federación*, 1 February 2007, last reform published 20 January 2009.
in a similar way than the concept of self-determination, for example. This potential of human security as a “unifying concept”, as Von Tigerstorm calls it, allows it to serve as a tool for upholding a critical perspective.100

To illustrate this possibility, we may look at the concept of self-determination which has been understood as a principle and also as a right, as protected by common Article 1, 1. of the UN International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. However, even if legally defined as a right, and not only as a principle, it has been observed that the right to self-determination of indigenous peoples, for example, encompasses a whole series of human rights (i.e., rights over land and natural resources, non-discrimination, cultural integrity and self-government), given that all of them are necessary to enable the full exercise of self-determination, an approach which illustrates the interdependent and indivisible character of human rights. In this context, if we are to search for the elements of a certain broad right, such as that of self-determination, which are located in separate legal instruments, then we are able to list these co-related rights and appreciate the whole potential of the right of self-determination in itself, as well as its applicability as the combination of different rights.101

In this sense, if the notion of human security were to be eventually developed as a right, this does not mean that it would have to lose its cross-cutting orienting capacity and moreover it might even help to specify its scope of action and content, as a response to criticisms of conceptual ambiguity and lack or difficulty of operational relevance.102

As has been indicated, a common source between human security and human rights can be found in the quest for the promotion and protection of the values essential to human beings. The notion of human security has been built to a great extent upon the logic and axiology behind International Law, in particular, International Human Rights Law and to some extent, International Humanitarian Law. It has even been observed that given the prohibition of causing unnecessary suffering developed in International Humanitarian Law, the “concept of human security today could be seen as a logical development of the basic principles enunciated in the Hague Conventions of 1899 and 1907”103

4.1. Human security and human rights: a proposal to strengthen dialogue

Law cannot and should not remain indifferent in the face of risk. As has been argued in this paper, the main distinctive element between human security and human rights is the element of risk or vulnerability. In this sense, following from the universality, interdependence and indivisibility of human rights, it has been proposed to consider through an integrated approach, that all human rights are at the center of human

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100 Von Tigerstrom, op.cit., p. 49.
102 See Tadjbakhsh, Shahrbanou, Human Security: The Seven Challenges of Operationalizing the Concept, op. cit.
security, and that the differentiating element, the one that unites the two notions and therefore makes it significant both for rights and for security, is precisely the component of risk or vulnerability, as was also pointed out in the working definition.

Now, it can be argued that human security reaches spaces which the concepts of personal security, social security and citizen security do not. As was seen above, security holds a factual dimension and also a normative dimension. With regards to its normative character, in terms of human rights, human security includes all human rights and covers therefore the right to personal security and the right to social security contemplated in International Human Rights Law, as well as the elements of citizen security as articulated in the Inter-American system of human rights. But it also extends to risks, threats and sudden changes not considered by these concepts or by these specific rights, for example, risks to the right to health and to the right to a healthy environment.

However, why analyze human security and not the sum of all human rights? Or, in any case, why not analyze the human rights outside of the rights to personal and social security, in current need of justiciability, namely, ESC Rights? To answer these questions, it can be underlined that it is not enough to look at each right separately or to only examine them in a joint manner. Comparably to what occurs with self-determination, for example, it is observed that human security has a potential to function as an integrating bridge between correlated risks to human rights that place persons in a situation of vulnerability. The result of looking at the connection between rights and viewing them integrally may be considered in fact human security. Under this light, human security refers not only to the protection from risks described in the working definition, but becomes also a guarantee, a condition which is necessary to allow the full enjoyment of all human rights by all persons.

Thus, it is considered appropriate and even constructive to use these international legal tools to attend some of the new challenges for humanity that the notion of human security has helped to identify by applying the people-centered approach, many of them closely related to the possibility of human beings to fully enjoy all human rights.

Lastly, it can be observed that given the very recent increase in the usage of the notion of human security through some academic and practical exercises, the theme is gaining an important momentum, for which legal scholarship should have an answer and continue reflection on the limits and potentials of human security as a catalyst for the improvement of the lives and rights of human beings.