

## A HUMAN SECURITY COUNCIL? APPLYING A "HUMAN SECURITY" AGENDA TO SECURITY COUNCIL REFORM

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*This article analyzes what a "human security" agenda means in the context of reforms to the United Nations Security Council. The first part gives some substance to the concept of "human security", at least to the extent of getting at its core meaning and implications. The second part briefly looks at the Security Council, analyzing its traditional jurisdictional constraints and its failure to deal with human rights issues. This part also examines how these old jurisdictional constraints continue to limit the Security Council's protection of human rights in its work. The third part analyzes current proposals for Security Council reform and shows that implementing even the proposals of some using human security rhetoric would not fully shift the Security Council paradigm to one of human security. To achieve such a transformation would require further empowerment of the Security Council to deal with human security threats and would demand entirely new kinds of participation in the Security Council. The fourth part analyzes concerns that might emerge from these proposals. It concludes that while some caution might be appropriate, human security is needed and there are feasible ways for the Security Council structure to help us achieve it. In the end, the idea of human security offers tangible changes to security institutions that can respond to human rights and further human dignity.*

*Cet article cherche à préciser le sens d'un agenda pour la « sécurité humaine » dans le contexte des réformes à apporter au Conseil de sécurité des Nations Unies. La première partie scrute le concept de « sécurité humaine », dégagant tout au moins les éléments fondamentaux et leurs implications. La deuxième partie examine brièvement le Conseil de sécurité, en particulier les contraintes découlant de ses pouvoirs traditionnels et son inefficacité à régler les problèmes de droit de la personne, puis analyse comment ces contraintes de longue date rattachées à ses pouvoirs demeurent une entrave pour le Conseil de sécurité dans la protection des droits de la personne. La troisième partie passe en revue les propositions actuelles de réforme du Conseil de sécurité et démontre que la mise en oeuvre, même de quelques-unes, suivant la rhétorique de la sécurité humaine, ne transformerait pas totalement le paradigme du Conseil de sécurité en un paradigme de la sécurité humaine. Pour que s'opère une telle transformation, il faudrait conférer au Conseil de sécurité des pouvoirs nouveaux lui permettant d'intervenir en cas de menaces à la sécurité humaine, et cela exigerait une participation toute différente au Conseil de sécurité. La quatrième partie analyse les préoccupations que peuvent engendrer ses propositions. En bout ligne, si une certaine prudence s'impose, la sécurité humaine est nécessaire et il existe des moyens réalistes de modifier la structure du Conseil de sécurité afin de nous aider à réaliser ce but. En somme, l'idée de la sécurité humaine suggère des changements tangibles aux institutions de sécurité afin qu'elles répondent aux besoins humains et favorisent la dignité humaine.*

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\* Law Clerk, Supreme Court of Canada. An earlier version of this article received second prize in the Lawyers for Social Responsibility 1999 Dr. William Hanley Memorial Essay Competition for essays dealing with achieving peace through law. The author thanks Lawyers for Social Responsibility for its support of research in this important area. The author also thanks Ken Norman for his advice on this article.

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## I. INTRODUCTION

In recent years, we have witnessed an ongoing conversation on how to reform United Nations institutions so that they can best respond to the needs of a changing world. We have also witnessed the emergence of a new concept to describe the security interests that the United Nations appropriately protects. The new concept of "human security" and the conversation on how to reform key United Nations institutions are inextricably linked. This article examines that linkage in the context of reform of the Security Council, which is arguably the most powerful United Nations institution.

The first part of the article is an exposition of this new "human security" approach. In essence, a human security agenda fundamentally revises traditional security approaches by conceiving of security issues no longer in terms of state security, but rather in terms of human needs. This becomes clear through an examination of United Nations reports that have used the concept, the comments of a leading political proponent, and some recent applications of the concept in international policy-making. A human security agenda has a particular consistency with human rights theory, and it provides a potentially valuable language for human rights advocates to enter into the security sphere and to seek reform of institutions in that security sphere.

In order to provide a context for the reform discussion, the second part of the article briefly looks at the United Nations Security Council as constituted and as it has functioned. The Security Council has immense power. The *Charter of the United Nations*,<sup>1</sup> while capable of more expansive interpretations, would have initially suggested the application of that power only to state security interests. For the most part, the history of the Security Council has borne out this origin. On the whole, Security Council actions have been disconnected from human rights concerns *per se*. Although there has been some shift from this in the 1990s, the Security Council has generally remained constrained, and the work of some writers and the continued position of some states remains supportive of constraints on the Security Council.

While there have been substantial attempts at Security Council reform as part of the ongoing conversation on how to reform United Nations institutions, these attempts have not entirely transcended the Security Council's origins and history. The third part of the article introduces current reform efforts and proposals, and points to the gaps present between these proposals and a larger human security agenda. The article argues that while current proposals might well use the rhetoric of human security in some instances, there is a dichotomy between their rhetoric and the tangible reforms that they actually advance at the moment. Current proposals focus largely on ideas of opening up the Security Council's work and improving the Security Council's representativeness. The article argues that a full-fledged human security approach to Security Council reform entails not just transparency efforts but also explicit empowerment of the Security Council to deal with human security threats, and it demands not just altered representation but also entirely new kinds of participation in the Security Council.

The fourth part of the article takes these realizations back to a theory-based discussion of the appropriateness of the human security approach to United Nations

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<sup>1</sup> Charter of the United Nations: Including the Statute of the International Court of Justice together with the Interim Arrangements Establishing the Preparatory Commission of the United Nations (Ottawa: Can. T.S. 1945 No. 7) [hereinafter *Charter of the United Nations*].

reform. Concerns in the Security Council context about continuity with the historical mandate of the Security Council, the possible vagueness of a human security approach, and the need for appropriate checks and balances to constrain a newly empowered and more broadly participatory Security Council might call for caution. But the promise of and need for human security remain. A human security approach carries well the concerns of human rights advocates, and it continues to offer a viable path to possible United Nations reform.

## II. THE HUMAN SECURITY AGENDA

The United Nations High Commissioner for Refugees has expressed well one of the challenges facing any application of a human security agenda: "Human security is a term which carries the risk of meaning all, and nothing."<sup>2</sup> Before we can apply a human security approach, we have to understand where it comes from and what it means. United Nations reports that have used the concept and comments by Canadian Foreign Affairs Minister Lloyd Axworthy, a leading proponent of human security, supply a reasonably cohesive definition, even if major writers have not grasped it accurately. Human security is basically about changing traditional security approaches by conceiving of security issues not just in terms of state security, but primarily in terms of human needs. This definition also fits reasonably with the contexts in which proponents of a human security agenda claim that it has already been used.

The idea of human security emerged in full force in United Nations discussions and documents in the time leading up to the World Summit for Social Development held in Copenhagen in March 1995. In 1994, the Secretary-General of the United Nations spoke before a session of the Preparatory Committee for the Summit about how "[i]t is time to balance the old commitment to territorial security with a new commitment to human security: to shift from providing security through arms, to ensuring security through development..."<sup>3</sup> The United Nations Development Programme's annual *Human Development Report 1994* placed a major emphasis on human security and its relation to human development, and it described the need for a transition from thinking in terms of nuclear security to thinking in terms of human security.<sup>4</sup> The *Report* wrote that "[f]or most people today, a feeling of insecurity arises more from worries about daily life than from the dread of a cataclysmic world event."<sup>5</sup> This *Report* continued on to a major exposition of the notion of human security and its implications.<sup>6</sup>

Despite its rise in United Nations documents a few years ago in the process leading up to a particular world summit, the idea of human security has not been a bureaucratic orphan. On the contrary, subsequent documents and writers have picked

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<sup>2</sup> Sadako Ogata, "Human Security: A Refugee Perspective" (Speech at the Ministerial Meeting on Human Security Issues of the "Lysoen Process" Group of Governments; Bergen, Norway; 19 May 1999), online: United Nations High Commissioner for Refugees <<http://www.unhcr.ch/refworld/unhcr/hcspeech/990519.htm>> (date accessed: 10 February 2000).

<sup>3</sup> Boutros Boutros-Ghali, "Address to the Second Session of the Preparatory Committee for the World Summit for Social Development" (New York, 22 August 1994), quoted in *Our Creative Diversity: Report of the World Commission on Culture and Development* (Paris: UNESCO, 1995) (Pres., Javier Pérez de Cuéllar) at 273-74.

<sup>4</sup> *Human Development Report 1994* (New York: Oxford University Press, 1994) at 22.

<sup>5</sup> *Ibid.* at 3.

<sup>6</sup> *Ibid.* at 23-33.

up the concept. The Commission on Global Governance, although going on to ground its reasoning on the "security of people", refers to various historical conceptions of security before going into a discussion of human security as a current concept.<sup>7</sup> There are references to human security interspersed throughout the report of the Independent Working Group on the Future of the United Nations.<sup>8</sup> Bruce Russett, a leading writer on the United Nations, refers to human security as very much a current term for visions of the Security Council in the context of the United Nations as a whole.<sup>9</sup>

Indeed, Canadian Foreign Affairs Minister Lloyd Axworthy has become a leading proponent of a human security agenda and has spoken of human security for years, intensifying in the time leading up to Canada's recent election as a non-permanent member of the Security Council. In a 1996 speech to the General Assembly, Minister Axworthy spoke of the need to seek "sustainable human security."<sup>10</sup> In 1998, Minister Axworthy spoke at Harvard of human security, in what policies he thinks it has already succeeded, and in what ways we can continue to use it.<sup>11</sup> Minister Axworthy has even issued a policy document in which he argues for human security in general as a "conceptual framework which will improve the coherence between Canadian foreign policy and assistance priorities."<sup>12</sup>

The idea of a human security agenda, then, emerged strongly in United Nations documents in 1994, has been picked up since in further United Nations documents and in the works of some writers, and has support from Canada's foreign ministry (among others).<sup>13</sup> Without a doubt, the concept has some influence.

The next question is just what it means. Although the *Human Development Report 1994* is a useful starting point for the very extensive consideration that it gives to human security, it is not entirely helpful in giving a clear definition. However, when

<sup>7</sup> *Our Global Neighbourhood: The Report of the Commission on Global Governance* (Oxford: Oxford University Press, 1995) at 79-80 (Co-chairs: I. Carlsson & S. Ramphal).

<sup>8</sup> *The United Nations In Its Second Half-Century: A Report of the Independent Working Group on the Future of the United Nations* (New York: Ford Foundation, 1995) (Co-chairs: M. Qureshi & R. von Weizsäcker), online: United Nations Scholar's Workstation at Yale University <[http://www.library.yale.edu/un/UN\\_Report.txt](http://www.library.yale.edu/un/UN_Report.txt)> (date accessed: 17 February 2000).

<sup>9</sup> "Ten Balances for Weighing UN Reform Proposals" in Bruce Russett, ed., *The Once and Future Security Council* (New York: St. Martin's Press, 1997) 13 at 14.

<sup>10</sup> "Address to the 51st General Assembly of the United Nations" (New York, 24 September 1996), online: Department of Foreign Affairs and International Trade <[http://www.dfait-maeci.gc.ca/english/news/statements/96\\_state/96\\_037e.htm](http://www.dfait-maeci.gc.ca/english/news/statements/96_state/96_037e.htm)> (date accessed: 10 February 2000).

<sup>11</sup> "The New Diplomacy: The UN, The International Criminal Court and the Human Security Agenda" (Conference on UN Reform, Kennedy School, Harvard University, Cambridge, Mass., 25 April 1998) [hereinafter *The New Diplomacy*], online: Department of Foreign Affairs and International Trade <[http://www.dfait-maeci.gc.ca/english/news/statements/98\\_state/98\\_030e.htm](http://www.dfait-maeci.gc.ca/english/news/statements/98_state/98_030e.htm)> (date accessed: 10 February 2000).

<sup>12</sup> "Canada and Human Security: The Need for Leadership" (1998), online: Department of Foreign Affairs and International Trade <<http://www.dfait-maeci.gc.ca/english/foreignp/sechume.htm>> (date accessed: 15 February 2000).

<sup>13</sup> Support for the concept is not confined to the Canadian foreign ministry. To take just one example, consider Canada's ability to form a type of alliance with Norway to promote human security to the world. See Department of Foreign Affairs and International Trade, News Release No. 117, "Canada and Norway Form New Partnership on Human Security" (11 May 1998), online: Department of Foreign Affairs and International Trade <[http://www.dfait-maeci.gc.ca/english/news/press\\_releases/98\\_press/98\\_117e.htm](http://www.dfait-maeci.gc.ca/english/news/press_releases/98_press/98_117e.htm)> (date accessed: 10 February 2000).

we consider it together with subsequent commentaries in other reports and speeches, we can construct a reasonably cohesive definition of human security.

The *Human Development Report 1994* summarizes its extensive examination of human security: "Human security can be said to have two main aspects. It means, first, safety from such chronic threats as hunger, disease and repression. And second, it means protection from sudden and hurtful disruptions in the patterns of daily life — whether in homes, in jobs or in communities."<sup>14</sup> The *Report* goes on to set out seven main categories of human security: economic; food; health; environmental; personal; community; and political.<sup>15</sup>

Although these categories sound like they embrace many developmental aspects of human life, the *Report* emphasizes the need to distinguish human security from human development.<sup>16</sup> And although the definition that the *Report* offers that is least likely to infringe on human development is "freedom from fear and freedom from want,"<sup>17</sup> it also claims that human security is not defined in a defensive fashion.<sup>18</sup> The *Human Development Report 1994*, if taken only on its own, might seem to offer a set of paradoxes — like a Zen koan, it would offer us enlightenment about human security only after great mental struggling.

However, both in the *Human Development Report 1994* and in subsequent analyses, one thing is very clear, and that is what human security is in opposition to. The *Report* opposes human security to nuclear security, thus relating it more to the security concerns of daily life.<sup>19</sup> Secretary-General Boutros Boutros-Ghali opposes human security to territorial security and speaks of seeking human security through development rather than through arms.<sup>20</sup> The Commission on Global Governance opposes human security to older conceptions of security like common security, collective security, and comprehensive security, distinguishing human security as "a people-centred approach that is concerned not so much with weapons as with basic human dignity."<sup>21</sup>

From this opposition, it becomes clear that a human security approach involves a shift in analyses towards people and away from territorial or other state-centred issues. Applying this to a security context in particular, Minister Axtworthy suggests, "[e]ssentially, this is the idea that security goals should be primarily formulated and achieved in terms of human, rather than state, needs."<sup>22</sup> In a recent "concept paper", Canada's Department of Foreign Affairs and International Trade states, "A human security perspective asserts that the security of the state is not an end in itself. Rather

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<sup>14</sup> *Supra* note 4 at 23.

<sup>15</sup> *Ibid.* at 24-33.

<sup>16</sup> *Ibid.* at 23.

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

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.* at 22. In many ways, this is in keeping with the whole spirit of the *Human Development Report*, whose main purpose has become that of measuring human development in a more comprehensive fashion than through the financial measure of GDP alone. This, of course, builds on the work of development theorists, and, in particular, Amartya Sen: see his works like *Commodities and Capabilities* (New York: Elsevier Science, 1985).

<sup>20</sup> *Supra* note 3.

<sup>21</sup> *Supra* note 7 at 80.

<sup>22</sup> The New Diplomacy, *supra* note 11.

it is a means of ensuring security for the state's people."<sup>23</sup>

The corresponding positive side to human security, consisting not just of an opposition, then, is a focus on the security of people. Minister Axworthy states, "Sustainable human security means providing basic needs in both economic and political ways."<sup>24</sup> The Commission on Global Governance, explicitly building on the *Human Development Report 1994*, articulates that "human security includes safety from chronic threats such as hunger, disease, and repression, as well as protection from sudden and harmful disruptions in the patterns of daily life."<sup>25</sup> While human security cannot become the same as human development if the term is to have an independent meaning,<sup>26</sup> it must have some kind of development-like content if it is to respond to the needs of human people in a positive, vibrant manner.<sup>27</sup>

Various documents and speeches that have considered human security thus coalesce into a reasonably cohesive two-pronged definition. First, a human security approach says that security *should not* be measured in terms of the security of states. Second, a human security approach says that security *should* be measured in terms of the security of human people, in terms of their safety and their ability to access basic human needs without disruption.

One major writer on the United Nations, Bruce Russett, seems to fundamentally misconceive the notion of human security. He describes human security as "the security of states, and of their peoples, from mortal danger, a vision attentive to a broad range of human rights: political, social, and economic."<sup>28</sup> While it is true that a human security approach is necessarily attentive to human rights, Russett's definition again places the security of states first and foremost, with the security of peoples relegated to a subordinate clause and human rights to something to which we are merely to be attentive. The whole point of human security as articulated by those who wish to see it used is to get beyond always putting states' interests first and to shift the focus to human interests being first. This is a difficult paradigm shift, and it is easy to get caught in older notions, but to do so fails to live up to the potential of the human security agenda.

A human security agenda has an actual transformative potential. To conceive of security needs in a different way leads us to a rethinking, and such a rethinking can lead us to a reshaping. Proponents of a human security agenda suggest that their rethinking has already had an impact. For example, Minister Axworthy cites the signing

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<sup>23</sup> "Human Security: Safety for People in a Changing World" (April 1999), online: Department of Foreign Affairs and International Trade <<http://www.dfait-maeci.gc.ca/foreignp/HumanSecurity/secure.htm>> (date accessed: 14 February 2000). It also states: "[Human security] is an attractive way of seeing the world, taking people as its point of reference, rather than focusing exclusively on the security of territory or governments."

<sup>24</sup> "Address to the 51st General Assembly of the United Nations", *supra* note 10.

<sup>25</sup> *Supra* note 7 at 80.

<sup>26</sup> *Human Development Report 1994*, *supra* note 4 at 23.

<sup>27</sup> As Canada's Department of Foreign Affairs and International Trade puts it, "The two concepts of human security and human development are mutually reinforcing, though distinct[...]. Together, human security and human development address the twin objectives of freedom from fear and freedom from want." ("Human Security: Safety for People in a Changing World", *supra* note 23.)

<sup>28</sup> *Supra* note 9 at 14.

of the land mines ban<sup>29</sup> as a tangible success.<sup>30</sup> Banning land mines presupposes that removing a threat to human life and limb ought to take precedence over so-called state security interests, thus putting human security above state security. Minister Axworthy suggests that this is the principle that was able to bring together an unlikely coalition of non-governmental organizations (NGOs), humanitarian organizations, and smaller powers that were able to persuade, rather than coerce, the world into supporting a land mines ban.<sup>31</sup>

Proponents of a human security agenda have also been proponents of the creation of an international criminal court, essentially on the premise that such a court would bring international bodies into direct interaction with the individual human persons for whom they exist and would bring to justice those who violate human security.<sup>32</sup> Such a court now has a statute and the full backing of the United Nations General Assembly.<sup>33</sup> Another major goal of those supporting the human security agenda has thus effectively been implemented.<sup>34</sup>

It is also possible to see influences like human security in major policy documents that have emerged in recent years from the United Nations Secretariat. In a set of major reports — *An Agenda for Peace*, *An Agenda for Development*, and *An Agenda for Democratization* — Secretary-General Boutros Boutros-Ghali has

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<sup>29</sup> *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction*, 18 September 1997, Oslo, Norway.

<sup>30</sup> *The New Diplomacy*, *supra* note 11.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*; *Our Global Neighbourhood: The Report of the World Commission on Global Governance*, *supra* note 7 at 323ff.

<sup>33</sup> *Establishment of an International Criminal Court*, GA Res. 53/105, UN GAOR, 53d Sess., 83d Plen. Mtg., UN Doc. A/RES/53/105 (1999).

<sup>34</sup> Some proponents of a human security agenda also saw it as giving clear support to NATO's intervention in Kosovo. Minister Axworthy has spoken of human security supporting "robust action when necessary" ("Human Security and Canada's Security Council Agenda" (Address to the Société des relations internationales de Québec, Quebec City, Quebec, 25 February 1999, online: Department of Foreign Affairs and International Trade <[http://198.103.104.118/minpub/publication.asp?FileSpec=/Min\\_Pub\\_Docs/100237.htm](http://198.103.104.118/minpub/publication.asp?FileSpec=/Min_Pub_Docs/100237.htm)> (date accessed: 14 February 2000)). He has also specifically discussed the Kosovo intervention as an example of action in support of human security. He notes, "Unfortunately, certain members of the [Security] Council could not reconcile yesterday's assumptions about sovereignty with today's imperatives of human emergency." ("Kosovo and the Human Security Agenda" (Address to the Woodrow Wilson School of Public and International Relations, Princeton University, Princeton, New Jersey, 7 April 1999, online: Department of Foreign Affairs and International Trade <[http://www.dfaic-maeci.gc.ca/english/news/statements/99\\_state/99\\_028-e.htm](http://www.dfaic-maeci.gc.ca/english/news/statements/99_state/99_028-e.htm)> (date accessed: 14 February 2000)). Obviously, there has been a good deal of controversy about the Kosovo intervention. Someone could conceivably support a human security agenda without thinking that the specific military action undertaken was the most effective response to the facts of the situation. However, there is no doubt that a human security agenda can provide justification to an international military intervention in a domestic situation — at least to something along the lines of Kosovo, to intervention against genocide, to intervention in support of human dignity over territorial sovereignty. For some lessons that might emerge from Kosovo for future situations, see part IV, below.



articulated the inextricable connections of peace and development.<sup>35</sup> The Secretariat's recognition of this interconnectedness along with its recommendations to other United Nations bodies and its own intended policy changes based on this principle mark an attention to a broader conception of peace that must include the improvement of human conditions along with it.<sup>36</sup> Both in certain measures that have been undertaken and in certain alterations in policy directions, the human security agenda's transformative potential is actualizing into tangible changes in the way the world order works.

The transformative potential of the human security agenda has a particular consistency with human rights theory. This consistency can be seen in three ways. First, a human security approach is like human rights theory at a fundamental level insofar as it places an emphasis on people rather than on states. Human rights theory suggests that human rights are worth protecting for their own sake, whereas rights exist in states only to protect other values. Every article of the *Universal Declaration of Human Rights*<sup>37</sup> aims to give rights to people, and no article aims to give rights to states. As W. Michael Reisman writes,

The international human rights program is more than a piecemeal addition to the traditional corpus of international law, more than another chapter sandwiched into traditional textbooks of international law. By shifting the fulcrum of the system from the protection of sovereigns to the protection of people, it works qualitative changes in virtually every component.<sup>38</sup>

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<sup>35</sup> *An Agenda for Peace* 1995, 2d ed. (New York: United Nations, 1995) at 44, 46ff.; *An Agenda for Development* 1995 (New York: United Nations, 1995) at 17, 20ff.; *An Agenda for Democratization* (New York: United Nations, 1996) at 52-54. See also United Nations, *Agenda for Development* (New York: United Nations, 1997) at 3. The Secretariat after the removal of Secretary-General Boutros-Ghali has actually issued some statements that are arguably even more directly on point in supporting human security. Deputy Secretary-General Louise Freehotte gave a speech on the concept of human security in which she linked it to the Secretary-General's preparedness to support intervention to stop aggression of all kinds: "Deputy Secretary-General Addresses Panel on Human Security Marking Twentieth Anniversary of Vienna International Centre" (Press Release DSG/SM/70, 12 October 1999), online: United Nations Press Releases <<http://www.un.org/News/Press/>> (date accessed: 14 February 2000)). Secretary-General Kofi Annan, speaking of his support for intervention, indicated a readiness to interpret the *UN Charter* purposively: "The Charter is a living document, whose high principles still define the aspirations of peoples everywhere for lives of peace, dignity and development. Nothing in the Charter precludes a recognition that there are rights beyond borders." ("Secretary-General Presents His Annual Report to General Assembly" (Press Release SG/SM/7136 GA/9596, 20 September 1999), online: United Nations Press Releases <<http://www.un.org/News/Press/>> (date accessed: 14 February 2000)).

<sup>36</sup> See in particular the approach these reports envision to reach peace. *An Agenda for Peace*, *supra* note 35 at 46ff. describes the related processes of preventive diplomacy, peacemaking, peace-keeping, and post-conflict peace-building. *An Agenda for Development* 1995, *supra* note 35 at 24 explains peace-building as "action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict." Peace and development ultimately become two aspects of the same objective, which is a society directed by the aspirations of human dignity.

<sup>37</sup> GA Res. 217(III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71.

<sup>38</sup> "Sovereignty and Human Rights in Contemporary International Law" (1990) 84 A.J.I.L. 866 at 872.

The qualitative change that the international human rights program works is precisely the same sort of qualitative change that a shift to a human security agenda attempts to work.

Second, a human security approach is in keeping with the fundamental precepts of human rights theory. In particular, the *Vienna Declaration and Programme of Action* has affirmed that “[a]ll human rights are universal, indivisible and interdependent and interrelated.”<sup>39</sup> Peter Leuprecht has stated that the three most basic features of human rights are their universality, their indivisibility, and their solidarity.<sup>40</sup> The *Universal Declaration of Human Rights* contains language affirming that human rights are universal and rooted in the dignity with which human beings are born.<sup>41</sup> A human security agenda responds to principles like the universality and indivisibility of human rights. A human security agenda says that it is not enough to deal only with some kinds of threats to human security. It is not enough to deal with intercontinental nuclear missiles and to refuse to act against domestic butchers. To do so fails to acknowledge all aspects of human dignity, fails to act with solidarity, and fails to recognize the character of human rights as universal, as indivisible, as interdependent, as interrelated, and as rooted in human dignity. A human security agenda deals with humans in a way that reaffirms the fundamental precepts of the international human rights movement in the security sphere.

Third, human security is itself becoming a recognized human right. As Lois E. Fielding writes, there is “an emerging right of all individuals to be secure and to have peace within the territorial confines of their state, whether a threat arises across a border or internally.”<sup>42</sup> A human security agenda supports the recognition of this basic human right.

Indeed, a human security agenda envisions a new global community that will respect the dignity and human rights of each of its human members. Minister Axworthy has recently offered several beautiful brush strokes in the picture of this society:

At its core, the human security agenda is an effort to construct a global society in which the safety and well-being of the individual is an international priority and a motivating force for international action; a society in which international humanitarian standards and the rule of law are advanced, woven into a coherent web protecting the individual, where those who violate these standards are held fully accountable; and finally, a society in which our global, regional and bilateral institutions – present and future – are built and equipped to promote and enforce these standards.<sup>43</sup>

A human security agenda is about recreating our world vision in a way that puts a new emphasis on people, in keeping with fundamental principles of human rights,

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<sup>39</sup> UN Doc. A/CONF 157/23 (25 June 1993), part I, para. 5, adopted following United Nations World Conference on Human Rights, cited in Rebecca M.M. Wallace, *International Law*, 3d ed. (London: Sweet & Maxwell, 1997) at 205.

<sup>40</sup> “Human Rights — Victims of Pan-Economic Ideology?” (11 March 1999) [unpublished, archived at University of Saskatchewan, College of Law, Saskatoon, Saskatchewan].

<sup>41</sup> *Supra* note 37, preamble., art. 1.

<sup>42</sup> Lois E. Fielding, “Taking a Closer Look at Threats to the Peace: The Power of the Security Council to Address Humanitarian Crises” (1996) 73 U. Det. Mercy L. Rev. 551 at 568.

<sup>43</sup> “Kosovo and the Human Security Agenda”, *supra* note 34.

and in itself directly advancing a human right.

A human security agenda is fundamentally very much in keeping with the agenda of the international human rights movement. At the same time, it speaks in ways that can actually deal with security issues and alter security goals. The upshot is that a human security agenda provides a potentially valuable language for human rights advocates to enter into the security sphere and to help transform institutions in that security sphere. By using this language and by seeking reforms consistent with this agenda, human rights advocates have a tremendous opportunity to help reshape the security sphere.

### III. THE SECURITY COUNCIL CONTEXT

When looking for a logical place to begin calls for reform, the foremost institution of the security sphere is undoubtedly the United Nations Security Council. In many ways, the Security Council is the most powerful institution of the United Nations. The three chapters of the *Charter of the United Nations* exclusively dedicated to the Security Council<sup>44</sup> make clear the Security Council's special place. The Security Council has "primary responsibility for the maintenance of international peace and security."<sup>45</sup> It exercises this responsibility through its Chapter VI powers to recommend peaceful dispute resolutions and its Chapter VII powers to implement sanctions or military action as it deems necessary. It has the authority to bind members, and members are committed to carrying out Security Council's measures.<sup>46</sup> Indeed, the Security Council takes precedence over other United Nations bodies — when it is considering a matter, the General Assembly is to keep out,<sup>47</sup> and the International Court of Justice, despite powerful dissenting voices, seems to have also developed a doctrine of not challenging a Security Council decision.<sup>48</sup>

The Security Council is not only an institution of power, but an institution of concentrated power. The Security Council is composed of just fifteen members, with the five "great powers" from the end of World War II enjoying permanent status.<sup>49</sup> Each of the five permanent members also enjoys an effective veto over any non-procedural decision.<sup>50</sup> Ultimately, a very small number of states wield enormous influence over decisions that affect all the other members of the world community.

Moreover, the way in which Security Council business is actually carried out tends to enhance the concentration of power.<sup>51</sup> A practice of informal consultations outside of formal meetings has developed, which while sometimes facilitating

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<sup>44</sup> *Supra* note 1, chs. V, VI, VII.

<sup>45</sup> *Ibid.* art. 24, para. 1.

<sup>46</sup> *Ibid.* arts. 25, 48.

<sup>47</sup> *Ibid.* art. 12, para. 1. The "Uniting for Peace" Resolution allows the General Assembly to act in some narrowly defined circumstances when the Security Council is paralyzed: GA Res. 377(V), UN GAOR, 5th Sess., 302d Plen. Mtg., UN Doc. A/1456 (1950).

<sup>48</sup> *Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising From the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America)*, [1992] I.C.J. 114.

<sup>49</sup> *Charter of the United Nations*, *supra* note 1, art. 23, para. 1.

<sup>50</sup> *Ibid.* art. 27, para. 3.

<sup>51</sup> On the important impacts of informal practice generally, see Ian Hurd, "Security Council Reform: Informal Membership and Practice" in Russett, ed., *supra* note 9, 135.

compromise, makes the business of the Security Council entirely secretive and exclusionary.<sup>52</sup> The use of private informal consultations with only the five permanent members present, after which they go to meetings of the entire Security Council with a bloc position, intensifies this practice, creating a yet more secretive and exclusionary "closed shop."<sup>53</sup> The Security Council is very powerful, and its power is intensely concentrated.

The Security Council, in exercising the power attached to its "primary responsibility for the maintenance of international peace and security,"<sup>54</sup> has the authority to define its own jurisdiction. It has investigative power over any dispute or situation that might give rise to a dispute in order to determine the likelihood that the dispute is "likely to endanger the maintenance of international peace and security."<sup>55</sup> Its determinative and decision-making powers are equally self-governing: "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with articles 41 and 42, to maintain or restore international peace and security."<sup>56</sup>

However, there is one restriction that is built into the jurisdiction of the Security Council, and that is the need to have at least a "threat to the peace,"<sup>57</sup> and particularly to the "international peace,"<sup>58</sup> before the Security Council is entitled to implement measures to deal with a situation. It is certainly possible to read this constrained jurisdiction expansively to cover even internal human rights situations; generally speaking, human rights violations eventually lead to breaches of the peace.<sup>59</sup> However, to read the jurisdiction in this way at least stretches the language relating to

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<sup>52</sup> James S. Sutterlin, "The Past as Prologue" in Russett, ed., *supra* note 9, 1 at 9.

<sup>53</sup> *Our Global Neighbourhood: The Report of the Commission on Global Governance*, *supra* note 7 at 238.

<sup>54</sup> *Charter of the United Nations*, *supra* note 1, art. 24, para. 1.

<sup>55</sup> *Ibid.* art. 34.

<sup>56</sup> *Ibid.* art. 39.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.* See also *ibid.* art. 24, para. 1, which says that the Security Council has responsibility for the "maintenance of international peace and security" (emphasis added).

<sup>59</sup> E.g. Sydney D. Bailey, *The UN Security Council and Human Rights* (New York: St. Martin's, 1994) at x, citing Sydney D. Bailey, *How Wars End: The United Nations and the Termination of Armed Conflict 1946-1964*, vol. 1 (Oxford: Clarendon Press, 1982) at 10, for the proposition that more than half the wars in the Third World since 1945 have been caused by perceived denials of human rights; Jost Delbruck, "A Fresh Look at Humanitarian Intervention Under the Authority of the United Nations" (1992) 67 *Ind. L.J.* 887 at 900: "It is only realistic to assume that massive human rights violations of genocidal dimensions will sooner or later escalate into international military conflicts in a world highly sensitized by such events."; Ruth E. Gordon, "Humanitarian Intervention by the United Nations: Iraq, Somalia, and Haiti" (1996) 31 *Texas Int'l. L.J.* 43 at 51; James A.R. Nafziger, "The Security of Human Rights: A Third Phase in the Global System?" (1990) 20 *Calif. Western Int'l L.J.* 173 at 182: "[D]eprivations of human rights endanger the peace, both because the effects of suffering and resulting tensions may spill over national boundaries, and because internal suppression and external aggression seem to go hand in bloody hand.... The relationship between security and human rights is thus reciprocal." See also *Our Global Neighbourhood: The Report of the Commission on Global Governance*, *supra* note 7 at 81: "[S]tates cannot be secure for long unless their citizens are secure."

a body set up for the "maintenance of *international* peace and security."<sup>60</sup>

Indeed, the historical record shows that the Security Council has considered itself constrained by the clauses granting its jurisdiction. Up until the 1990s, the Security Council had essentially avoided human rights issues.<sup>61</sup> It is true that it dealt with some human rights situations like South Africa by characterizing them as "threats to the peace."<sup>62</sup> It is also true that it addressed some humanitarian issues.<sup>63</sup> The point, however, is that these were the exceptions rather than the rule. It was only the rare situation where the Security Council acted on human rights issues.<sup>64</sup> Those situations where it did act were generally where there was either a request for help or overt aggression of some form.<sup>65</sup> Studies of the language of Security Council resolutions from the 1940s up to the 1980s reveal hardly a reference to human rights issues.<sup>66</sup>

The language of Security Council resolutions is perhaps the most telling sign of the degree to which the Security Council has generally felt itself constrained from dealing with human rights issues *per se*. In the 1990s, the Security Council has come to grips with a number of situations involving major human rights issues, attempting to act in Iraq, in Somalia, in Haiti, in the former Yugoslavia, and in Rwanda. However, each time it has done so, each time it has finally come closer to providing some human security, it has felt the old need to couch its language in cautious terms and ensure that its resolution could be tagged on to some threat to the broader international peace.

Following the Gulf War, Security Council actions to protect the Kurdish minority and other minorities in Iraq could suggest a concern for human rights, but they soon revealed other considerations. The Security Council passed Resolution 688,<sup>67</sup> which provided a basis for actions in support of human rights, such as the establishment of safe havens and the creation of "no-fly" zones to protect these safe havens.<sup>68</sup> However, the debate leading up to the passing of the resolution showed that only France

<sup>60</sup> *Charter of the United Nations*, *supra* note 1, art. 24, para. 1 [emphasis added]. Moreover, as Delbruck notes, *supra* note 59 at 892, when the United Nations was founded, most governments wanted an extensive principle of nonintervention to restrict the powers of United Nations institutions like the Security Council. Such a principle of nonintervention took pride of place in the *Charter of the United Nations*, *supra* note 1, art. 2, para. 7.

<sup>61</sup> Bailey, *The UN Security Council and Human Rights*, *supra* note 59 at x.

<sup>62</sup> Delbruck, *supra* note 59 at 893 & 899. See also Philip Alston, "The Security Council and Human Rights: Lessons to Be Learned From the Iraq-Kuwait Crisis and Its Aftermath" (1992) 13 *Aust. Y.B. Int'l. L.* 107 at 130, discussing the significance of always tying involvement with the South African and Rhodesian situations to risks of increased bellicosity in the region. For discussion of other situations where the Security Council acted, see also Bailey, *How Wars End*, *supra* note 59, vol. 1 at 326-31.

<sup>63</sup> For an extensive documentation of the Security Council's humanitarian endeavours, see Christine Bourloyannis, "The Security Council of the United Nations and the Implementation of International Humanitarian Law" (1992) 20 *Denv. J. Int'l. L. & Pol'y.* 335. See also generally Bailey, *The UN Security Council and Human Rights*, *supra* note 59.

<sup>64</sup> Delbruck, *supra* note 59 at 894.

<sup>65</sup> David Billis, "International Human Rights and Humanitarian Intervention: The Ramifications of Reform on the United Nations' Security Council" (1996) 31 *Texas Int'l. L.J.* 107 at 111-12.

<sup>66</sup> Alston, *supra* note 62 at 131-32.

<sup>67</sup> UN SCOR, 46th Sess., 2982nd Mtg., UN Doc. S/RES/688 (1991) [hereinafter *Res. 688*].

<sup>68</sup> Alston, *supra* note 62 at 148-53.

wanted human rights violations in and of themselves to be actionable by the Security Council.<sup>69</sup> Other states were very careful to tie their support for the resolution to specific international threats or took pains to indicate their concerns about setting an unwelcome precedent for intrusions into the domestic affairs of states.<sup>70</sup>

An explicit mention of the domestic jurisdiction clause of the *Charter of the United Nations*<sup>71</sup> eventually made its way into the very text of the Security Council resolution.<sup>72</sup> The resolution also explicitly tied the Security Council's involvement to its being "[g]ravely concerned by the repression of the Iraqi civilian population...which led to a massive flow of refugees towards and across international frontiers and to cross-border incursions, which threaten international peace and security in the region."<sup>73</sup> In other words, for all the claims that the Security Council's protection of minorities in Iraq heralded a new era, the Security Council remained very much constrained by traditional doctrine concerning the need for some kind of international threat.

In Somalia, the Security Council acted based on the Secretary-General's recommendations to pass Resolution 794,<sup>74</sup> which authorized military force to secure an environment for humanitarian relief. This resolution has been cited as a turning point in Security Council involvement with human rights issues on the basis that the resolution considered an internal humanitarian crisis in and of itself a threat to the peace.<sup>75</sup> For some analysts, it suggested even that mass starvation had been recognized as a threat to the peace.<sup>76</sup> Indeed, there are very powerful words in the resolution: "Determining that the magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitutes a threat to international peace and security."<sup>77</sup>

The resolution is very positive in terms of human rights theory insofar as it links "human tragedy" directly to "international peace and security."<sup>78</sup> However, even in so doing, the resolution also refers to the "obstacles...to the distribution of humanitarian assistance" and elsewhere specifically refers to violence directed at aid workers.<sup>79</sup> The resolution does not entirely abandon the search for some kind of international issue. Security Council action in Somalia has not yet demonstrated what the Security Council's outlook would be in the case of massive humanitarian abuses that were somehow truly insulated from any international effects.<sup>80</sup>

In Haiti, the Security Council passed Resolution 940,<sup>81</sup> which authorized

<sup>69</sup> *Ibid.* at 134.

<sup>70</sup> *Ibid.* at 134-42; Gordon, *supra* note 59 at 47-50.

<sup>71</sup> *Supra* note 1, art. 2, para. 7.

<sup>72</sup> Res. 688, *supra* note 67, preamble.

<sup>73</sup> *Ibid.*

<sup>74</sup> UN SCOR, 47th Sess., 3145th Mtg., UN Doc. S/RES/794 (1992) [hereinafter *Res. 794*].

<sup>75</sup> Gordon, *supra* note 59 at 51.

<sup>76</sup> Mark R. Hutchinson, "Restoring Hope: U.N. Security Council Resolutions for Somalia and an Expanded Doctrine of Humanitarian Intervention" (1993) 34 Harv. Int'l L.J. 624 at 625.

<sup>77</sup> Res. 794, *supra* note 74, preamble.

<sup>78</sup> Hutchinson, *supra* note 76 at 633.

<sup>79</sup> Res. 794, *supra* note 74, preamble.

<sup>80</sup> Hutchinson, *supra* note 76 at 640.

<sup>81</sup> UN SCOR, 49th Sess., 3413th Mtg., UN Doc. S/RES/940 (1994) [hereinafter *Res. 940*].

military intervention to restore the ousted democratic government. This too has been cited as an example of Security Council action increasingly aimed at protecting human rights and providing humanitarian assistance.<sup>82</sup> However, this resolution likewise contained language to try to hook Security Council action to traditional doctrine by referring not only to the situation in Haiti itself, but also to refugee issues and to the expulsion of the staff of the International Civilian Mission.<sup>83</sup>

While these latter concerns are not trivial, neither were the problems faced by the Haitian people after the ousting of their democratic government; anything that implies that the Haitian people had a right to assistance in their plight only because of the refugee threat to other countries and the expulsion of some foreign nationals risks implying that the Haitian people's plight was inconsequential.<sup>84</sup> Again, while Security Council actions in Haiti might have had positive human rights impacts, their purposes were still couched partly in terms related to the old doctrine of non-intervention.

In the killing fields of the former Yugoslavia in general and Bosnia in particular, the Security Council took steps towards holding individuals responsible for violations of human rights. In Resolution 808,<sup>85</sup> it affirmed its intention to create an international tribunal to try war criminals; and in Resolution 827,<sup>86</sup> it created such a tribunal. In both resolutions, the Security Council referred to reports of mass killings and ethnic cleansing in determining the existence of a threat to international peace and security. There is an apparent direct linkage between serious human rights violations and a threat to the peace, although Resolution 827 does add another element to the ethnic cleansing before finding a threat to the peace: "the continuance of the practice of "ethnic cleansing", including for the acquisition and the holding of territory".<sup>87</sup> Nonetheless, the human rights violations finally seem to be paramount in the determination of the existence of a threat to the peace.

In Rwanda, the Security Council also set up an international tribunal to bring to justice those who had violated human rights. Resolution 955<sup>88</sup> established this

<sup>82</sup> Gordon, *supra* note 59. According to some writers, democratic governance is itself becoming a human right that the international community legitimately protects. See in particular Thomas M. Franck, "The Emerging Right to Democratic Governance" (1992) 86 A.J.I.L. 46; Lois E. Fielding, "Taking the Next Step in the Development of New Human Rights: The Emerging Right of Humanitarian Assistance to Restore Democracy" (1995) 3 Duke J. Comp. & Int'l L. 329.

<sup>83</sup> Res. 940, *supra* note 81, preamble.

<sup>84</sup> A more recent parallel may be found in Security Council Resolution 1132 on Sierra Leone, where the Security Council explains how it is "[g]ravelly concerned at the continued violence and loss of life in Sierra Leone following the military coup of 25 May 1997, the deteriorating humanitarian conditions in that country, and the consequences for neighbouring countries" and thereby goes on to find a threat to the international peace (UN SCOR, 52d Sess., 3822d Mtg., UN Doc. S/RES/1132 (1997).) Although the Security Council is prepared to acknowledge the importance of the humanitarian situation in Sierra Leone, it insists on tying it once again to the effects on neighbouring countries. The moral is clear: to increase your chances of help from the United Nations, pray that the people hacking you apart with machetes cross the border now and then.

<sup>85</sup> UN SCOR, 48th Sess., 3175th Mtg., UN Doc. S/RES/808 (1993) [hereinafter *Res. 808*].

<sup>86</sup> UN SCOR, 48th Sess., 3217th Mtg., UN Doc. S/RES/827 (1993) [hereinafter *Res. 827*].

<sup>87</sup> *Ibid.*, preamble.

<sup>88</sup> UN SCOR, 49th Sess., 3453th Mtg., UN Doc. S/RES/955 (1994).

international tribunal at the request of the Rwandan government, with the Security Council finding jurisdiction for its involvement in "genocide and other systematic, widespread and flagrant violations of international humanitarian law" that it determined constituted a threat to international peace and security.<sup>89</sup>

The language of this resolution again links human rights violations directly to threats to international peace and security, here apparently without any other hook, except perhaps for the fact that the Security Council acted in response to a request from the Rwandan government. This is a very positive development in terms of the Security Council being able to deal head-on with human rights violations as themselves breaches of the order of international peace and security.<sup>90</sup> While the Security Council has very often been constrained by traditional doctrine on international threats to the peace, there is perhaps hope of transcending this doctrine.<sup>91</sup>

At the same time, however, the Security Council often remains under the pall of old doctrines of state sovereignty. In Kosovo, the Security Council was prepared in the fall of 1998 to affirm that the deteriorating situation constituted a threat to regional peace and security based on civilian casualties, displacements of persons, refugee movements, and an "impending humanitarian catastrophe."<sup>92</sup> However, subsequent Security Council Resolutions tempered this with reaffirmations of "the territorial integrity and sovereignty of all states in the region"<sup>93</sup> or specifically of "the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia".<sup>94</sup> In the end, of course, the Security Council remained mired in inaction, swimming in the quicksand of the old rhetoric of states' rights, while others did something to try to prevent genocide.

As soon as hope arises, ancient voices call out for the older order. Writers offer up arguments that the Security Council has acted *ultra vires* by creating war crimes tribunals where there is no real threat to international peace.<sup>95</sup> Even if it proves to be a

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<sup>89</sup> *Ibid.*, preamble.

<sup>90</sup> Complimenting the Security Council on its linguistic triumphs in establishing the war crimes tribunals in former Yugoslavia and Rwanda ignores, of course, the more substantive question of the failure of the United Nations to take earlier action to try to prevent the slaughters in the first place. To our great shame, a million dead become another footnote. In recent months, the United Nations has begun to acknowledge its failings in Rwanda and in Srebrenica in the former Yugoslavia: "Kofi Annan Emphasizes Commitment to Enabling UN Never Again to Fail in Protecting Civilian Population From Genocide or Mass Slaughter" (Press Release SG/SM/7263 AFR/196, 16 December 1999, available online through United Nations Press Releases <<http://www.un.org/News/Press/>>).

<sup>91</sup> A truly hopeful example is in Resolution 1159 dealing with the situation in the Central African Republic. Here, the Security Council comes close to a preparedness to look at domestic conditions related to human security: "Recognizing the link between peace and development and that a sustained commitment by the international community to assist and support the economic, social, and institutional development of the Central African Republic is indispensable for long-term peace and stability in the country... Determining that the situation in the Central African Republic continues to constitute a threat to international peace and security in the region." (UN SCOR, 53d Sess., 3867th Mtg., UN Doc. S/RES/1159 (1998).

<sup>92</sup> SC Res. 1199, UN SCOR, 53d Sess., 3930th Mtg., UN Doc. S/RES/1199 (1998).

<sup>93</sup> SC Res. 1239, UN SCOR, 54th Sess., 4003d Mtg., UN Doc. S/RES/1239 (1999).

<sup>94</sup> SC Res. 1203, UN SCOR, 53d Sess., 3937th Mtg., UN Doc. S/RES/1203 (1998).

<sup>95</sup> E.g. T. Sapra, "Into the Heart of Darkness: The Case Against the Foray of the Security Council Tribunal Into the Rwandan Crisis" (1997) 32 Texas Int'l. L. J. 329.



losing argument, defence lawyers before war crimes tribunals attempt to argue against the jurisdiction of the tribunals on the same grounds.<sup>96</sup> And states express their discomfort with the Security Council's latest moves that purportedly invade domestic jurisdiction.<sup>97</sup> Despite contrary claims such as that "no serious scholar still supports the contention that internal human rights are 'essentially within the domestic jurisdiction of any state' and hence insulated from international law,"<sup>98</sup> any Security Council action in support of human rights still remains jurisdictionally controversial.<sup>99</sup> The Security Council itself is still bound to find some hook to traditional doctrine to justify its action.

It is in this context of the Security Council having to carefully justify every action in support of human rights, and leaving many major human rights situations unaddressed because of its uncertain role, that we turn to the matter of how to reshape the Security Council. The Security Council, in its governance over global security, wields enormous power — and power that is closely concentrated. As constituted and as it has historically functioned, the Security Council has not applied this power to human rights issues. There remain considerable restraints on it even as it has attempted

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<sup>96</sup> E.g. *Prosecutor v. Dusko Tadic* (2 October 1995), No. IT-94-AR72, Defence Motion for Interlocutory Appeal on Jurisdiction (Int'l Trib. for the Prosecution of Persons Responsible for Serious Violations of Int'l Humanitarian Law Committed in the Territory of Former Yugoslavia Since 1991). For the Tribunal's decision that there was no jurisdictional problem, which the defence tried to appeal, see *Prosecutor v. Dusko Tadic a/k/a "Dule"* IT-94-1, Decision on the Defence Motion Against Jurisdiction (10 August 1995), available online: International Criminal Tribunal for the former Yugoslavia, <<http://www.un.org/icty/tadic/triac2/decision-e/100895.htm>> (date accessed: 22 March 2000). This decision contains some substantial discussion of the Security Council's jurisdiction.

<sup>97</sup> Consider Libya's challenge before the International Court of Justice in the *Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising From the Aerial Incident at Lockerbie*, *supra* note 48. But consider also the concerns expressed even by states like Canada regarding the need to appropriately constrain the precedential scope of a decision when the Security Council was considering the measures for the protection of minorities in Iraq: see Alston, *supra* note 62 at 134.

<sup>98</sup> Reisman, *supra* note 38 at 869. (There has in some instances been a major shift in the scholarship on related issues like humanitarian intervention. For example, compare the 1973 anti-intervention views of T. M. Franck & N. S. Rodley, "After Bangladesh: The Law of Humanitarian Intervention by Military Force" (1973) 67 A.J.I.L. 275 to Franck's views on the new legal entitlement of democratic governance in the less dusty 1992 volume of the A.J.I.L.: "The Emerging Right to Democratic Governance", *supra* note 82.) Judge Schwebel, speaking outside his role as a judge on the International Court of Justice, has made the very cogent argument that human rights issues cannot be considered as within the domestic jurisdiction of states when the vast majority of states are signatories to major international treaties safeguarding human rights and when many human rights principles have clearly become part of customary international law. See S. M. Schwebel, "The Roles of the Security Council and the International Court of Justice in the Application of International Humanitarian Law" (1995) 27 N.Y.U. J. Int'l L. & Pol. 731 at 747-50. Moreover, Schwebel, *ibid.* at 750, would give a broad reading to the final clause of the *Charter of the United Nations*, *supra* note 1, art. 2, para. 7, which indicates that it is not to "prejudice the application of enforcement measures under Chapter VII."

<sup>99</sup> Thus those seeking to maintain the old jurisdictional constraints give legal weight to the old diplomatic niceties bitterly described by Ugandan President Godfrey L. Binaisa after the overthrow of Idi Amin: "[S]omehow, it is thought to be in bad taste or contrary to diplomatic etiquette to raise matters of violations of human rights by Member States within the forums of the United Nations." (UN Doc. A/34/PV.14 at 4-6 (1979), cited in Franck, "The Emerging Right to Democratic Governance", *supra* note 82 at 83.)

to deal with a few recent human rights situations. Our best hopes are often dashed. The question becomes whether there is a way to recapture hopes for the Security Council to more truly protect the kind of international security with which we are concerned. Does a human security approach have some contribution to make to changes in the practice of this institution and, indeed, to changes in the institution itself?

#### IV. SECURITY COUNCIL REFORM AND THE HUMAN SECURITY AGENDA

In considering putting effort into reforming the Security Council, an appropriate threshold question is whether reform is even feasible. The answer is "yes" — the possibility of reform is a potentially viable hope. First, there have been previous reforms to the United Nations Security Council. The Security Council, as constituted at the time of the *Charter* had just eleven members; in 1965, in response to the increased number of member states in the United Nations, members were able to agree to amend the *Charter* to bring the Security Council to its present form with fifteen members.<sup>100</sup> Therefore, historically speaking, reform has occurred, even if it has required amendment of the *Charter*.

Second, the present time is a particularly viable moment for Security Council reform. The notion that the Security Council cannot remain unchanged in a changing world<sup>101</sup> is today accepted as almost axiomatic. Indeed, the General Assembly of the United Nations has passed resolutions soliciting the input of member states on Security Council reform<sup>102</sup> and establishing a working group to build on this input and find reforms.<sup>103</sup> Numerous states responded to the solicitation of input, with a large portion calling for such reforms as enlargement of the Security Council.<sup>104</sup> So, aside from a general environment of seeking reform in international institutions like the United Nations, there is a particular environment of preparedness to consider reforms to the Security Council.

Third, the efforts of the working group that the General Assembly established are ongoing and show hope despite the fact that the working group's 1998 report suggested the possibility that the process was getting bogged down.<sup>105</sup> The working group's very establishment goes some way in demonstrating the current willingness of the world community to consider change. Some of the working group's earlier reports

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<sup>100</sup> For discussion of this reform, see: M. Smith, "Expanding Permanent Membership in the UN Security Council: Opening a Pandora's Box or Needed Change?" (1994) 12 Dick. J. Int'l. L. 173 at 178; Boutros-Ghali, *An Agenda for Democratization*, *supra* note 35 at 49.

<sup>101</sup> See e.g. Smith, *supra* note 100 at 193.

<sup>102</sup> GA Res. 47/62, UN GAOR, 47th Sess., 84th Plen. Mtg., UN Doc. A/RES/47/62 (1992), art. 1, requesting the Secretary-General to invite member states to submit written comments.

<sup>103</sup> GA Res. 48/26, UN GAOR, 48th Sess., 69th Plen. Mtg., UN Doc. A/RES/48/26 (1993), arts. 1, 2.

<sup>104</sup> See Sutterlin, *supra* note 52 at 9.

<sup>105</sup> The report really showed no signs that the working group was reaching saleable solutions. See *Report of the Open-Ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council*, UN GAOR, 52d Sess., UN Doc. A/52/47 (24 August 1998) [hereinafter *1998 Report on Security Council Reform*].

showed that it was very seriously considering substantial reforms.<sup>106</sup> Moreover, the working group's 1999 report, although in a literal sense "recommending" only that work continue, offers a number of "general observations" suggesting that the working group is approaching consensus on a number of key issues for reform.<sup>107</sup> The possibility of Security Council reform is very much alive right now.

A major thesis of this article, however, is that the reforms presently under serious consideration, even including those offered by proponents of a human security agenda, may be gestures in a useful direction, but they often do not live up to the full demands of a human security agenda. To see this point, we have to look first to just what reform proposals are under serious consideration. Most proposals concern opening up the Security Council's work and improving the Security Council's representativeness.

The working group that the General Assembly established to consider Security Council reform thus far seems to have come to general agreement on two types of reform. The first is to open up the workings of the Security Council — to give the process more transparency.<sup>108</sup> This type of reform responds to the strong sense of exclusion generated by the way in which the Security Council has been operating.<sup>109</sup>

The second type of reform on which consensus is building responds in some ways to this same concern. The working group received numerous submissions from states desiring an expansion of the Security Council,<sup>110</sup> and after 1998, it continued to meet primarily to work on this.<sup>111</sup> In 1999, the working group's report suggested support for "more equitable representation" to be achieved through enlargement to twenty to twenty-six members, with some change in the veto structure possibly following as well.<sup>112</sup> The idea of increasing the Security Council's representativeness by expanding the Security Council, possibly in conjunction with some change in the veto structure, is of great appeal, and has received much attention in academic writing.<sup>113</sup>

Proposals currently advanced by advocates of a human security agenda often echo the proposals that are already present in the general discussion. The upshot is that human security proponents are not making the unique contribution that their concept

<sup>106</sup> See e.g. *Working Group on the Security Council (1995): Report to the General Assembly*, UN GAOR, 49th Sess., UN Docs. A/49/47, A/49/965 (18 September 1995).

<sup>107</sup> *Report of the Open-Ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council*, UN GAOR, 53d Sess., UN Doc. A/53/47 (5 August 1999) [hereinafter *1999 Report on Security Council Reform*].

<sup>108</sup> *1998 Report on Security Council Reform*, *supra* note 105, Annex III. See also *1999 Report on Security Council Reform*, *supra* note 107, part III, para. 27(c).

<sup>109</sup> Sutterlin, *supra* note 52 at 9.

<sup>110</sup> Sutterlin, *ibid.* notes that this is the most common desire of member states. For documentation of this, see e.g. *Working Group on the Security Council (1995): Report to the General Assembly*, *supra* note 106.

<sup>111</sup> See *1998 Report on Security Council Reform*, *supra* note 105, chs. 2, 3.

<sup>112</sup> See *1999 Report on Security Council Reform*, *supra* note 107, part III, para. 27(d), (e).

<sup>113</sup> E.g. Smith, *supra* note 100; H. Koechler, "The United Nations Security Council and the New World Order" in F. Barnaby, ed., *Building A More Democratic United Nations: Proceedings of CAMDUN-1* (London: Frank Cass, 1991) 238 at 242 gives this eloquent statement: "No real dialogue will ever be possible among the nations and their citizens if the victors of World War II continue to derive from this historical fact special rights for them alone."

enables them to offer. For example, in his speech to the General Assembly of the United Nations in which he unleashed his purportedly bold new vision based on human security,<sup>114</sup> Minister Axworthy unveiled a set of rather pale words. He spoke of strengthening the Security Council with "greater accountability, representativeness, transparency, and responsibility."<sup>115</sup> These words do not necessarily indicate anything different from the widely discussed ideas of opening up the Security Council's workings a little, letting a few more states participate, and then trying to do a good job. Although Minister Axworthy hinted at the idea of ensuring that the Security Council had a greater role in conflict prevention,<sup>116</sup> this was vague rhetoric. And his reference to increasing the number of Security Council seats<sup>117</sup> was no more radical than what many others have advocated.

Of course, some might argue that foreign ministers must speak softly and work within incremental processes of change — they cannot just pound their shoes on their desks and demand that everything go their way all at once. Indeed, a related argument is that the responsible course in achieving Security Council reform is to go slow and take a number of steps. The Commission on Global Governance has argued that reform may have to be undertaken in stages in order to gradually shift power away from those who presently hold it so that they will not block the process of removing their power.<sup>118</sup> However, the dynamics of major structural change are not necessarily quite that simple. For instance, a party that acquires power at some intermediate stage of a structural reform process may then try to halt the reform process partway through in order to retain that power; a multi-stage process is not inherently advantageous.<sup>119</sup> Making changes to the Security Council is a rare event, and there are rare opportunities to do so; there has, after all, been only one reform in over fifty years.

Indeed, the *Charter of the United Nations*, like most constitutions, is difficult to change. Any change requires the support of two-thirds of member states, including all the permanent members of the Security Council.<sup>120</sup> To expect to be able to carry out Security Council reform in stages is ludicrous. More plausible is the idea that we might put together a reform package that could command broad support. Indeed, this seems to be what present reform processes envision.<sup>121</sup> For human security advocates to advance only a partial version of their vision of Security Council reform guarantees them a lessened contribution to the eventual shape of such a package. They are simply giving up their rare opportunity to influence Security Council reform at a moment when it finally seems possible. The human security agenda deserves a fate better than death in the mealy-mouthed words of bureaucrats.

Some human security proponents have advanced their visions of Security

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<sup>114</sup> "Address to the 51st General Assembly of the United Nations", *supra* note 10.

<sup>115</sup> *Ibid.*

<sup>116</sup> *Ibid.*

<sup>117</sup> *Ibid.*

<sup>118</sup> *Our Global Neighbourhood: The Report of the Commission on Global Governance*, *supra* note 7 at 239.

<sup>119</sup> For my consideration of related questions elsewhere, see D. Newman, "Reconstituting Promises to Negotiate in Canadian Constitution-Making" (1998-99) 10 N.J.C.L. 1 at 34-35.

<sup>120</sup> *Charter of the United Nations*, *supra* note 1, art. 108.

<sup>121</sup> See the explicit suggestion to this effect in the 1999 *Report on Security Council Reform*, *supra* note 107, part III, para. 27(h).

Council reform in somewhat bolder terms, although the limits that they set on their reforms again exhibit some divergence between the rhetoric of human security and the actual proposed reform. The *Human Development Report 1994*, which presented an extensive analysis of human security, referred to its hopes of creating an Economic Security Council that would focus on sustainable development.<sup>122</sup> However, the *Report* concluded that this would be difficult to establish since it would require amendments to the *Charter*, so it suggested an alternative, less ambitious idea of extending the mandate of the present Security Council to include "not just military threats but also threats to peace from economic and social crises."<sup>123</sup> But since this latter proposal is to avoid the difficulties of amending the *Charter*, it necessarily cannot involve a *Charter* amendment. So it is to be nothing more than a continuation of the present approach of trying to stretch the language of traditional doctrine on "threats to the peace." The more radical proposal of an Economic Security Council has no detail concerning how this Economic Security Council is to have any powers to implement human security, and the temporary proposal of the Security Council addressing a broader range of threats to the peace is really no reform at all. These proposals do not live up to the potential of the human security agenda.

In a similar vein, the Independent Working Group on the Future of the United Nations has proposed the creation of a new Economic Council and a new Social Council, which would together be what the Group calls a "Global Alliance for Sustainable Development".<sup>124</sup> However, the Economic Council would be empowered solely to come up with guidelines and the Social Council would be empowered solely to supervise and integrate existing United Nations work on social issues.<sup>125</sup> The Group's Report does not live up to the potential of its continual references to human security, for these reforms never make human security important enough to be pursued hand-in-hand with traditional security objectives.

The Commission on Global Governance takes a different tack. It briefly indicates its support for such changes as expanding Security Council membership and phasing out the permanent member veto,<sup>126</sup> which are commonly discussed elsewhere. But the Commission advances some ideas not present in all the discussions. For example, the Commission addresses the issue of the Security Council being able to transcend its strict jurisdictional constraints in order to better deal with what is needed to find peace in the modern world.<sup>127</sup>

Unfortunately, the Commission seems to become involved in some contradictions here. Although it asserts that "a primary need is for the world community to make greater, more imaginative, more creative use of existing provisions of the Charter,"<sup>128</sup> it expresses its concerns with the Security Council's interpretations of its own jurisdiction, stating that a creative reading that "strains credulity...may be

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<sup>122</sup> *Human Development Report 1994*, *supra* note 4 at 10-11.

<sup>123</sup> *Ibid.* at 11

<sup>124</sup> *The United Nations In Its Second Half-Century: A Report of the Independent Working Group on the Future of the United Nations*, *supra* note 8, ch. 3b.

<sup>125</sup> *Ibid.*, chs. 3b, 3c.

<sup>126</sup> See *Our Global Neighbourhood: The Report of the Commission on Global Governance*, *supra* note 7 at 240-41.

<sup>127</sup> *Ibid.* at 87ff.

<sup>128</sup> *Ibid.* at 233.

unsustainable.”<sup>129</sup> The Commission seeks an appropriate *Charter* amendment precisely to keep the Security Council within strictly observable limits.<sup>130</sup> So, while there are positive aspects in terms of empowering the Security Council to deal with a broader range of security issues, these positive aspects seem to come attached to some unease about how the *Charter* and the Security Council interact. The achievement of the human security agenda is not complete.

The Commission on Global Governance also speaks directly to the matter of trying to find a way for people and for organizations representing people to be involved in the United Nations, perhaps through some kind of forum for civil society,<sup>131</sup> thus transcending the constant relation of the United Nations to people only through state structures. However, the Commission does not apply this directly to the Security Council. Thus it misses an opportunity to bring together the Security Council and human security.

The proposals put forward by many human security advocates merely echo those present among those without a human security agenda, thus creating a dichotomy between rhetoric and proposed reality. Even those human security advocates who advance their visions of reform in bolder terms still often leave a gap between the transformative potential of the human security agenda and the actual reforms for which they argue.

Critiquing current proposals does not fully make the point. It is worth setting forth what a full-fledged human security agenda would advocate in terms of reforms to the Security Council. It would go beyond transparency to actual empowerment and beyond modified representation to entirely new kinds of participation.

First, while the various calls for transparency and a new openness around Security Council proceedings might be well and good, they have their limits. Opening up the process of how the Security Council arrives at decisions not to deal with human rights issues might lead to more accountability for those decisions, but it will not necessarily change the decisions. An institution may function transparently, yet transparently do nothing, and transparently be empowered to do nothing. Openness may reveal only hollowness.

A human security approach, realizing that “[h]uman security is indivisible,”<sup>132</sup> entails that the primary institution empowered to deal with some aspects of human security must be empowered to consider all aspects of human security. If the Security Council’s mission continues to be defined in terms of international threats, it will not only remain focused on states rather than on people, but it will also remain restrained from dealing with human security issues that arise on matters that do not have an apparent international hook. This will make the Security Council less relevant in a day with a statistically demonstrable predominance of intra-state conflicts<sup>133</sup> and in an era when 90% of deaths in armed combat are in civil wars, with 90% of those deaths being civilian victims.<sup>134</sup> Proposals to set up separate coordinate councils to deal with

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<sup>129</sup> *Ibid.* at 89.

<sup>130</sup> *Ibid.* at 90.

<sup>131</sup> *Ibid.* at 256-58.

<sup>132</sup> *Human Development Report 1994*, *supra* note 4 at 8.

<sup>133</sup> Boutros-Ghali, *An Agenda for Peace*, *supra* note 35 at 7-8.

<sup>134</sup> Axworthy, “The New Diplomacy”, *supra* note 11, citing K. Holsti.

economic or social issues,<sup>135</sup> aside from being unclear about how those councils are to have any power, again fracture different aspects of human security rather than letting the most powerful institution of the United Nations system have ultimate authority to use its power for human security ends. If the Security Council is to act for a human security agenda, it must be empowered to act for a full human security agenda. This requires lifting the jurisdictional requirement of a threat to international peace *per se*.

Creative interpretation may help us move in this direction on a temporary basis. Secretary-General Kofi Annan has articulated that "[t]he Charter is a living document, whose high principles still define the aspirations of peoples everywhere for lives of peace, dignity and development. Nothing in the Charter preclude a recognition that there are rights beyond borders."<sup>136</sup> Minister Axworthy has optimistically stated, "The interpretation of what constitutes a threat to international peace and security – the litmus test for Council action – now includes intra-state issues."<sup>137</sup>

However, mere creative interpretation is clearly a second-best solution. Cedric E. Evans<sup>138</sup> describes well the situationally sliding scale of threats to the peace embodied in the Security Council's inconsistent articulations of the basis for its determination of a threat to the peace in situations like those we have considered.<sup>139</sup> A situationally determined scale makes the grounds for action less clear and thus means that decisions have less precedential value.<sup>140</sup> It remains unclear how the Security Council is to act in a situation with a lesser, or indeed with no, international hook on which it may hang its intervention.<sup>141</sup> So long as the text of the *Charter* is not amended to make clear the Security Council's proper intervention in human security issues that do not have an obvious international dimension, states and commentators can continue to second-guess the Security Council's interest in human rights matters. A human security agenda must demand Security Council empowerment through a broadening of the Security Council's textual jurisdictional authority.

Second, the various proposals concerning modified representation at the Security Council might well alter a power structure and a concentration of power that results in a skewing of the issues pursued and the interests considered. However, the proposals in circulation do not change the power structure in as full a way as a human security agenda would demand. In particular, they maintain the Security Council as an intergovernmental organization rather than as an interpeople organization.<sup>142</sup> Yet human

<sup>135</sup> See *The United Nations In Its Second Half-Century: A Report of the Independent Working Group on the Future of the United Nations*, *supra* note 8, ch. 3b.

<sup>136</sup> "Secretary-General Presents His Annual Report to General Assembly", *supra* note 35.

<sup>137</sup> "Human Security and Canada's Security Council Agenda", *supra* note 34.

<sup>138</sup> Cedric E. Evans, "The Concept of Threat to Peace and Humanitarian Concerns: Probing the Limits of Chapter VII of the U.N. Charter" (1995) 5 *Transnat'l L. & Contemp. Probs.* 213 at 235ff.

<sup>139</sup> See part II, above.

<sup>140</sup> Evans, *supra* note 138 at 235.

<sup>141</sup> Hutchinson, *supra* note 76 at 640.

<sup>142</sup> The Commission on Global Governance notes the shift that has taken place in the empirical nature of world governance: "At the global level, governance has been viewed primarily as intergovernmental relationships, but it must now be understood as also involving non-governmental organizations (NGOs), citizens' movements, multinational corporations, and the global capital market." (*Our Global Neighbourhood*, *supra* note 7 at 2-3.) Add to this empirical reality the normative principles of the human security agenda, and to maintain that United Nations

security is ultimately about constituting international relations less on a state-to-state level and more on a people-to-people level. The Security Council is presently set up to consider reports from the Economic and Social Council<sup>143</sup> and from the Secretariat.<sup>144</sup> However, getting reports only from other United Nations institutions and officials does not exactly ensure broad-based input.

In order to broaden the issues pursued and interests considered by the Security Council, a human security agenda would favour the people of the world having some kind of voice that the Security Council could hear. A forum for civil society<sup>145</sup> or a representative People's Assembly<sup>146</sup> as another branch of the organization could be a positive step for the United Nations. It would expose the Security Council to the needs of human security if such a body had guaranteed access to the Security Council or if there were some other way for the people of the world community to make representations before or otherwise participate in Security Council proceedings. This is not just a matter of transparency or modified representation in favour of different state interests. It is about guaranteeing a voice for non-state interests, for the humans whose human security is at stake.<sup>147</sup>

While there have been substantial attempts at Security Council reform, these proposals have not always escaped the weight of traditional doctrines of non-intervention and state-to-state relations. A human security agenda demands more, even if its own proponents have not always articulated the full implications of their agenda. When opportunities for reform exist, human security advocates ought to call not just for transparency but for explicit empowerment and not just for modified state representation but for entirely new forms of popular participation. Our impulse for human rights that is at our human essence should be at the essence of our central institutions as well.<sup>148</sup> The human security agenda's transformative potential makes necessary major reforms.

## V. HUMAN SECURITY AND THE UNITED NATIONS

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institutions ought to remain exclusively intergovernmental becomes untenable, to say the least.

<sup>143</sup> *Charter of the United Nations*, *supra* note 1, art. 65.

<sup>144</sup> *Ibid.*, art. 99.

<sup>145</sup> As advocated by *Our Global Neighbourhood*, *supra* note 7 at 256-58.

<sup>146</sup> As advocated by *Our Creative Diversity: Report of the World Commission on Culture and Development*, *supra* note 3 at 286.

<sup>147</sup> There are perhaps arguments not just for popular participation but even for some kind of democratic influence over the United Nations. Secretary-General Boutros-Ghali has written, "By promoting democratization within its own architecture, the United Nations, as the world's largest and most inclusive organization of Governments, can make a major contribution to democratization at the international level." (*An Agenda for Democratization*, *supra* note 35 at 46.) For a cogent argument for the democratic election of United Nations representatives, see W. Hoffmann, "A More Democratic UN" in Barnaby, ed., *supra* note 113, 52. The World Commission on Culture and Development has written, "Greater democracy in global governance...is an inevitable development since democracy is rarely so obliging as to stop at national borders." (*Our Creative Diversity: Report of the World Commission on Culture and Development*, *supra* note 3 at 285.) N. Jayawickrama, "The Right of Self-Determination — A Time for Reinvention and Renewal" (1993) 57 Sask. L. Rev. 1, in a slightly different context, has pointed to how the governance of the United Nations by states alone sets those states up in a self-sanctifying position and puts their territorial integrity above self-determination.

<sup>148</sup> Fielding, "Taking a Closer Look at Threats to the Peace", *supra* note 42.



The issue that resurfaces when we see the full implications of a human security agenda is whether human security offers a palatable recipe for the United Nations. Some will certainly find the taste sour. There are bound to be concerns over continuity with the historical mandate of the Security Council, the possible vagueness of a human security approach, and the need for appropriate checks and balances to constrain a newly empowered and more broadly participatory Security Council.

Some will raise the matter of the historical mandate of the Security Council. As demonstrated earlier,<sup>149</sup> the Security Council has not traditionally addressed itself squarely to human rights issues, and its *Charter* jurisdiction has tended to restrain it from so doing. Some states and commentators will express concern about the Security Council wavering from its historical mandate; for some, indeed, the Charter is as "holy writ."<sup>150</sup> However, the very fact that the Charter has been amended in the past is a demonstration that it cannot be regarded as sacrosanct.<sup>151</sup> Moreover, to insist on clinging to older doctrine in the face of new global problems is simply never a strong position. The historical position of the Security Council does not tell us what its position should be today.

A more developed concern along the same lines expresses the problem of a discontinuity with the Security Council's historical mandate in different terms. This objection is that the Security Council was designed based on certain philosophical foundations that a human security agenda would uproot. In particular, one might argue that the Security Council presupposed a philosophical framework of liberal internationalism, premised on free individual agents whose collective security needs some defence, combined perhaps with some dose of realist recognition of the great powers.<sup>152</sup> One author has portrayed the shift to a human security orientation as little more than a renaming of this framework accompanied by a few slight changes.<sup>153</sup> However, the shift is likely more significant, just as an objector might contend. A human security approach puts more emphasis on human needs, thus potentially calling for interventions in a national and international political, social, and economic order that does not fulfill these needs.

However, the notion of changing the philosophical foundations of traditional dogma on the Security Council does not necessarily represent the introduction of something alien to the United Nations. On the contrary, it is a recapturing of some of the organization's goals and promises. The preamble to the *Charter* speaks of one of the organization's objectives: "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person...".<sup>154</sup> The paragraphs of the *Charter* proper setting out the purposes of the United Nations refer again to human rights and

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<sup>149</sup> See part II, above.

<sup>150</sup> Bailey, *The UN Security Council and Human Rights*, *supra* note 59 at 142.

<sup>151</sup> *Our Global Neighbourhood*, *supra* note 7 at 236.

<sup>152</sup> See D. P. Fidler, "Caught Between Traditions: The Security Council in Philosophical Conundrum" (1996) 17 Mich. J. Int'l L. 411, esp. at 415, 429; Russett, *supra* note 9 at 13-14. For my comments elsewhere on the way in which the structure of the current Security Council violates simplistic notions of constitutional integrity by combining realism with philosophical principle, see D. Newman, "Individual, Subnational, and International Identity: A Critique of Dworkin's Conception of Community" (1999) 17 Winds. Y.B. Access Just. 86 at 98-99.

<sup>153</sup> Russett, *supra* note 9 at 14.

<sup>154</sup> *Charter of the United Nations*, *supra* note 1, preamble.

fundamental freedoms.<sup>155</sup> Against the notion of state sovereignty interests, they counterbalance the idea of the self-determination of peoples.<sup>156</sup>

Notions of human security interests, as interests going beyond states to peoples and to human individuals, are already inherent in the United Nations system. The United Nations exists ultimately not just for states but for nations and for the peoples of those nations. The opening words of the Charter, "We the Peoples of the United Nations,"<sup>157</sup> root "the sovereign authority of the Member States, and thus the legitimacy of the Organization which they were to compose, in the will of their peoples."<sup>158</sup> The human security agenda is an appropriate flourishing of United Nations ideals.

This leads, perhaps, into the second major concern that could be raised about the application of a human security agenda to the United Nations — that it is a lot of hot air and empty words. And it is fair enough to say that merely recognizing the aim of human security does not immediately give us the solution to every problem in the world. However, a human security agenda does offer tangible changes both in our end and in our means of achieving that end. Every day, we will see if we live out our new commitment to human security in responding to suffering around the world. But the mere need to live out the idea does not make it empty — it makes it visionary.

However, this leads to a more important challenge — since we do not yet know everything about how to live out a human security agenda, how do we put appropriate restraints on the reforms that accompany it so that it does not escape our control, so that it does not turn into an excuse to interfere in domestic affairs on some agenda-driven or even some *ad hoc* basis? In particular, how do we constrain a newly-empowered and more broadly participatory Security Council?

The question of what constraints we should implement for a reformed Security Council assumes that it would not already have constraints on it. However, the Security Council would continue to function in the framework of the *Charter*, and the *Charter's* preamble and opening articles set forth certain principles, underlying structural norms, and values as those that guide any United Nations institution, including the Security Council.<sup>159</sup> Even a reformed Security Council would continue to be under these constraints, which provide for a balancing of different interests. The interests to be balanced include those, such as the sovereignty of states,<sup>160</sup> that most concern many of those seeking constraints. The principles and structural norms that will guide the Security Council might provide room for more balancing than a strict requirement of a threat to international peace, but in many ways, this is the whole point of the exercise — to get a Security Council able to deal with different kinds of threats to human security.

The Security Council will never be a judicial body, determining how to deal

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<sup>155</sup> *Ibid.*, art. 1, para. 3. The *Vienna Declaration and Programme of Action*, *supra* note 39, Part I, para. 4 states, "The promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international cooperation. In the framework of these purposes and principles, the promotion and protection of all human rights is a legitimate concern of the international community."

<sup>156</sup> *Charter of the United Nations*, *supra* note 1, art. 1, para. 2.

<sup>157</sup> *Ibid.*, preamble.

<sup>158</sup> Boutros-Ghali, *An Agenda for Democratization*, *supra* note 35 at 12.

<sup>159</sup> See *Charter of the United Nations*, *supra* note 1, preamble., arts. 1, 2.

<sup>160</sup> *Ibid.*, art. 2, para. 7.

with threats to human security on the basis of some simple formula. To say that it could be is to adopt a simplistic outlook on the world. We do not have a list of magic rules ("seven steps to world peace!") that say when we should and should not intervene in domestic affairs that we can easily embody in the texts that define the powers of and participation in a reformed Security Council. The world's problems are usually complex, with many interacting and interrelated causes. Allowing the Security Council flexibility to deal with these complex problems is our best hope.

This is not to say that there can be no rules whatsoever. After Kosovo, Secretary-General Annan expressed his hope that the world community would develop "legitimate and universal principles" on which to base intervention.<sup>161</sup> One helpful principle might be a decided preference for multilateral intervention, which serves as a check on one state's abilities to pursue its own private ends and as an assurance that the situation is serious enough to warrant the intervention of the international community.<sup>162</sup> This principle further supports the idea of the Security Council assuming a meaningful leadership role in acting against humanitarian atrocities, as it would then assume its place in channeling international action.<sup>163</sup>

Other helpful principles might assist the Security Council in better delineating better situations where it might take particular forms of action. W. M. Reisman has proposed a test for the use of force: "The critical question is ... whether [coercion] has been applied in ways whose net consequences increased congruence with community goals and minimum order."<sup>164</sup> How to meaningfully apply this test, however, mystifies me as much as it has mystified other international law scholars.<sup>165</sup>

The international community, including diplomats and other experts, and the Security Council ought to try to develop sets of general criteria for different forms of action. But the Security Council must continue to have flexibility to deal with unanticipated situations. Within the framework and structure of the *Charter of the United Nations*, a newly-empowered and more broadly-participatory Security Council will already have constraints. We ought not to go further and presume in our *hubris* to be able to do all its work for it in advance. We ought simply to give the Security Council the structure and form to be able to live out the purposes of the United Nations. This means going beyond the current proposals of those using human security rhetoric.

To refuse to make the changes that flow from a human security approach

<sup>161</sup> "Secretary-General Presents His Annual Report to General Assembly", *supra* note 35.

<sup>162</sup> V. P. Nanda, "The Validity of United States Intervention in Panama Under International Law" (1990) 84 A.J.I.L. 494 at 502-503.

<sup>163</sup> Related to this point generally and to the Security Council's historic loss of control by allowing liberal interpretation of vague resolutions specifically, see J. Lobel & M. Ratner, "Bypassing the Security Council: Ambiguous Authorizations to Use Force, Cease-Fires and the Iraqi Inspection Regime" (1999) 93 A.J.I.L. 124.

<sup>164</sup> "Criteria for the Lawful Use of Force in International Law" (1985) 10 Yale J. Int'l L. 279 at 284.

<sup>165</sup> See Nanda, *supra* note 162 at 499-500. Reisman himself seems to conceive of his test much differently elsewhere: see "Coercion and Self-Determination: Construing Charter Article 2(4)" (1984) 78 A.J.I.L. 642 at 643 where he offers a *sine qua non* for any action as "the maintenance of minimum order in a precarious international system" and, assuming that threshold test is satisfied, then urges the transfer of attention to "the fundamental principle of political legitimacy in contemporary international politics: the enhancement of the ongoing right of peoples to determine their own political destinies."

would amount to failing to acknowledge our responsibilities to the peoples of our world. This is not to say that it is easy to know how to implement a human security agenda and what limits to put on it. Neither, of course, was it easy to move beyond the ancient demarcation of the public/private dichotomy that "a man's home is his castle" and to start dealing with domestic abuse.<sup>166</sup> We must always prefer the path that upholds human dignity to the easy old road that denies it.

A human security agenda responds to people around the world who are at risk. It does so by offering us a new vision of a goal at which we can aim and by offering tangible means by which we can move toward that goal.

A human security agenda calls for change. With that change comes both opportunities and challenges. The challenges might make us cautious about the change. But even in the wake of our caution, human security remains as fervent a hope and as strong a need.

## VI. CONCLUSION

Secretary-General Javier Pérez de Cuéllar, arguing for the extension of the Security Council's mandate to include human rights, once described the protection of human rights as "one of the keystones in the arch of peace."<sup>167</sup> What the new concept of human security makes clear is that peace, development, and human rights are all part of the same arch — an arch of human dignity.

The security of people around the world is at risk in different ways, and they give different accounts of what they need to be secure. A shoe-mender in Thailand says, "When we have enough for the children to eat ... we feel secure."<sup>168</sup> A woman in Kyrgyzstan says, "Human security indicates faith in tomorrow, ... stability of the political and economic situation."<sup>169</sup> A fourth-grade schoolgirl in Ghana says, "I shall feel secure when I know that I can walk the streets at night without being raped."<sup>170</sup>

The concept of human security is a concept that recognizes these threats to human dignity. When we put together various reports, documents, and commentaries on human security, we arrive at a reasonably cohesive definition: human security is fundamentally about changing traditional security approaches by conceiving of security issues not just in terms of state security, but primarily in terms of human needs. The human security agenda that reconceives security interests in this way has a particular consistency with human rights theory, and it has a transformative potential for human rights advocates to carry into the security sphere.

In particular, the human security agenda provides a program for reforming the security sphere's most powerful institution. The United Nations Security Council has traditionally not dealt with human rights issues, for it has been jurisdictionally constrained. Many people are talking about minor changes to the Security Council.

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<sup>166</sup> See A. D'Amato, "The Invasion of Panama Was a Lawful Response to Tyranny" (1990) 84 A.J.I.L. 516 at 517 for the use of this analogy in a discussion of the permeability of state borders for some reasons. D'Amato speaks at 524 of the "unraveling of statist conceptions of international law."

<sup>167</sup> *Report of the Secretary-General on the Work of the Organization*, UN GAOR, 46th Sess., UN Doc. GA/46/1 (1991) at 5.

<sup>168</sup> *Human Development Report 1994*, *supra* note 4 at 23.

<sup>169</sup> *Ibid.*

<sup>170</sup> *Ibid.*

This includes some who use the rhetoric of human security but who do not take the concept to its full implications. A human security agenda would envision changes to empower the Security Council to go beyond its traditional concerns and to have entirely new kinds of participation in the Security Council. In the process, it would see the greater fruition of fundamental purposes of the United Nations.

The preamble to the *Universal Declaration of Human Rights* states that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”<sup>171</sup> A human security agenda speaks to this principle, and, in the process, it offers a tangible vision for how to reshape the central institution of the security sphere in order to better implement this principle. The arch of human dignity and the shape of the institutions that support this arch have inevitable, inextricable connections; the concept of human security provides a clear view into these connections and into how to strengthen them for the future. For human dignity, we must have hope.

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<sup>171</sup> *Supra* note 37.

