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# Narrative of a Puzzling Security

Discussing the Meaning of Security Under  
International Law

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## **ABSTRACT**

### *Naturalmente, un puzzle*

Il concetto di sicurezza è stato da sempre oggetto di forti controversie nelle relazioni internazionali, così come di dispute di dottrina. Tali controversie hanno portato, nel corso dei secoli, diverse scuole di pensiero a scontrarsi per la prevalenza di un'accezione di sicurezza piuttosto che un'altra. Tale processo, vivo ancora oggi più che mai, accende i dibattiti di uno spettro di attori in costante aumento, grazie anche alle crescenti possibilità di comunicazione e confronto offerte da Internet e dalle nuove tecnologie. La sicurezza tuttavia, nata come questione prettamente "statale", è ancora oggi strettamente legata alle sue origini, quantomeno nella dimensione che la accorpa alle manifestazioni del diritto che soprassedono alla sua tutela e al suo mantenimento a livello sia nazionale che internazionale. Mai come oggi, dunque, è necessario guardare alla sicurezza come a una creatura antica ma allo stesso tempo ansiosa di ringiovanirsi seguendo la scia di un'innovazione che diventa ogni giorno globalmente più pervasiva e plasmante.

L'idea tradizionale di sicurezza a cui ancora oggi siamo strettamente legati, si origina a partire dai trattati di Westphalia e Osnabruck. Gli studiosi individuano infatti generalmente in tale momento storico il punto di partenza da cui la questione della sicurezza inizia ad essere collegata direttamente alla protezione delle infrastrutture statali e dei governi. È il momento in cui in Europa si stanno formando quelli che oggi identifichiamo come Stati Nazionali, e l'idea di sicurezza nazionale viene così lentamente assunta a modello dominante dai governi, che iniziano a sfruttare tale paradigma come punto di riferimento per la costruzione delle loro politiche di azione interne e estere. Tale visione della sicurezza, a dispetto delle remote origini, rimane ancora oggi assai rilevante, sia in ambito nazionale che internazionale. Negli anni '80, tuttavia, conseguentemente alla fine della guerra fredda e all'ondata di attivismo umanitario che ne seguì, iniziano a riemergere dalla nebulosa dei dibattiti internazionali vecchi concetti di sicurezza che vengono rielaborati e riproposti sotto

nuove spoglie allo scopo di scalzare la supremazia del pensiero tradizionale prettamente stato-centrico. Uno di questi concetti è proprio quello di *human security*.

Riconosciuto ufficialmente nel 1994 da un famoso report del Programma delle Nazioni Unite per lo Sviluppo, il concetto di *human security* viene presto trasformato in una sorta di emblema della lotta dei sostenitori dei diritti umani contro la prevalenza dell'opportunismo statale nelle politiche di sicurezza. Quello che non si poteva inizialmente prevedere è l'estensione del dibattito che tale nuovo paradigma di sicurezza avrebbe generato tra i suoi stessi paladini. L'idea stessa di *human security* inizia infatti a essere analizzata, decostruita, rielaborata e riproposta in una quantità tale di versioni diverse da portare un gran numero di studiosi, così come di politici e istituzioni, a bollarla come inutile, sviante o persino dannosa e controproducente.

La verità, come sempre, sta nel mezzo. O, quantomeno, nel caso della sicurezza si può affermare che, a seconda dei punti di vista, tutti come nessuno potrebbero essere nel giusto. Il problema principale, quando si trattano questioni così onnipervasive come quella di sicurezza, è che si tende generalmente a dimenticare come, in definitiva, sia l'uomo stesso a costruire i paradigmi di pensiero che, una volta impostisi nella società sotto forma di conoscenze universalmente riconosciute, influenzano il modo in cui egli di rimando pensa, si comporta e si relaziona con l'universo che lo circonda. Da questo punto di vista, dunque, la sicurezza stessa, nelle sue varie manifestazioni, non è che uno dei molti discorsi costruiti dall'uomo, o, come Foucault affermerebbe, l'ennesimo fenomeno sociale inconsciamente trasformato dall'uomo in assoluto oggettivo. Da qui lo sforzo continuo volto a smussare sempre di più i contorni della sicurezza attraverso l'istituzione di un apparato di norme e diritti sempre maggiore e sempre più complesso e interconnesso, l'ampliamento dell'ambito di studio e ricerca in materia, e il proliferare di organizzazioni e istituzioni *ad hoc*, volte al perseguimento e alla tutela di questa fantomatica "sicurezza". Sfortunatamente, a giudicare dal numero di controversie che ancora oggi insorgono ogni giorno su questioni legali di sicurezza e dalle dispute accademiche mai sopite, tali sforzi non sembrano essere riusciti completamente nel loro intento.

Al contrario, la questione della sicurezza, conseguentemente all'ampliamento ulteriore delle sfere di influenza con l'avvento delle nuove tecnologie e dell'universo "virtuale", sembra stia andando complicandosi sempre più. Essa appare oggi ai nostri occhi come un immenso puzzle irrisolto, e, potenzialmente, forse intrinsecamente irrisolvibile. Nel momento stesso in cui abbiamo ideato tale puzzle e iniziato a giocarci senza in realtà conoscerne la soluzione, la nostra esperienza si è trasformata in un susseguirsi di tentativi, più o meno fruttuosi, volti a piazzare una di fianco all'altra un numero sempre maggiore di tessere diverse tra loro, ma molto spesso complementari. Tali tessere costituiscono in realtà il frutto della produzione normativa dell'uomo sulla sicurezza, ovvero ciò che l'uomo ha cercato di inserire nel puzzle per portarlo a completamento. Le tessere già chiaramente collocate vanno dunque a rappresentare tutti quei trattati, convenzioni, singole norme giuridiche, politiche specifiche e quant'altro, creati dall'uomo e aventi un inquadramento giuridico tale da permettere, appunto, di individuare la posizione corretta a cui sono destinati all'interno del puzzle. Le tessere ancora mancanti rappresentano invece tutte quelle norme e politiche non ancora attuate, e tuttavia necessarie se si vuole mirare al completamento del puzzle stesso.

La confusione generata dal progressivo e costante aumentare di materiale normativo legato alla sicurezza, è dunque, in realtà, soltanto apparente. L'inserimento di una nuova tessera all'interno del puzzle, infatti, lungi dal provocare smarrimento e ulteriore incertezza procedurale, contribuisce a chiarirne il contributo e il significato, e ad avvicinarsi sempre di più all'immagine finale che si mira a costruire. In altre parole, ognuna delle diverse componenti e visioni inerenti al dibattito sulla sicurezza che andremo ad affrontare rappresenta in realtà un punto intrinsecamente fondamentale per giungere a comprendere fino a fondo le dinamiche sottostanti al fenomeno stesso. La metafora del puzzle verrà dunque utilizzata come guida nel viaggio alla scoperta delle trasformazioni sperimentate dal concetto di sicurezza nel corso dei secoli in termini sia di definizione che di realizzazione.

Nel corso della nostra analisi, ci scontreremo dunque con prospettive a volte contrastanti, e realizzazioni normative molteplici e variegate, indirizzate ognuna ad un aspetto o ad una

problematica diversa legata alla sicurezza. Ognuna di esse, tuttavia, rappresenterà una tessera fondamentale nel nostro viaggio alla ricerca di un modello unitario che aiuti a svelare le ragioni intrinseche della dinamicità ontologica della sicurezza.

L'obiettivo finale sarà quello di giungere il più vicino possibile a cogliere i meccanismi fondanti che sottostanno al funzionamento di tale fenomeno, offrendo dei possibili spunti – sia teorici che pratici – per affrontare al meglio, e in modo efficace, le nuove sfide che minacciano oggi non solo la sicurezza degli Stati, ma anche la tutela dei diritti umani degli individui.

## INTRODUCTION

### A First Glance at the Puzzle of Security

*"...the world is entering a new era in which the very concept of security will change – and change dramatically. Security will be interpreted as: security of people, not just territory. Security of individuals, not just nations. Security through development, not through arms. Security of all the people everywhere – in their homes, in their jobs, in their streets, in their communities, in their environment"(1).*

Security is probably one of the most controversial concepts in international relations. When thinking about it, everyone is generally reminded of something different accordingly to a wide range of factors, such as their place of living, cultural traditions, life conditions, political ideology, and so on and so forth. The word "security" is indeed used to make reference to a great number of more or less related concepts. Quoting from Booth, it is possible to generally state that "[e]ver since the time of Thomas Hobbes but in reality earlier security has been the primary obligation of governments"(2).

In general, however, when talking about actions carried out by governments to guarantee and safeguard the integrity of their own state, reference is automatically made to the concept of national security. The referent object of the security policy is, in this case, the state itself, as well as its governmental apparatus. This is generally considered the "traditional" form of security, the one whose origins can be traced back to the XVI century, when the creation of modern states in Europe started to unfold. The process culminated in 1648, when the Peace Treaties of Westphalia and Osnabruck established the legal basis of modern statehood and international politics. Indeed, this is seen by many authors as a key event for the constitution of the contemporary international system, since it represented "the first formal

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<sup>1</sup> HUL HA, *Reflections on Human Development*, New York, Oxford University Press, 1995, 115.

<sup>2</sup> BOOTH, *A Security Regime in Southern Africa: Theoretical Considerations*, in *Southern African Perspectives: A Working Paper Series*, vol. 30, Centre for Southern African Studies, University of the Western Cape, Bellville, 1994, 6.

acceptance of sovereign equality for a significant number of states”(3). Sovereignty and territoriality thus became part of a single paradigm that gave states the possibility to conduct their activities in an autonomous and independent way, with no longer higher authorities (such as the Pope or the Emperor) to regulate their relations with each other(4). Another consequence has been the emergence of a customary principle of non-intervention in the domestic affairs of states, arising from the necessity to safeguard the sovereignty and internal affairs of the new states from external intrusions(5). This principle of non-intervention, coupled with the new sovereignty paradigm, is said to have given birth to the international community of states as we today know it, that is, a system of legally equal and independent sovereign states(6).

In this context, securing each state’s sovereignty obviously became of supreme importance. Security was thus perceived as having absolute priority for state governments in order to protect their vital interests(7). Moreover, with the establishment of the aforementioned link between sovereignty and territoriality, security inevitably ended up being defined in military terms, so that the primary focus switched to the protection of national interests from external threats. Security thus became interconnected with national security, and the protection of territory from external military threats and attacks was recognized as the ultimate *raison d’être* of sovereign states(8).

This line of thought was generally followed, albeit with some exceptions(9), at least up to the so-called cold war period. The same happened with academic writing on the subject.

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<sup>3</sup> ARMSTRONG, *The Evolution of International Society*, in BAYLIS-SMITH-OWENS, *The Globalization of World Politics*, Fifth ed., Oxford Press, 2009, 41.

<sup>4</sup> BAYLIS, *International and Global Security*, in BAYLIS-SMITH-OWENS, *The Globalization of World Politics*, Fifth ed., Oxford Press, 2009, 234.

<sup>5</sup> ARMSTRONG, *op.cit.*, 41. The customary nature of the principle of non-intervention is confirmed by the International Court of Justice in the *Case Concerning Military and Paramilitary Activities in and against Nicaragua*. The Court held that the principle itself emanates from sovereignty, which entails “the freedom of choice of the political, social, economic and cultural systems of a State” (ICJ Reports (1986) (Merits), 133).

<sup>6</sup> ARMSTRONG, *op.cit.*, 41, 43.

<sup>7</sup> BAYLIS, *op.cit.*, 234.

<sup>8</sup> NASU, *The Expanded Conception of Security and International Law: Challenges to the UN Collective Security System*, 3 *Amsterdam Law Forum* (3, 2011), 16.

<sup>9</sup> Here reference can be made to the inter-war period, when some idealism and support for international cooperation ideals started to spread internationally. An example of this trend is given by Woodrow Wilson’s elaboration of the Fourteen Points and the subsequent creation of the League of Nations (despite its ending

Indeed, during that period both academics and statesmen tended to focus their interest primarily on the military capabilities that their states needed to develop in order to cope with any possible threat that could emerge with respect to relations with other states. Most writing on the subject therefore tended to put emphasis on the idea of national security, which was mainly defined in militarized terms<sup>(10)</sup>. Such notion of security – identified as the traditional in its reference to the protection of state territory from harm, national survival and military power – nonetheless started to undergo a process of “extension” in both academic and public policy discourse after the end of the cold war period in the mid XX century<sup>(11)</sup>.

The early development of the collective security system after World War I somewhat acted as a precursor to this kind of process. The Covenant of the League of Nations was in fact designed to promote international cooperation among states and foster peace and security. Article 10 of the Covenant indeed ruled that “[t]he Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League”. The scope of the provision was then narrowed by Article 16, whose wording specified that if any of the Members of the League resorted to war in disregard of the war avoidance procedures contained in Articles 12, 13 and 15 of the Covenant, “it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League”<sup>(12)</sup>.

Following the end of the Second World War, the development of the collective security system was completed with the institution of the United Nations, whose Security Council

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up being a failure). See BAYLIS, *op.cit.*, 232. In addition, even in previous centuries it is possible to find conceptions of security that are indeed alternative to the “traditional” one. Some of these “antecedents” to the future idea of human security can even be traced back to the Enlightenment period. For an in-depth discussion on this, see Chapter 2 of the present work below.

<sup>10</sup> BAYLIS, *op.cit.*, 233. In fact, during the cold war period, realism became the dominant school of thought in international relations and politics. On this see Chapter 1, para 3.1, of the present work.

<sup>11</sup> NASU, *op.cit.*, 16.

<sup>12</sup> *Covenant of the League of Nations* (28 June 1919, as amended December 1924), 225 CTS 188 (entered into force 10 January 1920), Articles 10 and 16. On the issue see also DUBLIN, *Toward the Concept of Collective Security: The Bryce Group's “Proposals for the Avoidance of War” 1914-1917*, in *24 International Organization* (1970), 288-318; WILLIAMS, *State Security and the League of Nations*, Baltimore: Johns Hopkins Press, 1927.

was tasked with the responsibility of maintaining international peace and security<sup>(13)</sup>. This actually represented a recognition and acceptance by states of the fact that not only national security, but also the security of the international community as a whole mattered, in order to achieve the goal of peace. Indeed, international security could be threatened by actions of war as much as national security could. This continued to be true during the cold war period, when – despite the numerous proxy wars that were fought everywhere in the world – strategic alliances and nuclear deterrence were used to secure international relations to avoid at least overt military confrontation between the two superpowers<sup>(14)</sup>. In fact, even if both academics and statesmen of the period tended to focus more on the level of military capabilities necessary to ensure national security of their states, the development of the new collective security system nonetheless inspired the emergence of some interesting proposals for somewhat different and broader conceptions of security. These are, in particular, the alternative views on the individual and societal dimensions of security elaborated by the Commission on Global Governance (“common security”), academic peace researchers (“stable peace”) and Third World countries<sup>(15)</sup>.

With the end of the cold war period, a new optimism ushered in, embodied by the belief in new cosmopolitan values that were thought to be bound to foster greater cooperation between individuals and human groups of various kinds, including states<sup>(16)</sup>. There also emerged a new interest in reconsidering past assumptions and theories on security, as well as a renewed criticism towards the so-called “traditional” conception of security<sup>(17)</sup>.

As a matter of fact, in the 1990s the individual and societal dimensions of security started to gain greater emphasis in the work of a number of scholars<sup>(18)</sup> who criticized the

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<sup>13</sup> *Charter of the United Nations* (hereafter “UN Charter”), 26 June 1945, 1 UNTS XVI (entered into force 24 October 1945), Article 24. The text of the official document is available online at <<https://treaties.un.org/doc/Publication/CTC/uncharter.pdf>> (last accessed 11 June 2016).

<sup>14</sup> On this see generally MORGENTHAU, *Politics Among Nations: The Struggle for Power and Peace*, New York: Aldred A. Knopf, 1950; WALTZ, *Theory of International Politics*, New York: Random House, 1979.

<sup>15</sup> On this see BILGIN, *Individual and Societal Dimensions of Security*, 5 *International Studies Review* (2, June 2003), 203-222. See also Chapter 1 at paras 3.3 and 3.4 below.

<sup>16</sup> BAYLIS, *op.cit.*, 232.

<sup>17</sup> BILGIN, *op.cit.*, 207.

<sup>18</sup> On this see, for example, BUZAN, *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, New York: Harvester Wheatsheaf, 1991; BUZAN-WAEVER-DE WILDE, *Security: A New Framework for Analysis*, Boulder: Lynne Rienner, 1998; BILGIN-BOOTH-JONES, *Security Studies: The Next*

established security paradigm for being too culturally biased and too narrowly defined<sup>(19)</sup>. Post-cold war approaches therefore broke up with the previous academic tradition and directed their research towards threats faced by both state and new non-state actors such as individuals, social groups and the global society. They thus argued for an expanded conception of security that would include not only the military aspects envisaged by the traditional national security paradigm, but also new political, societal, economic and environmental concerns. In so doing, they also claimed that the label “international security” was growing old, considering that, in their view, the inter-state framework suggested by the word “international” was no longer the epitome of the new security problems that were emerging in that period<sup>(20)</sup>. Expressions such as “global security” and “world security” started therefore to be proposed as alternatives to the “international” framework<sup>(21)</sup>.

The following emergence of the notion of “human security” further contributed to the expansion of the security concept. The first and best-known official appearance of human security was in the pages of the Report issued by the United Nations Development Program in 1994<sup>(22)</sup>. However, this shift in the focus of research was inspired by a series of developments that had already started to emerge during the cold war period, only to spread worldwide in its aftermath, thus becoming more manifest. These essentially include:

- (a) increasing inequality in economic opportunities at both intra-state and inter-state levels;

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*Stage?*, in 84 *Nação e Defesa* (1998), 137-157; KRAUSE-WILLIAMS, *Critical Security Studies: Concepts and Cases*, London: UCL Press, 1998; SORENSES, *Individual Security and National Security: The State Remains the Principal Problem*, in 27 *Security Dialogue*, 371-386.

<sup>19</sup> BAYLIS, *op.cit.*, 233.

<sup>20</sup> See BILGIN, *op.cit.*, 207. Some post-cold war writers actually argue that the fragmentation of various states, starting with the Soviet Union and Yugoslavia in the 1990s, created new problems linked to boundaries and minorities that consequently increased regional instability in many areas of the world. This led some authors to the claim that the new centre of analysis for security studies should be ethno-national group (i.e., intra-state entities) rather than states (i.e., inter-state relations). On this see, for example, WAEVER-BUZAN-KELSTRUP-LEMAITRE, *Identity, Migration and the New Security Agenda in Europe*, London: Pinter, 1993.

<sup>21</sup> BILGIN, *op.cit.*, 207.

<sup>22</sup> United Nations Development Program (UNDP), *Human Development Report 1994* (hereafter “UNDP Report”), New York: Oxford University Press, 1994, 22 (Chapter 2, para 1, entitled “New Dimensions of Human Security”).

- (b) marginalization of people in the so-called “developing world”, that was isolated from the globalizing economy that was emerging;
- (c) increasing refugee crises caused by the progressive diminishing of non-renewable resources in certain areas of the world;
- (d) strengthening of the Western collective image of the civilized self (the “North” of the world) menaced by a barbaric “other” (the “South”) in reaction to the cyclic waves of migrating pressures from the “developing” to the “developed” world;
- (e) proliferating conflict within states in the global South, that resulted in increased readiness and pressures for humanitarian intervention. This was actually also due to a conceptual change that the idea of sovereignty started to undergo in public policy discourse, being increasingly conceived as no longer an absolute right but instead a responsibility<sup>(23)</sup>.

This noteworthy shift of attitudes that during the 1990s concerned liberal democratic states in particular, actually brought to a general increase in the support for a new set of humanitarian claims at international level. Unsurprisingly, the 1990s are usually depicted as the “golden era” of humanitarian activism<sup>(24)</sup>. In a speech to the General Assembly of the United Nations in 1999, Secretary-General Kofi Annan indeed declared that a norm aiming at the protection of civilians from mass-atrocities such as genocide and mass-killings was developing at international level, reflecting the extent of the new international support for human rights-oriented discourse<sup>(25)</sup>. Among these new claims that were emerging, the new concept of the Responsibility to Protect (hereafter “R2P”) was the one that gained the upper hand.

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<sup>23</sup> BILGIN, *op.cit.*, 207. On this see also KERR, *Human Security*, in COLLINS (ed.), *Contemporary Security Studies*, Third ed., Oxford University Press, 2013, 105. In the 1990s, a number of actors – including the United Nations, several academics and NGOs – started to explore more in depth the individual and societal dimensions of security in particular. A discussion of the key approaches that emerged during the 1990s is carried out in Chapter 1, para 3.4, of the present work.

<sup>24</sup> BELLAMY-WHEELER, *Humanitarian Intervention in World Politics*, in BAYLIS-SMITH-OWENS (eds.), *The Globalization of World Politics*, Fifth ed., Oxford Press, 2009, 515.

<sup>25</sup> BELLAMY-WHEELER, *op.cit.*, 512.

The R2P framework basically arose from the attempt made by a group of liberal democratic states and NGOs to build international consensus on the idea that states must fulfil their obligation to protect citizens from harm. In other words, they carry a duty towards them, since sovereignty involves not only power but also responsibility<sup>(26)</sup>. However, if they are unwilling or unable to do so, this responsibility should be transferred to the international community of states<sup>(27)</sup>.

The R2P concept – firstly appeared in the 2001 Report of the International Commission on Intervention and State Sovereignty and then officially endorsed by states in the 2005 World Summit Outcome Document<sup>(28)</sup> – actually owes its theoretical foundations to the very notion of human security that had started to circulate in academic and public debate since the 1990s<sup>(29)</sup>. The R2P concept, in fact, switched the focus of security from sovereign states to the human population, by recognizing that people must be protected from vicious threats such as ethnic cleansing, genocide, war crimes and crimes against humanity<sup>(30)</sup>.

In the last decades, however, not simply the scope and interpretation of the concept of security have changed, but also its territorial context. As already said, security has traditionally been understood in the light of a direct connection between sovereignty and territory that the Permanent Court of Arbitration clarified in 1910, holding that “one of the elements of sovereignty is that it is to be exercised within territorial limits, and that, falling proof to the contrary, the territory is co-terminous with sovereignty”<sup>(31)</sup>. Security therefore came to be inextricably connected to the ideas of “political independence” and “territorial integrity” of states (i.e., their sovereignty), as ruled by Article 2(4) of the UN Charter<sup>(32)</sup>. However, the continuous and exponential increase in technological innovations of all kinds

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<sup>26</sup> HAMILTON, *The Responsibility to Protect: From Document to Doctrine – But what of Implementation?*, 19 *Harvard Human Rights Journal* (2006), 289-290.

<sup>27</sup> BELLAMY-WHEELER, *op.cit.*, 512.

<sup>28</sup> A/RES/60/1, 16 September 2005, paras 138-139. For a discussion of the R2P concept and the criticism surrounding the usefulness and efficiency of this new operational framework, see Chapter 2 of the present work.

<sup>29</sup> NASU, *op.cit.*, 17.

<sup>30</sup> *Ibid.*

<sup>31</sup> *North Atlantic Coast Fisheries (United Kingdom v. United States)*, Permanent Court of Arbitration, 11 Reports of International Arbitral Awards (1910), 180.

<sup>32</sup> *UN Charter* (1945), article 2(4).

has pushed security concerns to expand geographically and spatially to a whole new set of territorial (and even virtual) areas. Among these we can include, for instance, the Arctic<sup>(33)</sup>, the Antarctica<sup>(34)</sup>, maritime zones<sup>(35)</sup>, the outer space<sup>(36)</sup>, and – least but not last – even cyber space<sup>(37)</sup>.

This expansion in the areas subjected to security concerns is primarily due to an increasing divergence between the evolution of technology and the not-so-parallel evolution of regulation on the matter itself. In fact, starting with the ICT revolution of the 1980s, technology has developed into some kind of uncontrollable creature, that has proved to be nearly impossible to stop, confine or regulate. At the same time, the territorial boundaries that once were in place have begun to enlarge, up to the point in which some previously “free” areas have started to be claimed by states as part of their sovereign space to control. Disputes have arisen over the control of such areas, in the seas, or even in the outer space. Other zones have been declared common heritage of mankind and/or are managed by the international community of states as a whole (as it happens with the Antarctica)<sup>(38)</sup>. However, what has not yet received such normative coverage are probably the newest and most problematic offspring that have developed in last decades, among which the issue of the cyber world stands as a remarkable case of security puzzle, for actors struggling to control an ever-enlarging spectrum of phenomena that, as time goes by, seem to grow increasingly global in their scope, in the attempt to ensure their own security.

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<sup>33</sup> On this see HEINIEN, *Globalization and Security in the Circumpolar North*, Chicago: The University of Chicago Press, 2010, 221-264; WEST, *Arctic Warming: Environmental, Human, and Security Implications*, in *Vanderblit Journal of Transnational Law* 2009 (42), 1081-1108.

<sup>34</sup> See ROTHWELL-NASU, *Antarctica and International Security Discourse: A Primer*, 6 *New Zealand Yearbook of International Law* (2008), 3-24. See also other writings on the same subject in this volume.

<sup>35</sup> See, for example, KLIEN, *Maritime Security in International Law*, Oxford: Oxford University Press, 2011; KLIEN-MOSSOP-ROTHWELL (eds.), *Maritime Security: International Law and Policy Perspectives from Australia and New Zealand*, London: Routledge, 2010.

<sup>36</sup> On this see BOURBONNIÈRE-LEE, *Legality of the Deployment of Conventional Weapons in Earth Orbit: Balancing Space Law and the Law of Armed Conflict*, 18 *European Journal of International Law* (2007), 873-901; WOLTER, *Common Security in Outer Space and International Law*, Geneva: United Nations Institute for Disarmament Research, 2005.

<sup>37</sup> See, for example, ROSCINI, *World Wide Warfare – Jus ad bellum and the Use of Cyber Force*, 14 *Max Planck Yearbook of United Nations Law* (2010), 85-130; SCHMITT-O'DONNELL (eds.), *Computer Network Attack and International Law*, Newport: Naval War College, 2002.

<sup>38</sup> On this see generally FOCARELLI, *Diritto Internazionale*, Second ed., Cedam, 2012, 360-371.

The reasons for the lack of normative coverage that still characterizes these new “areas” of security is very often linked to the absence of a territorial characterization that makes it difficult to establish the extension and limits of the space itself (as it happens with the cyber world), or, in alternative, to a more or less voluntary unwillingness by international actors to cooperate in formulating new programs of action to cope with the emerging security challenges. This is indeed unfortunate, and the analysis carried out in this work will ultimately demonstrate that not only are these to be seen as menaces to the traditional conception of security, but also to the very idea of human security itself, and should therefore be addressed accordingly. As a matter of fact, in the light of these developments, the whole debate that arose right after the appearance of the term “human security” over the divergence between the “freedom from fear” and “freedom from want” objectives seems quite inconsistent. The reasons are multiple, and will be addressed in the central part of this present work.

Chapter One will begin by framing the conceptual basis the security puzzle, offering an in-depth analysis of how security has been conceptualized throughout the epochs. Chapter Two will then draw on these conclusions to elaborate a critical evaluation of the main controversies surrounding the concept itself, overturning classical perspectives with the aim of providing a new way of rethinking the whole security paradigm. The final goal will be that of developing a unique conceptual framework that will allow us to go deep into the mechanics of the security puzzle unveiling its founding structure as a “socially constructed” phenomenon. The model that will be presented in Chapter Three, by merging legal theory to other different theoretic elements – such as social theory, constructivist thinking, and Poststructuralism – will demonstrate that the way we think about security, and the way our perceptions are influenced by the social and cultural context in which we live, may actually have some strong influence on security outcomes of any sort. The puzzle of security is way more difficult than it may appear at first sight, and simple analysis carried out through the confrontation of numbers and statistics or classifications of different security areas is not sufficient to grasp the whole of the phenomenon, nor is it to learn how to better tackle the new challenges offered by an ever-changing world.

As we will argue, solving the puzzle could actually prove to be impossible, given that security needs of people are bound to a continuous transformation, and the processes of law as well never stay still for too long. For this reason, we have no interest in joining the ongoing trend that sees academics and researchers struggling to find the “ultimate definition” of security. Instead, our work will try to demonstrate how this attempt is both impossible to accomplish and very well useless in itself, given that the amount of contrasting perspectives on security will always hamper the reaching of a common, universal definition for it. What we will attempt to offer, instead, is a new conceptual tool for the analysis of security, a compass that will guide us in our effort at deconstructing the security puzzle little by little, piece by piece. Let our journey begin.

*Narrative of a Puzzling Security:  
Discussing the Meaning of Security Under International Law*

*Narrative of a Puzzling Security:  
Discussing the Meaning of Security Under International Law*

## Chapter One

### Assessing the Security Puzzle: A Controversial Task

OVERVIEW: 1. The neglect of security – 2. The gap within security: Opposition in identity – 3. A timeline for security: The chronological construction of the concept – 3.1 The realist vision – 3.2 Towards human security: Cold war developments and concepts – 3.3 Questioning traditional security between the 1980s and 1990s – 3.4 The extension of security in the 1990s – 3.4.1 Theoretical contributions at UN level: The 1994 UNDP Report – 3.4.2 The Canadian approach to human security – 3.4.3 The Japanese security-development nexus – 3.4.4 The Canada-Norway partnership in the Human Security Network – 4. Concluding remarks

#### 1. The neglect of security

There seems to be general consensus among academic writers on security being a contested concept<sup>(39)</sup>. This is primarily due to the elasticity of the concept itself, that appears to change its essence depending on how any of its core elements is examined by scholars of different schools of thought. Therefore, changing the elements of threats, protected values and means of protection for these values corresponds to obtaining different results for the security equation<sup>(40)</sup>.

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<sup>39</sup> BAYLIS, *op.cit.*, 233. Cf. BUZAN, *Peoples, States and Fear: The National Security Problems in International Relations*, Brighton: Wheatsheaf, 1983, 6 (stating that security is an “essentially contested concept”). See also COX, *Social Forces, States and World Orders: Beyond International Relations Theory*, in *Millennium* 10 (2), 1981. Then cf. BALDWIN, *The concept of Security*, 23 *Review of International Studies* (1997), 5-26, arguing, on the contrary, that security is more of an inadequately explained concept than a contested one. Quoting partially from GALLIE, *Essentially Contested Concepts*, 56 *Proceedings of the Aristotelian Society* (1956), 168, he indeed claims that “[e]ssentially contested concept are said to be so value-laden that no amount of argument or evidence can ever lead to agreement on a single version as “the correct or standard use””. However, “[i]nsofar as the concept [of security] is actually contested this does not seem to stem from “essential contestability”. This therefore means that “[s]ecurity is more appropriately described as a confused or inadequately explicated concept than as an essentially contested one”.

<sup>40</sup> NASU, *op.cit.*, 15. In fact, despite the recognition of the multidimensionality of the security issue in general debate, its impact on the international law system is yet largely unexplored and thus remains slightly unpredictable as well.

In fact, in social science the issue of security is regarded as a rather controversial one, due to the lack of a strong consensus on the meaning of the word itself. This should not come as a surprise, given that the meaning of concepts may vary according to people's culture, ideas, perceptions of reality and time or place of living<sup>(41)</sup>. What we are indeed influenced by is our perception of the world surrounding us, and this could be said of anything, included the concept of security.

The great number of alleged definitions of security that have been advanced at both national and international levels testify to this. Such trend has experienced a substantial increase particularly since the 1990s, when the traditional concept of national security started to be opposed, at least in scholarly debate, to the new-born labels of human security, common security, collective security, shared security, cooperative security, and so on<sup>(42)</sup>. All these new concepts represent in reality new ways of thinking about security more than new definitions of it. They actually change the focus on the matter, so that they could count as somewhat new perspectives on security itself. They aim at teaching different visions on what should be considered the true object of security, as well as on the best – and perhaps the most moral – way to obtain it<sup>(43)</sup>.

Notions concerning security are indeed disseminated everywhere throughout the history of International Law and International Relations (hereafter "IR") theory. Finding a common definition, one on which any writer on the matter would agree, has – until now – proved to be impossible. The main reason for this has already been mentioned above. The fact that people's perceptions on their security needs vary according to a whole different set of facts

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<sup>41</sup> Instituto Español de Estudios Estratégicos, Framework document 05/2011, *The evolution of the Concept of Security* (June 2011), 1.

<sup>42</sup> In recent years, other conceptualizations of security have emerged as well, such as that revolving around sustainable security and other hybrid concepts as those of hard power-soft power and smart power. However, these are actually not useful for the purposes of this work, and will therefore be left away. The analysis of this chapter will focus on the most relevant concepts at international level.

<sup>43</sup> Helga Haftendorn actually states that "there is no one concept of security; national security, international security and global security refer to different sets of issues and have their origins in different historical and philosophical contexts" (quoted in SHEEHAN, *International Security. An Analytical Survey*, Lynne Rienner Publishers, London, 2005). This view is supported by LABORIE IGLESIAS in the Framework document on security elaborated by the Spanish Institute of Strategic Studies (see *supra*, note 41, at 9), arguing that "if we accept that "security" is essentially a controversial concept, the debated that the word originates cannot be resolved in an abstract way", since, in sum, "it is the political power that [eventually] determines the orientation and meaning of security".

makes it difficult to agree on a common definition of security. Scholars have therefore tried to advance definitions of security that, in reality, were instead centred around a specific set of aspects of the security concept, or threats that they considered in need of being prioritized in policy-making processes, instead than around security *per se*.

This actually represents quite a common phenomenon in IR theory, if one assumes that interests and concepts are always defined from particular social and cultural positions that influence the construction of such definitions<sup>(44)</sup>. Baldwin actually dismisses this whole timeless process of redefining security as having become a useless “cottage industry”<sup>(45)</sup>. The uselessness here is given by the fact that the efforts of scholars have always been directed towards the redefinition of policy agendas of states more than on focusing on the concept of security itself, that should have been the original object of inquiry. Baldwin thus argues that “[s]ecurity has been a banner to be flown, a label to be applied, but not a concept to be used by most security studies specialists”<sup>(46)</sup>. Also Buzan, in his work entitled *Peoples, States, and Fear* stated that security is an “underdeveloped concept” that has not received enough attention from academic research, and commented that “conceptual literature on security” has been essentially non-existent before the 1980s<sup>(47)</sup>. It then experienced some progresses, but the situation has nonetheless remained quite the same.

In fact, despite the huge number of attempts to “redefine” security since the end of the cold war<sup>(48)</sup>, according to Baldwin the neglect of the security concept is manifest. First, because, despite the flourishing of literature on the subject right after (or even during) the cold war period, the concept still received far less attention than it actually deserved, given its importance for international relations in that epoch. And, in any case, it was military force, more than the basic concept of security itself, that was the primary concern of both

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<sup>44</sup> This is the basic assumption of the Constructivist school of IR. On this see, for example, BARNETT, *Social Constructivism*, in BAYLIS-SMITH-OWENS, *The Globalization of World Politics*, Fifth ed., Oxford Press, 2009, 148-165.

<sup>45</sup> BALDWIN, *op.cit.*, 5.

<sup>46</sup> BALDWIN, *op.cit.*, 9.

<sup>47</sup> BUZAN, *op.cit.*, 3-4.

<sup>48</sup> On this see, for example, ROTHSCHILD, *What Is Security?*, 124 *Daedalus* (3, 1995), 53-98. See also TUCHMAN MATTHEWS, *Redefining Security*, 68 *Foreign Affairs* (1989), 162 ff; TICKNER, *Re-visioning Security*, in BOOTH-SMITH (eds.), *International Relations Theory Today*, Oxford, 1995, 175-197; BOOTH, *Security and Emancipation*, 17 *Review of International Studies* (1991), 313 ff.

scholars and policymakers of the period. Second, even the most recent literature on the subject does not contain true conceptual analysis on the matter, or, in other words, analysis of the concept of security *per se*. Academic inquiry indeed tends to focus more on the multidimensional aspects of security or on parallel concepts such as those of power, justice, freedom, equality, and so on<sup>(49)</sup>.

As a matter of fact, in recent years, scholars working on the security issue have primarily focused their inquiry on arguing for higher priority to be given in national and international policy-making to issues related to human rights, fairer distribution of income and protection of the impoverished people in the world economy, sustainable development and the environment, and the countering of threats such as drug trafficking, epidemics, crime, social injustice and so on. To the list, some still add the traditional need for protecting state structure from external military threats<sup>(50)</sup>. On this, however, Baldwin argues that

[s]uch proposals are usually buttressed with a mixture of normative arguments about which values of which people or groups of people should be protected, and empirical arguments as to the nature and magnitude of threats to those values. Relatively little attention is devoted to conceptual issues as such<sup>(51)</sup>.

This last sentence actually represents the key to understand Baldwin's reasoning on the issue of security. In fact, his main point is that security is to be considered a neglected concept as far as conceptual analysis is concerned. This obviously entails that security should therefore be separated from the normative and empirical concerns that it generally ends up being linked to in both academic and public discourse. According to Baldwin, this should be done in order to foster communication and discussion on security among scholars and policy-makers as well. Instead, the conceptual rhetoric that currently imprisons both normative and empirical debate on the matter eventually shuts down cooperation by

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<sup>49</sup> Cf. the conceptual analysis made by DIGESER, *The Concept of Security*, 1994 (the work has been firstly presented at the Annual Meeting of the American Political Science Association on 14 Sept. 1994).

<sup>50</sup> BALDWIN, *op.cit.*, 5.

<sup>51</sup> *Ibid.*

exaggerating the extent of the gap between proponents of more “traditional” security policies that focus on national security and supporters of more “human-oriented” approaches<sup>(52)</sup>.

## **2. The gap within security: Opposition in identity**

Baldwin’s essay *The concept of security* is indeed a useful tool to introduce one of the main topics that will be discussed in the present work, namely the substantial uselessness and conceptual redundancy of the debate among supporters of traditional security approaches on the one side, and advocates of human security approaches on the other. On the issue, Baldwin argues the following.

Are proponents of economic or environmental security using a concept of security that is fundamentally different from that used by Realists? Or are they simply emphasizing different aspects of a shared concept? Do those who object to “privileging” the nation-state rather than, say, the individual or humanity share any conceptual views with students of “national security”<sup>(53)</sup>?

The answers to these questions from Baldwin are, respectively,

- (a) no, they are not. In fact, both supporters of the traditional and the alternative (i.e., the human security) frameworks actually *do* make reference to a concept of security that is, in reality, the same. They simply focus on one aspect of security instead than another; in other words, they choose the major threat to be securitized and the main object that needs to be made secure according to what they perceive it is necessary from their subjective points of view. In the context of security, this results in the abovementioned debate among supporters of policies designed for the protection of state structures on the one side, and supporters of more human-oriented approaches at both national and international levels on the other. This is, however, a tautological

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<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

process, since the basic concept to which they make reference is shared by both of them. Security is and will always remain security; there is no substantial difference in arguing for the prominence of national or human security, since the achievement of a status of security is the final aim of both departure points. What changes is only the path, i.e., what people perceive that should be given security priority first. Emphasizing the difference between the various academic approaches to security as if they actually made reference to different objects instead than to a common idea of security, is, therefore, both substantially and analytically wrong. Moreover, it has the downside of exaggerating the extent of the disaccord on the issue of security among scholars and policymakers that are supportive of the different approaches. In fact, in his essay Baldwin underlines the importance of focusing on the elements that the various schools of thought have in common when discussing about security, instead than exacerbating disagreement on the matter by over-exaggerating the range of the gap between them. According to the author, this is useful in at least two ways. First, “it promotes rational policy analysis by facilitating comparison of one type of security policy with another”. Second, “it facilitates scholarly communication by establishing common ground between those with disparate views”, to help scholars and policymakers from different schools understand that they “have more in common than is generally acknowledged”<sup>(54)</sup>. This actually leads to the second point, that is,

- (b) yes, they do. Indeed, scholars supporting the human security approach and arguing for a greater importance of the individual dimension and of human rights in policy-making processes *do* have in common much more than it would be generally expected with scholars from traditional security approaches that instead opt for supporting the classical notion of national security. The reason has already been mentioned above in section (a). Everyone, from more traditionalist scholars to the new generation of human-focused thinkers, is actually connected by the sharing of a

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<sup>54</sup> BALDWIN, *op.cit.*, 5-6.

common objective in their research, i.e., the achievement of security for those who they think need it the most. On a substantial basis, it is irrelevant if one argues for better security for the state or for the individual. What matters is the object of inquiry, namely security. Scholars from different schools of thought have indeed much more in common than it is generally acknowledged in both academic and public debate.

We will now proceed in this chapter by evaluating and analysing a set of prominent definitions regarding the security issue that have been proposed by academic researchers throughout the time. These will then be used in Chapter two in order to go more in-depth into the security issue, with an examination of the concept of human security, of its pros and cons as well as its obscurities. In the following paragraph we will therefore begin by taking into consideration the original definitions of security, up to the human security framework and the related definitions for it.

A chronological arrangement of the various definitions can be very helpful to trace in a simple but very effective way the process of evolution undergone by security in its theorization throughout the epochs. In fact, after the initial preponderance of the conventional dimension siding with the security of the state, academics in the late 1980s started expanding the scope of their research to include some new ideas concerning the security of peoples, communities and humankind in general<sup>(55)</sup>.

### **3. A timeline for security: The chronological construction of the concept**

The concept of security can hardly be said to have ever reached a fixed and ultimate definition. Instead, its progressive construction throughout the time has followed the waves of fluctuating political power, innovative thinking and evolving historical backgrounds. The problem with security is therefore that, although we quite surely know how it began in terms of conceptualization – i.e., with the classic or realist definition for it – we instead still

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<sup>55</sup> According to the traditional narrative on security, this passage was actually fostered by the end of the so-called cold war period and the dismantlement of the Soviet Union and of its system of government. Indeed, as mentioned in the introduction to the present work, the 1990s are considered a kind of “golden era” for humanitarian activism. See BELLAMY-WHEELER, *op.cit.*, 515.

ignore where it will end. It indeed seems very likely to be bound to never achieve a fixed and definitive constitution. Its multiple forms have displayed all over the centuries under the aegis of definitions given by several, often contrasting, IR schools of thought, policymakers and academics, and have challenged themselves constantly to gain the upper hand. In fact, despite the general prominence attained by the realist discourse on security throughout the epochs, all the different approaches that step-by-step have arisen to challenge it have indeed played an important role in the evolution of the concept. Last but not least, the concept of human security, that nowadays seems to have become enough popular as a trend to become able to dethrone – if managed correctly – the traditional realist vision.

The first definition of security that is presented here illustrates the basic assumption concerning security on which there seems to be general consensus among scholars of the various schools of thought. This definition from Wolfers is quite old – it actually dates back to 1962 – but is still helpful as a starting point for a more in-depth evaluation of the security concept. Wolfers' conceptualization thus reads that

[s]ecurity, in any objective sense, measures the absence of threats to acquired values, in a subjective sense, the absence of fear that such values will be attacked<sup>(56)</sup>.

This general assumption is commonly accepted and automatically integrated – more or less explicitly – in quite any definition of the security concept. Instead, disagreement among scholars arises principally when it comes to establishing if the focus of inquiry – i.e., the object to be defended from threats – should be the state, the individual, or the international or global dimension<sup>(57)</sup>. Taking Wolfers' definition as starting point for our analysis, we will now move on to examine in chronological order a series of definitions and conceptualizations of security, in the attempt to construct a timeline of the major evolutions undergone by the concept.

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<sup>56</sup> WOLFERS, *Discord and Collaboration*, Baltimore: Johns Hopkins University Press, 1962, 150.

<sup>57</sup> BAYLIS, *op.cit.*, 233.

### 3.1 The realist vision

The reference made by Wolfers in his definition to the adjective “attacked” is a helpful reminder of a second important aspect that cannot be overlooked when overviewing the history of security. Indeed, the expression “attack”, and the action itself that the word indicates, are obviously related to the idea of an aggression that can be carried out towards the abovementioned “acquired values” (be them of states, or of individuals or groups). Aggression, as recognised in the UN Charter, is understood in the international realm as the use – or threat of use – of force against a nation state. This is the realist vision that is generally said to have dominated international relations and IR theory ever since at least the outbreak of World War II. Under this paradigm of world politics, the definition of security starts to narrow and acquire some distinct specifications. In the language of realists,

[s]ecurity itself is a relative freedom from war, coupled with a relatively high expectation that defeat will not be a consequence of any war that should occur<sup>(58)</sup>.

Or, in other words,

[n]ational security may be defined as the ability to withstand aggression from abroad<sup>(59)</sup>.

Finally, the definition offered by Lippman in 1991 follows the same line of thought, but adds to the equation the “core values” (named “acquired values” by Wolfers). In fact, he argues that

[a] nation is secure to the extent to which it is not in danger of having to sacrifice core values if it wishes to avoid war, and is able, if challenged, to maintain them by victory in such a war<sup>(60)</sup>.

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<sup>58</sup> BELLAMY, *Towards a Theory of International Security*, 29 *Political Studies* 29 (1, 1981), 102.

<sup>59</sup> BUZAN, *op.cit.*, 16. See also LUCIANI, (1989) *The Economic Content of Security*, 8 *Journal of Public Policy* (2, 1989), 151.

<sup>60</sup> LIPPMANN, *US Foreign Policy: Shield of the Republic*, Boston: Little, Brown and Co., 1943, 350.

These passages illustrate the essence of the realist thought on security. Indeed, the basic assumption of the realist school of thought on the matter revolves around the idea that the state is the prominent actor in international relations, the one whose sovereignty over the territory must be preserved and guaranteed in order to ensure survival. This is the primary objective of all states, the supreme national interest that all statesmen and leaders must commit themselves to. In order to obtain such level of security, a state must therefore pursue power by evaluating rationally the best measures to be taken to deal with other states in a hostile and threatening international environment. Realism is thus associated with the *raison d'état* doctrine due to its basic assumption that leaders are allowed to conduct foreign relations as they please, as long as their actions are directed towards ensuring the security of the state. Therefore, even the use of force becomes, in this case, a legitimate instrument of statecraft, if war is deemed the *only* way possible to ensure the survival of the state and its structures and government<sup>(61)</sup>. Under this paradigm, ethical principles are ultimately seen as being subordinated to policies, a view that is already traceable in the political realism of Machiavelli in *The Prince*<sup>(62)</sup>.

This kind of security discourse has in fact predominated for centuries, even after the outbreak of WWII. This has inevitably led to the emergence of the traditional understanding of security as mostly “military-oriented and focused on national security”, and “inevitably

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<sup>61</sup> DUNNE-SCHMIDT, *Realism*, in BAYLIS-SMITH-OWENS (eds.), *The Globalization of World Politics*, Fifth ed. Oxford Press, 2009, 86-87.

<sup>62</sup> This struggle to impose the political interests of the state over ethical considerations of any kind, that has been faced by leaders of all times, is indeed the main area of inquiry of two famous classical realists, namely Machiavelli and Thucydides, the author of *The History of the Peloponnesian War* (c. 430-406 BC). The realist family is composed by many types of realism that are generally differentiated chronologically into three historical periods. The first goes under the name of classical realism, and indicates realist works from Thucydides up to the XX century. This period is followed by the so-called modern realism, which comprises more or less the years of the inter-war period (1939-1979), and finally, by the structural or neo-realism that is conventionally thought to have been introduced by Waltz's writing *Theory of International Politics* (1979). The intellectual history of realism is nonetheless way more complex than this simplified historical sequence, due to the existence of many different varieties of realist theory. This simplified categorization, however, is helpful to underline the relevance of the role played by the realist theory in international politics. See DUNNE-SCHMIDT, *op.cit.*, 89-90.

linked to the idea that it is by military means that security goals are achieved”, with the resulting creation of a trend to seek military solutions to any kind of security threats<sup>(63)</sup>.

As mentioned above, the history of realism has indeed been linked to war and the military dimension since its very beginning. With the outbreak of WWII this approach replaced that of the “idealist” or “utopian” writers of the inter-war period (1919-1939). The new generations of writers such as Carr, Niebuhr and Morgenthau, among others, outclassed the discredited idealist approach and imposed their thought as the leading doctrine for international relations. One of the reasons for this fortunate outcome probably lies also in the fact that realism works as a kind of legitimization for any action carried out to maximize national interests and protect the state in a hostile international environment<sup>(64)</sup>.

The dominance of the realist thinking continued during the so-called cold war period that developed in the aftermath of WWII. This is testified by the predominance of traditional military security concepts such as “containment”, “deterrence”, “massive retaliation”, “balance of power”, “mutually assured destruction” (MAD) and the general concern over nuclear energy in security studies in the decades following the end of WWII<sup>(65)</sup>. At the same time, however, a new impetus for cooperation and support for cosmopolitan values and the importance of individual and societal dimensions of security and human rights was already starting to take hold at international level<sup>(66)</sup>.

### **3.2 Towards human security: Cold war developments and concepts**

The cold war represented a period of transition in the scenario of security studies. In fact, despite the general prevalence of traditional, or else realist, visions at both academic and policymaking levels, there appeared at the same time a new parallel thinking on the issue

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<sup>63</sup> NASU, *op.cit.*, 29. On the issue also Baldwin argues that “n[a]tional security has figured prominently in academic and political discussions of foreign policy and international politics since the end of World War II”. See BALDWIN, *op.cit.*, 26.

<sup>64</sup> DUNNE-SCHMIDT, *op.cit.*, 86.

<sup>65</sup> BAYLIS-RENGGER, *Introduction: Theories, Methods, and Dilemmas in World Politics*, in BAYLIS-RENGGER (eds.), *Dilemmas of World Politics: International Issues in a Changing World*, Oxford University Press, Oxford, 1992, 9.

<sup>66</sup> BILGIN, *op.cit.*, 203.

that started to usher in a period of revision of the concept itself <sup>(67)</sup>. Already back in the 1960s, the discontent towards the dominant models of development and security had begun to push for some revisionism and critique in Economics. This was followed in the 1970s by the work of the World Order Models Project (WOMP), that started an ambitious project for a more just and secure world, in the attempt to bring to the fore the problem of individual security and well-being<sup>(68)</sup>.

This particular transition in the evolution of the concept of security can be well explained by analysing the original text of the Helsinki Final Act. This document represents the outcome of the Conference on Security and Co-operation in Europe which opened at Helsinki in 1973 and concluded on 1 August 1975. In that occasion, the High Representatives of a significant number of European (as well as some non-European) states met, “in the interest of peoples, to improve and intensify their relations and to contribute in Europe to peace, security, justice and cooperation”<sup>(69)</sup>. Section 1(a) of the first part of the document is indeed entirely dedicated to security, and presents a list of agreed “Principles Guiding Relations between Participating States”. This list is divided into ten parts whose titles are particularly relevant to our analysis. These are the following.

- I. Sovereign equality, respect for the rights inherent in sovereignty
- II. Refraining from the threat or use of force
- III. Inviolability of frontiers
- IV. Territorial integrity of States
- V. Peaceful settlement of disputes
- VI. Non-intervention in internal affairs
- VII. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief
- VIII. Equal rights and self-determination of peoples

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<sup>67</sup> KERR, *op.cit.*, 105.

<sup>68</sup> BAJPAI, *Human Security: Concept and Measurement*, 19 Kroc Institute Occasional Paper (1, Aug. 2000), 5.

<sup>69</sup> *Helsinki Accords*, or *Helsinki Final Act* (hereafter “Helsinki Final Act”), adopted on 1 August 1975 during the Conference on Security and Co-operation in Europe, Preamble.

IX. Co-operation among States

X. Fulfilment in good faith of obligations under international law<sup>(70)</sup>

Sections I-VI embody the so-called traditional conception of security, the one that is reflected in the realist vision of international relations and that in political discourse and in national and international policymaking has been linked to the very idea of national security. This idea of security indeed focuses on the maintenance of state structures through the preservation of its sovereignty (section I), frontiers (section III) and territorial integrity (section IV). This, however, can be realized only by banning the threat and use of force (section II) and favouring peaceful settlements to disputes between states (section V). In the current system of international law, the regime created by these principles is eventually complemented by the customary principle of non-intervention in the internal affairs of states (section VI). This is indeed a reaffirmation of the original content of the UN Charter, whose Article 2 establishes

- the sovereign equality of all the Member States of the United Nations (para 1);
- the obligation for Member States to settle their disputes by peaceful means, so as to ensure the maintenance of international peace, security and justice (para 3);
- the ban of the threat – as well as the use – of force in international relations against the territorial integrity and political independence of Member States (para 4);
- the reaffirmation of the prohibition of intervention by Member States in the domestic jurisdiction of any other Member State – with the exception of measures taken in accordance with enforcement measures under Chapter VII (para 7)<sup>(71)</sup>.

The abovementioned sections of the Helsinki Final Act therefore present a clear reaffirmation of the traditional principles that protect state sovereignty and national security. However, in subsequent parts of the same document reference is made to other

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<sup>70</sup> Helsinki Final Act, *Questions relating to Security in Europe, 1(a) Declaration on Principles Guiding Relations between Participating States*, Sections I-X.

<sup>71</sup> UN Charter (1945), Chapter 1, Article 2.

principles that are more human-oriented and thus show that already during the Cold War period the intensity of concern for human rights, civil liberties and human-oriented discourses in general was growing at international level. In fact, the importance of human rights in the international sphere started to be affirmed already after the atrocities of WWII<sup>(72)</sup>, even if implementation of the principles set forth in the UN Charter<sup>(73)</sup> would require some time more. What matters for the purposes of our analysis here is however the transitional phase embodied by the Helsinki Final Act. In fact, this document is a perfect example of the moment when national security and military concerns were still regarded as the prominent conception of security, even though the relevance of the protection and fostering of human rights and freedoms at all levels was starting to be reaffirmed after its first important endorsement of the idea in the UN Charter of 1945.

The sections that testify to this development are section VII and section VIII, respectively dedicated to declarations concerning “Respect for human rights and fundamental freedoms” and “Equal rights and self-determination of peoples”. The content of section VII is particularly relevant, since the text opens with a declaration that “[t]he participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion”. It then goes on reaffirming that “[t]he participating States recognize the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and wellbeing necessary to ensure the development of friendly relations and co-operation among themselves as among all States”. Section VII concludes

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<sup>72</sup> BELLAMY-WHEELER, *op.cit.*, 512.

<sup>73</sup> See both the principles set forth in the Preamble of the UN Charter, the objectives of the Organization listed at Chapter 1, Article 1, and the operational principles set forth at Article 2 of the same chapter. See also Article 55 of the UN Charter, ruling that:

“With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”.

with the participating States declaring that “[t]hey will constantly respect these rights and freedoms in their mutual relations and will (...) promote universal and effective respect for them”, and affirming that “[i]n the field of human rights and fundamental freedoms, (...) [they] will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights, (...) [as well as] fulfil[ling] their obligations as set forth in the international declarations and agreements in this field, including inter alia the International Covenants on Human Rights, by which they may be bound”<sup>(74)</sup>.

The text of the Helsinki Final Act therefore demonstrates that, despite the general predominance of the traditional military-centred paradigm of security, the very idea of a more “human” security, and the discourse about how to achieve it, was starting to take hold internationally. Indeed, during the cold war period, those alternative voices that for centuries had been arguing for greater respect for human rights and the dignity of the person started to gain the upper hand and, by the beginning of the 1990s, eventually ended up influencing in a profound manner the academic debate, as well as national and international policymaking<sup>(75)</sup>.

This kind of human-oriented discourse was obviously not new<sup>(76)</sup>. Back in the XVIII century, the German philosopher Leibniz had already addressed the need for a common security (*sécurité commune*) to be provided by the state to its citizens. His words were echoed by Montesquieu, who claimed that true political freedom for people is possible only if they are secure. They thus both focused on the security of individuals instead than on that of states, meaning that full security is achievable only if everybody in the state is secure, aside

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<sup>74</sup> Helsinki Final Act (1975), *Section VII*. Here the reference is generally made to the principles set forth in the UN Charter in the Preamble, as well as at Articles 2 and 55. Other reference points at the time were undoubtedly the Universal Declaration of Human Rights of 1948, as well as general treaties concerning specific rights to which states might be bound specifically. Among these the most prominent ones are the 1966 Covenants on Civil and Political, as well as Economic, Social and Cultural Rights, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, and the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (also called “European Convention on Human Rights”).

<sup>75</sup> On this see generally SOLOMON, *From Marginalised to Dominant Discourse: Reflections on the Evolution of New Security Thinking*, 20 *Monograph – Caring Security in Africa* (Febr. 1998). The text is available online at <<https://www.issafrica.org/Pubs/Monographs/No20/Solomon.html>> (last accessed 11 June 2016).

<sup>76</sup> A greater insight on the origins of the concept of human security as well as its historical, political and legal developments will be provided in Chapter 2 of the present work.

of state's infrastructure and government<sup>(77)</sup>. During the cold war, however, the revivalism of this support for more human-oriented approaches to politics became way more passionate. In 1950, the political scientist Harold Lasswell maintained that "all measures which are proposed in the name of national security do not necessarily contribute to the avowed end". He therefore argued for a revision and reconceptualization of security in wider terms to include areas other than the military. His point was indeed that "[o]ur greatest security lies in the best balance of all instruments of foreign policy, and hence in the co-ordinated handling of arms, diplomacy, information, and economics; and in the proper correlation of all measures of foreign and domestic policy"<sup>(78)</sup>.

Lasswell was not alone in supporting this shift in the security paradigm. Even Robert McNamara, as the former US Secretary of State, in 1968 argued for a security that was less military and politically oriented. His words were later to be reinforced by Galtung's reference to war, as well as repression, hunger and eco-disasters, as potential threats to the security of people everywhere in the world<sup>(79)</sup>.

These dissident voices actually did not get established immediately; the traditional, military-centred security studies still represented the dominant paradigm, or, at least, the one that was predominantly inspiring policymaking in that period, also due to the fear of possible nuclear annihilation<sup>(80)</sup>. The dominance of this paradigm, however, would not last long, at least in academic debate. Carim, in particular, identifies a set of reasons that, in his opinion, contributed to the undermining of the traditional security paradigm in the scenario of the 1970s, and favoured a re-examination of the classical interpretation of security. These basically are:

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<sup>77</sup> ROTHSCHILD, *What Is Security?*, in SINGH (ed.), *Redefining Security in Southern Africa: Workshop Proceedings*, Common Security Forum, Centre for History and Economics, King's College, Cambridge, 1995, 16.

<sup>78</sup> ROMM, *Defining National Security: The Nonmilitary Aspects*, Council on Foreign Relations Press, New York, 1993, 3.

<sup>79</sup> VAN AARDT, *In Search of a More Adequate Conceptualisation of Security for Southern Africa: Do We Need a Feminist Touch?*, 20 *Politikon* (1, 1993), 55.

<sup>80</sup> See generally SOLOMON, *op.cit.*

- the easing of tensions between US and USSR during the so-called *détente* period in the 1970s, which is testified by the ratification in 1972 of the SALT 1 Treaty (i.e., Strategic Arms Limitation Treaty) by the two superpowers;
- the involvement of US in the Vietnam war, that for the first time in the history of the country created a fraction in its alleged invulnerability, as well as exposing the limits of undertaking a military approach to any type of security problem and conflict indiscriminately. The social and political costs of this war indeed turned out absolutely huge;
- the financial and economic costs undergone by the US in particular to sustain the Vietnam war, that, coupled with the economic recession that was being experienced worldwide in those years, stimulated an inflationary escalation;
- the temporary economic decline of the US in the international markets, compared to the expansion that both Japan and the increasingly integrated European Economic Community (ECC) were instead experiencing; and finally
- the oil shocks of the 1970s, whose consequences imposed a readjustment of economic policies of oil importers everywhere in the world, and especially in Europe and in the US. The quadrupling of prices carried out by the OPEC organization in 1973 therefore exposed the dependence of Western countries on strategic external resources, as well as showing that economic interdependence was an emerging reality to be considered in the new globalizing world.

These events undoubtedly had a great impact on the security landscape of the epoch, since they showed that the traditional security paradigm was somewhat incomplete, and that other dimensions as well – such as the economic one – had to be taken into account when discussing about security threats<sup>(81)</sup>. This is perfectly captured by the declaration made in 1972 to the US Congress by William Blair (the then Deputy Assistant Secretary of State for

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<sup>81</sup> *Ibid.*

Public Affairs), who recognised that “[o]ur national security today depends on things like balance of payments, economic affairs, foreign assistance”<sup>(82)</sup>.

This is the reason why the definition of security given by Richard Ullman in 1983 is perhaps, conceptually speaking, the most appropriate with regard to the historical period to which he was making reference. His definition is nonetheless still somewhat relevant even if applied to the contemporary epoch, as it reads that a menace to national security is

[a]n action or sequence of events that (1) threatens drastically and over a relatively brief span of time to degrade the quality of life for the inhabitants of a state, or (2) threatens significantly to narrow the range of policy choices available to the government of a state or to private, nongovernmental entities (persons, groups, corporations) within the state<sup>(83)</sup>.

Ullman’s definition is indeed a perfect exemplification of the gradual transition that was unfolding during the cold war period, paving the way for the extension of the security concept from a narrow conceptualization as pure national security under military terms to a broader one that should aim at bringing subnational, national and transnational policymaking to take into account also the needs of people when dealing with security challenges. Ullman’s conceptualization can therefore be seen as an ideal precursor to the work that would later be carried out by Brundtland<sup>(84)</sup> and others in their report arguing for an “extended” security<sup>(85)</sup>.

It is probably of some significance that this article by Ullman appeared just after the publication of the reports by both Brandt and Palme Commissions, issued respectively in 1980 and 1982. The Brandt report was actually entitled “North-South: A Programme for Survival”, and it basically contained an analysis of how world economy had, until then,

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<sup>82</sup> ROMM, *op.cit.*, 5.

<sup>83</sup> ULLMAN, *Redefining Security*, 8 *International Security* (1, 1983), at 133. Also quoted in ROMM, *op.cit.*, 4.

<sup>84</sup> Here reference is made to the *Report of the World Commission on Environment and Development: Our Common Future* (commonly known as the “Brundtland Report”), annexed in 1987 to the UN General Assembly Res. A/42/427 on Development and International Co-operation: Environment. This report is mainly known for being the origin of the concept of “sustainable development”.

<sup>85</sup> See <<http://www.gmu.edu/programs/icar/pcs/zebich.htm>> (last accessed 11 June 2016).

failed to supply social, as well as economic, equality to all humankind. The income disparity between developed and so-called underdeveloped countries was a problem that needed to be addressed with urgency to solve the problems of global economic and financial instability and poverty. The Commission thus held that cooperation was the necessary instrument that would help states in this difficult task of making development become a path to “self-fulfilment and creative partnership in the use of a nation’s productive forces and its full human potential”, instead than merely a quest for forcibly imposing models of development onto other countries<sup>(86)</sup>.

These innovative ideas remained silent and were unfortunately never officially endorsed by governments at the epoch, probably due to a general lack of will to implement them under a cold war scenario. However, the content and significance of this document remains undoubtedly relevant, as other reports in the following years would demonstrate.

### **3.3 Questioning traditional security between the 1980s and 1990s**

Those who first took advantage of this theoretical revisionism of traditional understandings of security were scholars belonging to the so-called alternative security school, or, in other words, all those new approaches to security studies that would later fall under the general label of “Critical Security Studies”<sup>(87)</sup>. The group was initially inspired by the work of John Hertz, who in the early 1950s had introduced in IR theory the new notion of “security dilemma”, according to which “competitive policies that a state pursues to increase its own security can reduce its adversary’s security”, since the other state may in turn react by trying to pursue competitive policies to increase its own security<sup>(88)</sup>. As a

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<sup>86</sup> Report by the Independent Commission on International Development Issues, chaired by Willy Brandt, *North-South: A Programme for Survival*, 1980 (commonly known as the “Brandt Report”), 17. The 1982 report from the Palme Commission will be briefly addressed in paragraph 3.3 below.

<sup>87</sup> SOLOMON, *op.cit.* The label “Critical Security Studies” is in reality comprehensive of a set of approaches that starting from common assumptions then differentiated into various schools of thought. On this see MUTIMER, *Critical Security Studies: A Schismatic History*, in COLLINS (ed.), *Contemporary Security Studies*, Third ed., Oxford University Press, 2013, 67.

<sup>88</sup> GLASER, *Realism*, in COLLINS (ed.), *Contemporary Security Studies*, Third ed., Oxford University Press, 2013, 16.

consequence, according to this theory, in some cases cooperation between states might result in better outcomes than those produced by competition and power politics.

The alternative security school was indeed the first to introduce in the academic field the idea of “security interdependence”, arguing that at that point in history “Western security was intimately related to that of the Soviet Union and vice versa; modern weaponry had created an objective security interdependence”. In a period characterised by superpower nuclear confrontation, it was therefore “necessary for the West (...) to recognise the fact that increases in Soviet weaponry did not necessarily improve Western security”, and that “[t]he reverse was also true”<sup>(89)</sup>. This particular notion of security interdependence did not remain confined to the academic debate but instead rapidly received some political support in its reconceptualization as “common security”. This is actually showed by the words contained in a report issued in 1982 by the Palme Commission<sup>(90)</sup>, which was tasked with investigating international security issued (differently from the Brandt Commission, which focused on development problems). The report contained several interesting proposals, such as the creation of a nuclear-free zone in Europe, but for the purposes of our work its relevance lies primarily in its declaration that “states can no longer obtain security at each other’s expense, but only through co-operative efforts”<sup>(91)</sup>.

In the 1990s, after the superpower confrontation officially came to an end, this discourse on security interdependence started to be addressed by a growing number of scholars. Among these we find Paul Kennedy, Sorpong Peou and Pierre Lizee, who were pioneers in advocating for collective responses to the new transnational security threats that were either appearing or strengthening in that period, the major ones being drug trafficking, terrorism, pollution and climate change<sup>(92)</sup>. In this sense, quoting from Kennedy, it could be said that

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<sup>89</sup> WHEELER-BOOTH, *The Security Dilemma*, in BAYLIS-RENGGER (eds.), *Dilemmas of World Politics: International Issues in a Changing World*, Oxford University Press, Oxford, 1992, 45.

<sup>90</sup> See the Report of the Independent Commission on Disarmament and Security under the Chairmanship of Olof Palme, *Common Security, A Programme for Disarmament*, London: Pan Books, 1982. For a comment on the report see GALTUNG, *The Palme Commission Report on Disarmament and Security*, 14 *Bulletin of Peace Proposals* (2, 1983), 147 ff.

<sup>91</sup> WHEELER-BOOTH, *op.cit.*, 45.

<sup>92</sup> KENNEDY, *Preparing for the Twenty-First Century*, Fontana Press, London, 1993, 129-130; MAGNO, *Environmental Security and the South China Sea*, 28 *Security Dialogue* (1, 1997), 97-112; LIZEE-PEOU, *Co-operative Security and the Emerging Security Agenda in Southeast Asia: The Challenges and Opportunities of Peace in Cambodia*,

“national” security [was] becom[ing] increasingly inseparable from “international” security”(93).

From an academic point of view, the result was an increase in the questioning of fundamental issues related to security, that mainly concerned its significance (*what is security?*), its objects (*security for whom?*) and the possible threats to it (*security from which threats?*)(94). This was eventually the object of the work of two well-known scholars in the Critical Security Studies field, namely Ken Booth and Berry Buzan. Working within the context of the Copenhagen School, Buzan identified four more categories of security, aside from the traditional one related to military security. These were economic, political, societal and environmental security(95). Buzan then switched the focus from the state to human collectivities, adding that the security of people all over the world was affected by threats that originated from all of these five sectors, and not only from the military one(96). The aim of such a categorization was clearly to maintain the security survival logic that was intrinsic to the classical realist approach, but at the same time extending the security paradigm beyond, to include four other areas of influence(97).

On the other hand, in his quest for determining whose security needs were to be addressed, Booth noted that the basic flaw of traditional security approaches was that they tended to focus specifically on state security, thus completely leaving out the security needs of people(98). As a result, these scholars argued for a need to reconsider the traditional perspective on security, making people the main referent object of security, so that state security would no longer be pursued at the expense of human security(99).

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21 York Centre for International and Strategic Studies (YCISS) Occasional Paper, Centre for International and Strategic Studies, York University, Toronto, Canada, 1993, 1.

<sup>93</sup> KENNEDY, *op.cit.*, 130.

<sup>94</sup> See BOOTH, *A Security Regime in Southern Africa: Theoretical Considerations*, 30 *Southern African Perspectives: A Working Paper Series*, Centre for Southern African Studies, University of the Western Cape, Bellville, 1994.

<sup>95</sup> On this see generally the work of BUZAN-WAEVER-DE WILDE, *op.cit.* See also EMMERS, *Securitization*, in COLLINS (ed.), *Contemporary Security Studies*, Third ed., Oxford University Press, 2013, 132; ROTHSCHILD, *What is Security?*, in SINGH (ed.), *op.cit.*, 16.

<sup>96</sup> BUZAN, *op.cit.*, 19.

<sup>97</sup> EMMERS, *op.cit.*, 132.

<sup>98</sup> See generally BOOTH, *A Security Regime in Southern Africa: Theoretical Considerations*, 30 *Southern African Perspectives: A Working Paper Series*, Centre for Southern African Studies, University of the Western Cape, Bellville, 1994.

<sup>99</sup> See SOLOMON, *op.cit.*

These assumptions concerning the security issue therefore created a conflict between the traditional state-centric approach and this new way of thinking about security that was becoming increasingly more influential in both academic and political fields under the label of “human security”<sup>(100)</sup>.

### **3.4 The extension of security in the 1990s**

The concept of human security did not simply appear out of the blue in the 1990s. As a matter of fact, discussions about the “human” and “individual” aspects of security can be traced back already in the liberal political thought of the early period of the French Revolution<sup>(101)</sup>. As we have seen, historical and political developments during and after the cold war nonetheless favoured a revision of the traditional concept of security, and thus offered to all human-centred approaches the possibility to gain greater resonance at international level in a way that had never been possible before.

During the cold war period, a first indirect hint to human security appeared in the abovementioned Helsinki Accords of 1975, that tried to establish a connection between the security of the state and the protection of individual human rights and freedoms<sup>(102)</sup>. After that, the Bonn Declaration of 1991 also made a brief reference to human security, defining it as “the absence of threat to human life, lifestyle and culture through the fulfilment of basic needs”<sup>(103)</sup>. Between 1993 and 1994, also the Clinton Administration in the US made reference to the concept in a number of foreign policy speeches<sup>(104)</sup>.

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<sup>100</sup> *Ibid.*

<sup>101</sup> A more in-depth analysis of the Enlightenment precursors to human security will be provided in Chapter 2 of the present work.

<sup>102</sup> DONNELLY, *Universal Human Rights: In Theory and Practice*, Second ed., Cornell University Press, 2003, 249.

<sup>103</sup> OMARI, *Regional Security: One View from the Frontline States*, 5 *The Arusha Papers: A Working Paper Series on Southern African Security*, Dar es Salam: Centre for Southern African Studies, University of the Western Cape and Centre for Foreign Relations, 1995, 4.

<sup>104</sup> HOWARD-HASSMANN, *Human Security: Undermining Human Rights?*, 34 *Human Rights Quarterly* (1, Febr. 2012), 89.

### **3.4.1 Theoretical contributions at UN level: The 1994 UNDP Report**

The promotion of international human rights and freedoms has been one of the crucial goals of the United Nations since their very constitution in 1945. As we have seen, the UN Charter contains several references to the promotion and safeguard of human rights (in this respect, the most prominent ones being, probably, Articles 2 and 55). These were subsequently transposed into the well-known 1948 Universal Declaration of Human Rights and Freedoms, that was then followed by the two Covenants of 1955, as well as many other treaties concerning the protection of more specific-oriented rights<sup>(105)</sup>.

This trend remained alive during the whole cold war period, but then, when the ideological confrontation between the US and the USSR ended, the international concern over the possibility of war between major powers dissipated with it. What instead experienced a sudden increase were conflicts at intra-state level in all the so-called “developing” or “underdeveloped” countries. In the 1990s, therefore, an increasing number of liberal Western states in particular started to claim for a right of humanitarian intervention in states affected by gross violations of human rights, on the ground that sovereignty was increasingly been conceived as a responsibility, and no longer as merely a right<sup>(106)</sup>. Although the legality of humanitarian interventions (especially if carried out by military means and with no consent from the host state) still remains one of the most controversial issues in international law and relations<sup>(107)</sup>, the representation of the 1990s as some kind of “golden era” for humanitarian activism is undoubtedly well-fitting.

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<sup>105</sup> Among these we find, chronologically, the Universal Declaration of Human Rights of 1948, as well as general treaties concerning specific rights to which states might be bound specifically, the most prominent ones being the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, and the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (also called “European Convention on Human Rights”), the 1966 Covenants on Civil and Political, as well as Economic, Social and Cultural Rights, the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (also known as the “UN Convention against Torture”), and the 1989 UN Convention on the Rights of the Child.

<sup>106</sup> KERR, *op.cit.*, 105.

<sup>107</sup> At the current state of things, international law, referring to Art. 2(4) of the UN Charter, bans the use of force for any purposes except those of self-defence (Art. 51) and use of force explicitly authorised by a UN Security Council resolution (Chapter VII). Therefore, this means that despite the whole debate that for decades has surrounded the existence of a customary norm of humanitarian intervention or the possibility that unilateral and unauthorised interventions might be accepted in case of severe abuse of human rights, military intervention for humanitarian purposes remains generally banned. The issue is nonetheless very complex,

In fact, as a consequence of this increase in the international concern for human rights both academically and policymaking-wise, the very idea of human security started to progressively gain greater support at UN level as well. In 1992, UN Secretary-General Boutros-Boutros Ghali in his “Agenda for Peace” made an explicit reference to human security, arguing for “an integrated approach” to it that would help address the root causes of conflict. The term was therefore linked to the issues of preventive diplomacy, peacemaking, peacekeeping and post-conflict building<sup>(108)</sup>.

Subsequently, in 1994 the UN Development Programme issued its report on human development, that finally gave human security theoretical conceptualization<sup>(109)</sup>. The approach taken by the UNDP was slightly broad, since it basically indicated everything, from poverty and starvation to human rights abuses and environmental degradation, as potential source of instability and human insecurity<sup>(110)</sup>. The report actually defined human security as

[f]irst, 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>(111)</sup>.

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since several doctrines have been advanced – particularly since the 1990s – in support of a presumed right to humanitarian intervention or use of force in specific cases that are not contemplated in the UN Charter. Last but not least, the R2P framework that arose from the ICISS Report of 2001 tried to make some order in the whole discussion by clarifying that unilateral interventions are illegal and that the only intervention possible is under the aegis of the UN, with a clear authorisation obtained from the Security Council. However, unfortunately, the controversial application of the R2P principles to the Libyan crisis of 2012 has already demonstrated the first limits of this approach, so that it remains to be seen whether or not the R2P framework will be able to operate successfully in the future. For a general introduction to humanitarian intervention see BELLAMY-WHEELER, *op.cit.*, 510-525.

<sup>108</sup> Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping*, 17 June 1992.

<sup>109</sup> UNDP Report (1994). A thorough discussion of the content and significance of the report will be provided in chapter 2 of the present work.

<sup>110</sup> TOW-TROOD, *Linkages between traditional security and human security*, in TOW-THAKUR-IN-TAEK (eds.), *Asia's Emerging Regional Order*, New York: United Nations University Press, 2000, 13.

<sup>111</sup> UNDP Report (1994), 23. In the subsequent Outcome document of the 2005 World Summit the Heads of State from UN states governments declared that “[a]ll individuals, in particular vulnerable people, are entitled to freedom from fear and freedom from want, with an equal opportunity to enjoy all their rights and fully develop their human potential” (at para 143). The content of paragraph 143 of the World Summit Outcome

As it can be seen, this document also established a direct link between human security and the empowerment of people through human development. Indeed, the Report drew from the concept of “capability”, first introduced by Amartya Sen and the former *Human Development Report* of 1993, and used it as analytical guide for discussing the notion of human development. In that sense, therefore, the concept of security was eventually used to support the whole discourse on human development contained in the report<sup>(112)</sup>, to emphasize that the two freedoms acknowledged at the establishment of the UN (namely, freedom from fear and freedom from want), had been inappropriately implemented, since, until then, only freedom from fear had generally been linked to the concept of security<sup>(113)</sup>.

### **3.4.2 The Canadian approach to human security**

Despite the undeniable impact that the UNDP Report had at international level, there is actually a second complementary (and often overlooked) source that must be considered when dealing with the genesis of the human security doctrine. This is represented by the Canadian approach to human security<sup>(114)</sup>. As a matter of fact, despite the general belief that the Canadian support for human security has been the result of the UNDP report, there is some evidence that the new security notions<sup>(115)</sup> that started to gain widespread resonance

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document was then reaffirmed by the General Assembly of the UN in its resolution 66/290. The document is available online at

<<http://www.un.org/humansecurity/sites/www.un.org.humansecurity/files/hsu%20documents/GA%20Resolutions.pdf>> (last accessed on 11 June 2016).

<sup>112</sup> SHINODA, *The Concept of Human Security: Historical and Theoretical Implications*, in SHINODA-JEONG (eds.), *19 Conflict and Human Security: A Search for New Approaches of Peace-building* (2004), IPSHU English Research Report Series, 9.

<sup>113</sup> UNDP Report (1994), 24. This vision is actually contested in some of its assumptions by a relevant number of authors. A critical discussion on the supposed link between freedom from fear and the concept of national security will be given in chapter 2 of the present work.

<sup>114</sup> On this see HYNEK-BOSOLD, *A History and Genealogy of the Freedom-from-Fear Doctrine*, 64 *International Journal* (3, 2009), 735-750. The Canadian foreign policy eventually links human security more to a support for a freedom from fear doctrine and personal security against physical violence. Its conceptualization – as well as its practical realization – of human security is thus seen by some as more of an expansion of the traditional idea of security than a true innovative approach. Still, its international impact is – and has been – very relevant.

<sup>115</sup> These are the Comprehensive, Cooperative, Common, Environmental, Extended and other –Security approaches that will all be addressed more in depth in Chapter 2 of the present work. All these had been mainly promoted by the Palme, Brandt and Brundtland Commissions and their respective reports. See

in the 1980s had a great impact on it as well<sup>(116)</sup>. In the early period of its support for human security, Canada also took inspiration from the way older 1987 Brundtland Report, which for the first time had combined the two issues of human security and development<sup>(117)</sup>. The influence of both of these sources is thus already traceable in the White Paper on Foreign Policy issued by the Government of Canada in 1995, affirming that

[m]ore and more, the concept of security is focusing on the economic, social and political needs of the *individual*. (...) [A] sound development program must be *people-centred*, with a focus on *human development*. (...) All of this demands a broadening of the focus of security policy from its narrow orientation of managing state-to-state relationships, to one that recognizes the importance of the *individual* and *society* for our *shared security* (...) [, namely] *human security*<sup>(118)</sup>.

This early formulation of the human security notion by Canada has actually been widely overlooked; this is probably because, back in 1995, the doctrine of human security was not yet sufficiently influential at international level. In fact, it seems that Canada managed to create a substantially solid connection between the rather abstract idea of human security and its practical realization only when the campaign to ban anti-personnel landmines successfully ended in 1997, with the ratification by a relevant number of UN Member States of the Mine Ban Treaty<sup>(119)</sup>. This process had indeed been largely sponsored by Canada itself, that on the previous year had even hosted a meeting with other anti-landmines states to support the program<sup>(120)</sup>. This undoubtedly favoured the construction of the image of

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generally STOETT, *Human and Global Security. An Exploration of Terms*, Toronto: University of Toronto Press, 1999, 17-28.

<sup>116</sup> HYNEK, *Thinking Locally, Acting Globally: The Governmentalization-Securitization Interplay in Recent Advanced-Liberal Peace Machinery*, in LARRINAGA-DOUCET (eds.), *Security and Global Governmentality: Globalization, Governance and the State*, Routledge, 2010, 152.

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

<sup>118</sup> DFAIT, *Canada in the World*, Ottawa: Government of Canada, 1995, 10, 32, 48. The whole document can be found online at <<http://dfait-aeici.canadiana.ca/view/ooe.b2644952E/1?r=0&s=1>> (last accessed on 11 June 2016).

<sup>119</sup> *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction*, also named "Ottawa Treaty" (hereafter "Mine Ban Treaty").

<sup>120</sup> On this see, for example, HYNEK, *How "Soft" is Canada's Soft Power in the Field of Human Security?*, in HYNEK-BOSOLD (eds.), *Canada's Foreign and Security Policy: Soft and Hard Strategies of a Middle Power*, Toronto and

Canada as a middle-power state that was working to foster the protection of global civil society<sup>(121)</sup>; as a result, the post-1997 discourse of Canada on human security has been much better known and well-received at international level<sup>(122)</sup>.

This Canadian-led approach to human security has thus been said to have ushered in a new type of diplomacy, where the participation of a wide range of different actors facilitates the achievement of quick agreements on issues of global governance. At that time, the thorough cooperation between governments, NGOs and international organizations indeed favoured a quick progress in the negotiations that would then result in the aforementioned Mine Ban Treaty<sup>(123)</sup>.

In conclusion, the position of Canada on human security can be summarised as follows, drawing from the definition given by the Canadian Department of Foreign Affairs and International Trade in a document entitled "Freedom from Fear: Canada's Foreign Policy For Human Security"<sup>(124)</sup>. Here, it is held that for Canada "human security means freedom

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Oxford: Oxford University Press, 2010, 61-80. The meeting was actually sponsored by the former Foreign Affairs Minister of Canada, Lloyd Axworthy, who, as argued by Davenport, "gave great impetus to the new diplomacy by hosting the Ottawa Conference, which stepped out the normal international arms control processes and sought a fast-track treaty to ban landmines". The states that were involved in this kind of process were thus "essentially medium-sized and smaller states such as Canada, Australia, and the members of the European Union that ha[d] been eager to play a larger role on the diplomatic scene". See DAVENPORT, *The New Diplomacy Threatens American Sovereignty and Values*, in BORK (ed.), *"A Country I Do Not Recognize": The Legal Assault on American Values*, Stanford University - Hoover Institution Press, 2005, 120. Axworthy would later also uphold the creation of the International Commission on Intervention and State Sovereignty (ICISS), whose task was – among others – to build consensus over the contested issue of humanitarian intervention. The report issued in 2001 would then become the basis of the doctrine or the Responsibility to Protect. This doctrine is based on the assumption that sovereignty entails not only rights but also responsibility, so that if a state is not willing to defend its citizens' rights, the responsibility goes to the international community as a whole, that shares the "responsibility to protect".

<sup>121</sup> See generally HYEK-THOMSEN, *Keeping the Peace and National Unity: Canada's National and International Identity Nexus*, 61 *International Journal* (4, 2006), 845-858.

<sup>122</sup> HYNEK, *Thinking Locally, Acting Globally: The Governmentalization-Securitization Interplay in Recent Advanced-Liberal Peace Machinery*, in LARRINAGA-DOUCET (eds.), *op.cit.*, 152.

<sup>123</sup> See GWOZDECKY-SINCLAIR, *Landmines and Human Security*, in MCRAE-HUBERT (eds.), *Human Security and the New Diplomacy: Protecting People, Promoting Peace*, Montreal: McGill Queen's University Press, 2001, 28-40. For a complete timeline of Canadian foreign policy accomplishments on human security, see the relative Appendix in the same book.

<sup>124</sup> Department of Foreign Affairs and International Trade of Canada, *Freedom from Fear: Canada's Foreign Policy for Human Security*, Canada, 2000. The file can be found online at <[http://www.hegoa.ehu.es/dossierra/seguridad/Freedom\\_from\\_fear\\_Canada\\_s\\_foreign\\_policy\\_for\\_huma\\_n\\_security.pdf](http://www.hegoa.ehu.es/dossierra/seguridad/Freedom_from_fear_Canada_s_foreign_policy_for_huma_n_security.pdf)>. For more information on Canada's human security agenda, visit: <[www.dfait-maeci.gc.ca](http://www.dfait-maeci.gc.ca)> (both links have been last accessed on 11 June 2016).

from pervasive threats to people's rights, safety or lives"<sup>(125)</sup>. The text then goes on to identify the five foreign policy priorities of Canada to advance human security, that basically are centred around the strengthening of

1. norms for the protection of civilians, so as to progressively diminish the human costs of armed conflict;
2. norms of democracy and human rights to foster good governance at national and international levels, as well as promoting accountability for institutions of both public and private sectors;
3. peace support missions, contributing to UN's capacity-building processes through the formation of skilled Canadian personnel to be used in these operations;
4. measures to react and respond to the increasing threats posed by the growth of transnational organised crime, so as to ensure greater public safety;
5. the international capacity to prevent conflicts and manage post-conflict reconstruction, also through the strengthening of local indigenous capacity to manage conflicts in a peaceful manner<sup>(126)</sup>.

As this list clearly shows, the Canadian version of human security was slightly different from the one advocated by the UNDP Program in its report. In fact, Canada narrowed its commitment mostly to what the writers of the UNDP Report would have labelled as freedom-from-fear concerns; moreover, it chose as primary focus of its human security policy only personal security, i.e., freedom from physical violence for people<sup>(127)</sup>.

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<sup>125</sup> Department of Foreign Affairs and International Trade of Canada, *op.cit.*, 3.

<sup>126</sup> *Ibid.*

<sup>127</sup> GASPER-GÓMEZ, *Human Security Thinking in Practice – "Personal Security", "Citizen Security", Comprehensive Mappings*, pre-final version of a paper due in Contemporary Politics (2015), 8. Quoting from the aforementioned document on *Canada's Foreign Policy for Human Security* of 2000, "Canada has chosen to focus its human security agenda on promoting safety for people by protecting them from threats of violence" (at 3). The UNDP Report instead lists seven different categories of security in which human security must operate. These are economic, environmental, health, food, personal, community and political security. See UNDP Report (1994).

After the initial impetus showed in the 1990s by the then Canadian Minister of Foreign Affairs, successors unfortunately let human security lose its leading place in Canadian foreign policy<sup>(128)</sup>. This document from the Department of Foreign Affairs and International Trade nonetheless makes reference to a couple more concepts that it is useful to briefly set forth, as they will lay the foundations for our analysis in Chapter Two of the freedom from fear-freedom from want paradigm, as well as of its link to the concepts of national security, human security and human development.

The first one concerns the nature of the relationship between national and human security. In this regard, Canada in the document claimed that

[f]undamentally, these two concepts are *complementary*. People are made safer by an open, tolerant and responsive state capable of ensuring the protection of all of its citizens, at the same time, enhancing human security reinforces the state by strengthening its legitimacy and stability. A secure and stable world order is built both from the bottom up and the top down<sup>(129)</sup>.

This as far as the relationship between national and human security is concerned; on the other hand, regarding human security and human development, the text reads that

[s]imilarly, human security and human development can be understood as *mutually reinforcing concepts*. Respectively, they address the *twin objectives of freedom from fear and freedom from want*. Human security provides an enabling environment for human development. Where violence or the threat of violence makes meaningful progress toward development impractical, enhancing safety for people is a prerequisite. Conversely, by addressing the inequalities that are often the root causes of violent conflict, by strengthening governance structures and by providing humanitarian assistance, human development can also be an important strategy for furthering human security<sup>(130)</sup>.

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<sup>128</sup> HOWARD-HASSMANN, *op.cit.*, 91.

<sup>129</sup> Department of Foreign Affairs and International Trade of Canada, *op.cit.*, 3 (emphasis added).

<sup>130</sup> *Ibid.* (emphasis added).

This formulation of, respectively, national and human security, and human security and development, as complementary and reinforcing concepts is indeed of great interest, also in its linking the goals of human security and human development to “the twin objectives” of freedom from fear (as of the former) and freedom from want (as of the latter). We will return on this conceptualization, as well as on the slightly different one contained in the UNDP Report, in the following chapter of the present work, with the aim of demonstrating that freedom from fear does not simply stand as a synonym of national security, as it has generally been held by most academics and policymakers. Instead, it represents a necessary ingredient that must be coupled with freedom from want in order to reach a comprehensive understanding of how the human security framework should work in both theory and practice.

### **3.4.3 The Japanese security-development nexus**

Canada was not alone in its struggle to foster international support for the new-born doctrine of human security. As we have seen in the previous paragraph, after 1997 the international support for the efforts that Canada was putting on sponsoring the new security narrative started to increase, particularly among a specific range of middle-power countries. Among these, the most notable ones were probably Japan and Norway. The case of Japan is particularly relevant in its being connected to Canada in the promotion of the human security doctrine in the 1990s, but at the same time slightly opposed to it in terms of theoretical – and practical – conceptualization.

The first explicit reference to human security by the Japanese government can be found in a discourse given in 1995 to the UN General Assembly. In that occasion, the then Prime Minister Murayama characterised security as the “respect for the human rights of every citizen on earth”, as well as the protection from “poverty, disease, ignorance, oppression and violence”<sup>(131)</sup>. This commitment would then be reinforced two years later in another

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<sup>131</sup> BOSOLD-WERTHES, *Human Security in Practice: Canadian and Japanese Experiences*, 1 *International Politics and Society* (2005), 93.

speech given to the General Assembly by Murayama's successor, Hashimoto, who focused on stressing the importance of two issues in particular, namely "our responsibility to future generations" and "global human security". He thus argued that "[b]earing those points in mind, it is necessary that each of us develop a strong consciousness and shoulder our responsibilities", which also means "chang[ing] our lifestyles"<sup>(132)</sup>.

Up to this point, the definition given by both Japanese prime ministers bears nothing special in it, exception made perhaps for the idea of the international community sharing a responsibility for the future of upcoming generations. In fact, Japan would narrow the focus of its conception of human security only some years later. This, according to a number of authors<sup>(133)</sup>, came as the result of the severe economic crisis that Japan suffered in the late 1990s, which caused the Asian area to be more exposed to global economic phenomena<sup>(134)</sup>. The newly elected Prime Minister Obuchi thus stressed in his public speech given in 1998 at the Intellectual Dialogue on Building Asia's Tomorrow in Tokyo that

[t]he current economic crisis has aggravated [the social] strains, threatening the daily lives of many people. Taking this fact fully into consideration, I believe that we must deal with these difficulties with due consideration for the socially vulnerable segments of population, in the light of "Human Security", and that *we must seek new strategies for economic development which attach importance to human security with a view to enhancing the long term development of the region*<sup>(135)</sup>.

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<sup>132</sup> All quotes are taken from EDSTRÖM, *Japan's Foreign Policy and Human Security*, 15 *Japan Forum* (2, 2003), 212-14. For an overview of human security in Asia, see chapters 3, 6 and 14 of TOW *et al.* (eds.), *Asia's Emerging Regional Order: Reconciling Traditional and Human Security*, Tokyo: United Nations University Press, 2000.

<sup>133</sup> On this see, for example, the work of BOSOLD-WERTHES, *op.cit.*, 84-101; AKIYAMA, *Human Security at the Crossroad: Human Security in the Japanese Foreign Policy Context*, 19 IPSHU English Research Report Series, *Conflict and Human Security: A search for New Approaches of Peace-building* (2004), 252-270.

<sup>134</sup> ACHARYA, *Human Security: East Versus West*, in 56 *International Law Journal* (2001), 448. See generally also EVANS, *A Concept Still on the Margins, but Evolving from Its Asian Roots*, in 35 *Security Dialogue* (2004).

<sup>135</sup> OBUCHI, *Opening Remarks by Prime Minister Obuchi*, speech given at *An Intellectual Dialogue on Building Asia's Tomorrow*, Tokyo, 12 Dec. 1998. The text is available online at <<http://www.mofa.go.jp/policy/culture/intellectual/asia9812.html>> (emphasis added) (last accessed 11 June 2016).

In in this case, Prime Minister Obuchi clearly highlighted the need to link the objective of human security to the instrument of national and foreign policy, basically creating a “security-development nexus”<sup>(136)</sup>.

The concept of human security here presented is indeed way more linked to the idea of fostering human development and the freedom-from-want aspect of human security, which basically was the same focus of the UNDP Report. This commitment to addressing the root causes of insecurity and fostering human empowerment and development results particularly clear when considering the definition of human security subsequently given by Obuchi on the occasion of the ASEAN summit held in Hanoi in 1998, where he declared that

“Human security” is a concept that takes a comprehensive view of all threats to human survival, life and dignity and stresses the need to respond to such threats. (...) In our times, humankind is under various kinds of threat. Environmental problems such as global warming are grave dangers not only for us but also for future generations. In addition, transnational crimes such as illicit drugs and trafficking are increasing. Problems such as the exodus of refugees, violations of human rights, infectious diseases like HIV/AIDS, terrorism, anti-personnel landmines and so on pose significant threats to all of us. Moreover, the problem of children under armed conflict ought never to be overlooked<sup>(137)</sup>.

Japanese human security policy, starting from the 1990s, thus focused primarily on constructing programs that aimed at fostering economic development and social reconstruction through community building, more than on working on a clear definition of human security. Its approach was indeed also slightly different from the one undertaken by Canada, that, as we have seen, primarily focused on the protection of individuals from physical violence, while Japan was holding that, although protecting people is an essential component of human security, “human security is a much broader concept”, and “freedom

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<sup>136</sup> ROBERTS, *Human Security or Human Insecurity? Moving the Debate Forward*, in 37 *Security Dialogue* (2006).

<sup>137</sup> OBUCHI, *Toward the Creation of a Bright Future for Asia*, Policy Speech given by Prime Minister Keizo Obuchi in Hanoi, Vietnam, 16 Dec. 1998. The text is available online at <<http://www.mofa.go.jp/region/asia-paci/asean/pmv9812/policyspeech.html>> (last accessed on 11 June 2016).

from want is no less critical than freedom from fear”, so that “it is necessary to go beyond thinking of human security solely in terms of protecting human life in conflict situations”<sup>(138)</sup>.

The path taken by Japan in terms of policy implementation was consequently different from the Canadian one as well. In the late 1990s and early 2000s, Japan worked in close contact with the UN and its agencies in the effort to implement its own vision of human security, with a particular focus on fostering development of in the two critical areas of Asia and Africa. Instead of focusing on the promotion of the “new diplomacy” processes that we addressed in the previous paragraph (that were the main focus of Canada), Japan established in 1999 a Trust Fund for Human Security which is actually still administered by many UN agencies, such as the United Nations Development Program (UNDP), the United Nations High Commissioner for Refugees (UNHCR), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Health Organization (WHO). As already said, although the focus of action was mainly Africa and Southeast Asia, the spectrum of activity happened to be quite broad, ranging from programs for the promotion of education and HIV/AIDS awareness, control of refugee repatriation processes, up to the demobilization of former combatants<sup>(139)</sup>. In addition to that, during the same period, Japan also started a series of symposia on human security-related problems that were mainly centred on health and development, as well as on the possibility of reinforcing counter-terrorism strategies by increasing the levels of human security in risk countries<sup>(140)</sup>, on the grounds that human security “is a concept that will play an extremely

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<sup>138</sup> This quote from an official of Japan’s Ministry of Foreign Affairs is taken from EDSTRÖM, *op.cit.*, 216. This obviously does not mean that with its position Japan rejected the relevance of freedom from fear in the context of human security challenges. In another occasion, indeed, it has been argued by a Japanese representative that “[h]uman security may be defined as the preservation and protection of the life and dignity of individual human beings”, and it can thus be ensured “only when the individual is confident of a life free of *fear* and free of *want*”. See TAKASU, *Toward Effective Cross-Sectorial Partnership to Ensure Human Security in a Globalized World*, Statement given by Yukio Takasu, Director-General of Multilateral Cooperation Department at the *Third Intellectual Dialogue on Building Asia’s Tomorrow*, held in Bangkok on 19 June 2000. The text is available online at <[http://www.mofa.go.jp/policy/human\\_secu/speech0006.html](http://www.mofa.go.jp/policy/human_secu/speech0006.html)> (emphasis added) (last accessed on 11 June 2016).

<sup>139</sup> BOSOLD-WERTHES, *op.cit.*, 95.

<sup>140</sup> BOSOLD-WERTHES, *op.cit.*, 96.

important role in helping us use our (...) program to counter the negative effects of globalisation”(141).

The Japanese approach, more prone to stressing the issue of development and therefore the freedom-from-want side of the human security concept, is therefore generally juxtaposed to the Canadian approach to security of the 1990s, that instead put greater emphasis on freedom from fear(142). In 2003, the Commission on Human Security eventually produced, following a previous request from Japan, a report emphasizing that, *inter alia*, human security meant protection against human deprivation and extreme poverty, and the possibility to enjoy “basic health, basic education, shelter, physical safety, and access to clean water and clean air”(143).

After this initial impetus towards freedom from want, the Japanese rhetoric would nonetheless later rebalance itself. In 2006, Japan indeed started to broaden its approach by partnering with Mexico in a Friends of Human Security network under the UN(144), which worked as a discussion forum for states and UN representatives to address human security in a broader and multidimensional way, with a focus on both freedom from want and freedom from fear(145).

#### **3.4.4 The Canada-Norway partnership in the Human Security Network**

The “new diplomacy” was not to be limited to the first success obtained by Canada with the establishment of the anti-landmines treaty. Instead, another core element of this new approach was the aspiration to form new coalitions that would be based on shared ideas and common goals. This thus pushed Canada and Norway – one of Canada’s closest partners in the negotiating process of the anti-personnel landmines treaty – towards the

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<sup>141</sup> KAWAGUCHI, *A Foreign Policy to Consolidate Peace*, 30 *Japan Echo* (2, 2003), at 29. See also TAKEMI, *A New Direction for Japan’s Aid Program*, 30 *Japan Echo* (3, 2003), 23.

<sup>142</sup> BOSOLD-WERTHES, *op.cit.*, 94-95.

<sup>143</sup> Commission on Human Security, *Human Security Now* (New York, 2003), 73.

<sup>144</sup> OBERLEITNER, *Human Security*, in FORSYTHE (ed.), *Encyclopedia of Human Rights*, 2009, 486-487.

<sup>145</sup> UN Trust Fund for Human Security, *Third Meeting of Friends of Human Security*, Meeting Summary, (New York, 2007), available online at <[http://www.mofa.go.jp/policy/human\\_secu/friends/summary0711.html](http://www.mofa.go.jp/policy/human_secu/friends/summary0711.html)> (last accessed on 11 June 2016).

constitution of a coalition of states with the aim of working for the promotion of the human security agenda worldwide<sup>(146)</sup>.

In 1998, the Norwegian Prime Minister, Knut Vollebaek, invited Axworthy to Bergen in order to settle the theoretical basis of their future accord. The two-day meeting that followed gave birth to the “Canada-Norway Partnership for Action”, also called the “Lysøen Declaration”, whose agenda revolved around some major points, namely

- the necessity for further cooperation in the anti-landmines campaign, whose success was to be inspirational for the negotiations of future arrangements in other areas as well, following the “new diplomacy” methodology;
- a call for the international society to work in joint action in order to raise public awareness on the sore issue of child labour, and foster prompt action (also against sex exploitation of children) in policymaking processes;
- a commitment to foster the promotion of human rights and the respect of humanitarian law – as well as international law – also by sponsoring the ratification of the agreement for the formation of the International Criminal Court (i.e., what would later become the Rome Statute);
- the need for a parallel increase in the effort put on the cooperation for the promotion of human rights, and in particular freedom of religion, the promotion of ICT technologies in the southern hemisphere of the world, the strengthening of indigenous communities and the elaboration of codes of conduct for the private sector;
- the difficult task of controlling small arms, that in this case was addressed by Canada and Norway under different perspectives, such as those of human security, conflict prevention, democracy and good government, as well as considering the gender dimensions of the issue;

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<sup>146</sup> MCRAE-HUBERT (eds.), *Human Security and the New Diplomacy: Protecting People, Promoting Peace*, Montreal: McGill Queen’s University Press, 2001, 231.

- the exploitation of children in conflicts, a problem that had long been overlooked at international level, despite the intensification of the phenomenon in previous decades, and the consequent need for long-term approaches to deal with it;
- a commitment to bettering human security in the circumpolar area through increased cooperation to foster empowerment and defence of human security interests, as well as to address the environmental problems and ensure the extension of new technology and satellite communications to the indigenous people living in those territories<sup>(147)</sup>.

This Canada-Norway partnership agenda represented a milestone in the international recognition of human security. Indeed, for the first time “an entire agenda emerging around the idea of human security, rather than a disparate set of issues” was being recognised by two middle-power countries. And the area of influence was to be extended even beyond<sup>(148)</sup>.

Axworthy was indeed interested in expanding the number of countries involved in the project, so as to create a sort of H-8 (i.e., Humanitarian Eight) group parallel to the already existing G-8 group, that would basically function as a forum to discuss humanitarian issues instead of economic ones. Throughout 1998, on the occasion of other conferences hosted by organizations such as the North Atlantic Treaty Organization (NATO), the Organization for African Unity (OAU), and the Association of South East Asian Nations (ASEAN), he thus tried to convince other foreign ministers that the project was worth supporting. The ministers of Switzerland, Austria, Ireland and Thailand welcomed enthusiastically the idea of forming the first official human security group. In accord with Norway, it was decided to consult also other countries from different geographical areas to achieve greater balance; these were, eventually, the Netherlands, Chile, Slovenia, Jordan and South Africa.

The meeting that followed in 1999 in Bergen under the leadership of the ministers of Canada and Norway, to which also a group of academics and NGO experts attended,

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<sup>147</sup> Canadian Centre for Foreign Policy Development, *Roundtable on Canada-Norway Relations: The Lysøen Declaration*, 9 Oct. 1998 (hereafter the “Lysøen Declaration”). The text is available online at <<http://publications.gc.ca/collections/Collection/E2-319-1998E.pdf>> (last accessed on 11 June 2016).

<sup>148</sup> MCRAE-HUBERT (eds.), *op.cit.*, 232.

produced a document entitled “Human Security: Safety for People in a Changing World”. The relevance of this meeting lies primarily in the fact that, for the first time ever, a relevant group of states and NGOs cooperated together in the name of human security to create a common agenda for action<sup>(149)</sup>.

All these diplomatic efforts led directly to the creation of what is called the “Human Security Network” (hereafter “HSN”), whose final members included Austria, Canada, Chile, Greece, Ireland, Jordan, Mali, the Netherlands, Norway, Slovenia, Switzerland, Thailand and South Africa (although the latter only participating as an observer). In 2000, the first innovations started to appear, with Norway in particular giving birth to a program on women and peace processes, whereas Austria one on small arms. In the same year, during a meeting held in Lucerne, the members of the HSN even agreed to meet in the near future to discuss about social responsibility of corporations, as well as about the upcoming UN Conference on Small Arms that was to be held in 2001<sup>(150)</sup>.

The definition of security that was initially given by the HSN is very relevant, as well as useful to understand the theoretical inspiration of the group for its subsequent engagement in the promotion of human security. On the occasion of the meeting held in Bergen and Lysøen on 19-20 May 1999, the ministers and representatives of Austria, Canada, Norway, Chile, Ireland, Jordan, the Netherlands, Slovenia, Switzerland, Thailand and South Africa (as an observer) indeed declared that

[a] humane world where people can live in security and dignity, free from poverty and despair, is still a dream for many and should be enjoyed by all. In such a world, every individual would be guaranteed freedom from fear and freedom from want, with an equal opportunity to develop their human potential. Building human security is essential to achieving this goal. In essence, *human security means freedom from pervasive threats to people’s rights, their safety or even their lives*. Human security has become both a new measure of global security and a new agenda for global action<sup>(151)</sup>.

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<sup>149</sup> MCRAE-HUBERT (eds.), *op.cit.*, 232-233.

<sup>150</sup> MCRAE-HUBERT (eds.), *op.cit.*, 234.

<sup>151</sup> Department of Foreign Affairs and International Trade of Canada, *A perspective on human security – Chairman’s summary*, News Release No. 117 (20 May 1999), Lysøen, Norway. The document is available at

Today the HSN is somewhat different from its original version, but has maintained its commitment to the promotion of the human security agenda. In fact, although its composition has slightly changed, the countries of the network still work individually to foster their agendas. They also cooperate under the aegis of the UN as a group to promote human security strategies in foreign policy and stimulate the adoption of concrete strategies to counter human security problems. Some have suggested that the interest showed by Canada and Norway in particular for the human security challenge in the 1990s was actually to be interpreted as a political operation to obtain their chairs among the non-permanent members of the UN Security Council at that epoch<sup>(152)</sup>. Although this might have been true, the work carried out by the HSN to give international resonance to the new-born concept of human security, as well as the form through which this work was carried out, still remain undoubtedly relevant.

In sum, in the words of Michael Small, this “new diplomacy” framework owed its success to the fact that “[w]ithout being encumbered by fixed membership or inherited agendas, a cross-regional group of this kind can respond to new ideas, engage outside experts, and take up timely initiatives”<sup>(153)</sup>. The then Canadian Foreign Minister Axworthy indeed claimed that the collaboration with civil society groups and experts, the new technologies that helped simplify the negotiating processes, and the general operation outside the traditional diplomatic circuits were all ingredients that contributed to the constitution of human security as a “new diplomacy”. In this sense, human security would thus entail not only the strengthening and widening of the security agenda but also a new “bottom-up approach to diplomacy” opposite to the “classic top-down, undemocratic approach”<sup>(154)</sup>.

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<[http://www3.sympatico.ca/ideabank/ksk/News/990520\\_dfait.html](http://www3.sympatico.ca/ideabank/ksk/News/990520_dfait.html)> (last accessed on 11 June 2016).

<sup>152</sup> SUKHRE, *A Stalled Initiative*, 35 *Security Dialogue* (3, 2004), 365.

<sup>153</sup> MCRAE-HUBERT (eds.), *op.cit.*, 234.

<sup>154</sup> See both AXWORTHY, *Foreword*, xv–xiii, and MATTHEW, *Human Security and the Mine Ban Movement II: Conclusions*, 270–272 in MATTHEW et al. (eds.), *Landmines and Human Security: International Politics and War’s Hidden Legacy*, Albany: State University of New York Press, 2004.

#### **4. Concluding remarks**

This chapter has guided us through centuries of development of the concept of security. Tracing the chronological path of construction of the security concept, we have seen that the process has been a slightly complex one, that in the long run entailed the slow emergence of a second paradigm parallel to the long-prevailing, realist one. This second paradigm, that has been labelled “human security”, in the end gained much more consent internationally than anyone would have originally expected it to.

This idea of strengthening the “human” dimension of security eventually stemmed from the increasing recognition that was given to the importance of human rights since the end of WWII. The new-born human security doctrine thus resulted in a great impact internationally as norm-boosting concept. The doctrine of the Responsibility to Protect was in fact one of the offspring of the human security framework.

Human security, however, is not the clear-cut concept that it might appear at first glance. As we have argued, security is indeed a puzzle that men have been struggling to compose for centuries. The puzzle, in other words, is not so easily discernible in its deepest meaning. There actually still remain several controversies surrounding this notion. Some of these have been outlined in paragraph two of this present chapter, while discussing about the inconsistency of the debate surrounding the alleged opposition between the freedom from fear and freedom from want perspectives over security.

The issue is nonetheless a very complex one, so that a systematic assessment is needed in order to achieve an exhaustive understanding of the security challenge. This and other controversies and observations regarding the concept of human security will therefore be the object of inquiry of the following chapter.

*Narrative of a Puzzling Security:  
Discussing the Meaning of Security Under International Law*

## Chapter Two

### Revisiting the Security Puzzle: Towards a Different Perspective on Human Security

OVERVIEW: 1. A closer look at the content of the 1994 UNDP Report – 2. The debated twins: Freedom from fear and freedom from want – 3. Enlightenment origins of the “extended” security: Individual *sûreté* and the role of fear in people’s perceptions of security – 4. The current status of the human right to security of the person under international law – 5. Security as a human phenomenon – 6. Concluding remarks

#### 1. A closer look at the content of the 1994 UNDP Report

As we discussed in Chapter One of the present work, the 1994 UNDP Report is considered to have represented the first official appearance of the concept of human security. Our analysis has actually shown how the idea of a broader security compass to be directed towards the safeguard of peoples everywhere in the world had already been circulating internationally for quite a long time under different forms and proposals before the advent of the Report. The number of earlier commissions on environment, development, and global governance established under the aegis of the UN testify to this trend<sup>(155)</sup>.

The general sense of the report can be captured by taking a closer look at its opening statement, which reads that

[t]he world can never be at peace unless people have security in their daily lives. Future conflicts may often be within nations rather than between them – with their origins buried deep in growing socio-economic deprivation and disparities. The search for security in such a milieu lies in *development*, not in arms<sup>(156)</sup>.

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<sup>155</sup> See OBERLEITNER, *Human Security: A Challenge to International Law?*, 11 *Global Governance* (2005), 185.

<sup>156</sup> UNDP Report (1994), 1 (emphasis added).

The content of this brief passage is indeed very helpful to grasp the main topic that the report is built around, namely the need for a new approach to development that is “pro-people, pro-nature, pro-jobs and pro-women”. This is what the reports indicates as the basis for sustainable human development<sup>(157)</sup>. In the words of its writers, the Report indeed “explores the new frontiers of human security in the daily lives of the people”, tracing “a new design for development cooperation in the post-cold war era”<sup>(158)</sup>.

The importance of the dimension of development in the equation for global security is shown in the final part of the quote reported above, stating that the key to security lies in development, not arms. In the same page, the Report also argues for the UN to assume a greater role in the field of development, so as to finally incorporate the development agenda within that of global peace. This point is made on the basis that “[w]ithout peace, there may be no development[, b]ut without development, peace is threatened”<sup>(159)</sup>. This because “[h]uman security is not a concern with weapons – it is a concern with human life and dignity”<sup>(160)</sup>.

According to the Report, therefore, security should move away from the traditional concern with national security and embrace a new approach directed towards the fostering of human security. Security should thus be basically re-conceptualised by (a) making people become the new focus of concern, instead than state territory, and (b) promoting sustainable development instead of armaments as means to secure the world<sup>(161)</sup>.

In arguing that, the Report therefore identifies the basic characteristics of this new approach, clarifying that human security is:

- *Universal*. This means that, in the growing multipolar world in which we live, security threats affect people everywhere in the world, irrespective of their location, race, gender, or well-being. Moreover, there are threats that, given their status of

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<sup>157</sup> UNDP Report (1994), iii.

<sup>158</sup> *Ibid.*

<sup>159</sup> *Ibid.*

<sup>160</sup> UNDP Report (1994), 22.

<sup>161</sup> BILGIN, *op.cit.*, 214.

transnational crimes, are bound to potentially affect the security of all people indiscriminately. Among these we find human rights violations, drug trafficking, international terrorism, pollution and unemployment.

- *Interdependent.* This because human security crises linked to events of social disruption, famine, terrorism, pollution and so on produce consequences that nowadays have a global reach and can no longer be confined within single state borders. This means that distress threatening people's security in one part of the globe can end up involving all nations instead than its original place of origin alone.
- *Better ensured through prevention.* The idea is that meeting security threats upstream is less costly than doing it downstream through forcible means such as intervention carried out only after a crisis breaks out.
- *People-centred.* This is perhaps the most radical point of the four presented in the Report, according to which security should switch its focus and become concerned with the lives of people and their opportunities of development<sup>(162)</sup>.

This need for a more people-oriented approach to security had indeed been recognised internationally since the time of the founding of the United Nations. In 1945, after the Conference held in San Francisco that resulted in the creation of the UN, the US Secretary of State Edward R. Stetinius reported that

[t]he battle for peace has to be fought on two fronts. The first is the security front where victory spells *freedom from fear*. The second is the economic and social front where victory means *freedom from want*. Only victory on both fronts can assure the world of an enduring peace (...). No provisions that can be written into the Charter will enable the Security Council to make the world secure from war if men and women have no security in their homes and their jobs<sup>(163)</sup>.

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<sup>162</sup> UNDP Report (1994), 22-23.

<sup>163</sup> UNDP Report (1994), 24 (emphasis added).

There is, however, a subtle difference between this statement from the mid-1940s and the concept set forth in the 1990s by the UNDP in its Report. As shown by the quote reported above, the main objective of the founders of the UN was indeed the achievement of an “enduring peace” for the world. This means that, in this case, the security of people was seen as vital to the extent that a disruption of it could put international stability at risk. In other words, the “enduring peace” here seems to be primarily linked to world stability, that is thus prioritized over people’s security. On the contrary, the shift in the focus of security argued in the 1994 UNDP Report clearly designates people as the main target of security concerns. The authors of the Report thus basically advocate for “a move away from a state-centric approach that seeks peace understood as stability toward a people-centric approach that seeks peace through change”, mainly focusing on human development<sup>(164)</sup>.

Just one year after, in 1995, the report from the Commission on Global Governance entitled “Our Global Neighborhood” would address the same subject concerning the opposition between state interests and individual needs. In this report, the Commission held that the security of states and people are not mutually exclusive, since “states cannot be secure for long unless their citizens are secure”<sup>(165)</sup>. It thus called for the international community to bear in mind that protecting people and their security should become a global policy goal, parallel to the ensuring of states’ own security. However, this report is less absolute in its designation of people as the subject that should be prioritised when ascribing security precedence. The 1994 UNDP Report is therefore clearer than both the Commission’s report and the founders of the UN in allocating security priority to individuals, as well as to communities of people<sup>(166)</sup>.

The text of the Report nonetheless appears slightly confused and contradictory in its assumptions at some points. The main reason for that lies probably in its content being – at least in some assumptions – somehow historically biased (i.e., strictly related to the specific

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<sup>164</sup> BILGIN, *op.cit.*, 214.

<sup>165</sup> Commission On Global Governance, *Our Global Neighborhood*, Oxford: Oxford University Press, 1995, 22-23.

<sup>166</sup> BILGIN, *op.cit.*, 214.

historical context that produced it). We will now therefore briefly reconstruct the main line of reasoning of the opening pages of the Report, to help us identify these elements of incongruence.

As we have stated above, when calling for a new concept of human security the Report argues that “[f]or too long, security has been equated with the threats to a country’s borders” and “nations have [thus] sought arms to protect their security”<sup>(167)</sup>. This interpretation of the concept of security that had traditionally prevailed is dismissed by the Report as being too narrow, with a focus only on the protection of state territory from external aggression or on the safeguard of national interests in foreign policy. In other words, according to the text, until then security had been “related more to nation-states than to people”<sup>(168)</sup>.

Still, the Report is not neutral on this point. In fact, it specifies that this attitude was due to the fact that “[t]he superpowers were locked in an ideological struggle – fighting a cold war all over the world”, but then argues that things were about to change, “[w]ith the dark shadows of the cold war receding” and conflicts moving from the inter-state to the intra-state level. For all those reasons, the Report maintains that, at that point in history, when the fear of nuclear confrontation had finally ceased to exist, “a profound transition in thinking” was needed “from nuclear to human security”. This on the basis that, “[f]or most people, a feeling of insecurity arises more from worries about daily life than from the dread of a cataclysmic world event”<sup>(169)</sup>.

It is exactly this strict focus on the situation of the end of the cold war as a catalyst for change from a previous system of national security to a new system of human security makes the Report appear somewhat historically biased. Indeed, the text basically dismisses the whole issue of national security as some kind of old-fashioned, outdated concept, and discusses the fact that national security has been given too much space in security debate, as well as in terms of implementation of security measures at both national and international levels worldwide. Although this might have been true, at least generally speaking, in this very case the problem is nonetheless a flawed association that appears to be established in

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<sup>167</sup> UNDP Report (1994), 3.

<sup>168</sup> UNDP Report (1994), 22.

<sup>169</sup> All quotes in this para are taken from UNDP Report (1994), 22.

the text between national security and something that actually does not stand as a synonym of it, namely freedom from fear<sup>(170)</sup>.

The analysis of the Report indeed starts with the abovementioned general affirmation on security as having been equated for too long purely with threats to state territory and arms issues. Then, after the said excursus on the end of cold-war superpower confrontation and the subsequent need to move on from nuclear security to a new people-centred approach to security, it specifies that human security “can be said to have two main aspects”. These two aspects are those that we already reported in Chapter One of the present work within the context of the presentation of the UNDP Report, namely the “safety from such chronic threats as hunger, disease and repression”, and the “protection from sudden and hurtful disruption in the patterns of daily life”. However, the Report then specifies that “such threats can exist at all levels of national income and *development*”.

The second peculiarity of the Report therefore lies in this strict emphasis that is put on the link between human security and development, on the basis that “progress in one area enhances the chances of progress in the other”, but, at the same time, “failure in one area also heightens the risk of failure in the other”. It thus identifies human development as a broader concept that should not be equated with human security, and classifies the latter as “a critical ingredient of emancipatory development”. Under this interpretation, human security is therefore presented not as a defensive concept (as military or territorial security instead is), but as an integrative concept. This means that, according to the Report, human security encompasses all the components that we mentioned above at the beginning of this paragraph, namely

- the universal need for securing people’s protection;
- the increasing interdependence of security concerns everywhere, and thus the need for greater solidarity among people;

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<sup>170</sup> Reference is here made to the line of reasoning that emerges particularly from the content of pages 22-24 of the 1994 UNDP Report. The following reconstruction and quotes will also be based on the content of the same pages (any emphasis is added).

- the importance of prevention, instead than direct intervention carried out through arms and the use of force;
- the need for giving all people the opportunity to access human development, earn their own living, and meet the basic needs for achieving human fulfilment.

However, when it comes to the examination of the many components of human security, some confusing statements and contradictions start to emerge. The discourse on this point indeed opens with a statement that “[t]here have always been two major components of human security: freedom from fear and freedom from want”. Both were recognised back in 1945 by the founders of the UN, who, in the words of the Report, “always gave equal weight to territories and to people”. In saying so the Report draws from the aforesaid statement from the US Secretary of State addressing freedom from fear and freedom from want as the two “security fronts”, and implicitly establishes a parallelism between freedom from fear and territory on the one side, and between freedom from want and people on the other. It thus expresses disappointment for the fact that, later on, “the concept [of security] was tilted in favour of the first component rather than the second”, suggesting that, after the initial phase of equilibrium, security had then moved to be addressed only as freedom from fear<sup>(171)</sup>.

This part becomes quite crucial if linked to the subsequent paragraph, where the Report insists on the necessity to “make a transition from the narrow concept of national security to the all-encompassing concept of human security”. This transition should aim at changing the focus of security from “an exclusive stress on territorial security to a much greater stress on people’s security”, and from “security through armaments to security through sustainable human development”. This because, “[a]t the global level, human security no longer means carefully constructed safeguards against the threat of a nuclear holocaust”, but instead has come to mean “responding to the threat of global poverty travelling across international borders in the form of drugs, HIV/ AIDS, climate change, illegal migration and terrorism”.

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<sup>171</sup> Of the same opinion is SHINODA, *op.cit.*, 10.

The reconstruction of the reasoning behind these few pages of the text actually helps us unveil the narrative and the inner contradictions underlining the discourse of the Report. In fact, the thought process that seem to emerge from this analysis is based on the establishment of a distorted connection between territory, armaments, state (or national) security, and freedom from fear. This flawed association seems to dismiss freedom from fear without previously taking into account the fact that its meaning bears indeed no close link to the issue of national security, but is instead related to the freedom of individuals from the menace and perpetration of violence against them<sup>(172)</sup>.

At the same time, however, the Report includes the issue of protection of people and communities from violence in at least two or three of the categories that are used to classify potential threats to human security. The list of these includes economic security, food security, health security, environmental security, personal security, community security, and political security. To these, the category of “global human security” can also be added<sup>(173)</sup>. The categories of personal and community security in particular are relevant to the purpose of our analysis. As a matter of fact, in its dedicated section, personal security is presented as the protection of human lives from various kinds of violence perpetrated by states and other organised groups towards people. As for community security, it is described as the safeguard of people from the threat of oppression and ethnic violence within social communities. Both categories evidently represent a declination, even if under different perspectives, of the same principle of protection of the human person from violence. This can actually be inferred as some kind of corollary also from the category of political security, that is concerned with securitizing threats to human rights and democratization<sup>(174)</sup>.

In sum, the Report presents some elements of obscurity. This confusion is basically due to the text partially dismissing the freedom-from-fear component of human security as a mere

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<sup>172</sup> KERR, *op.cit.*, 106.

<sup>173</sup> The reference to “global human security” is made in a different section of the Report and is presented separately at page 34 and ff. Under the threats to global human security the Report lists unchecked population growth, disparities in economic opportunities, migration pressures, environmental degradation, drug trafficking and international terrorism.

<sup>174</sup> On this see UNDP Report (1994), 30-33.

instrument that has long favoured the dominance of the state-centric paradigm of security, but at the same time also incorporating the basics of freedom from fear in some of the sub-categories of human security. This should not actually come as a surprise, given that freedom from fear has very often been misinterpreted as some kind of synonym for state, or national, security. On the contrary, freedom from fear is linked to the need of recognising the “security of the person as an individual right which the State is obliged to protect”<sup>(175)</sup>.

This is obviously not to say that state security and human security must be interpreted as clashing objectives. In fact, even if it is true that the seven sub-categories of human security identified in the Report challenge the classic state-centric view of security, this does not mean that they challenge the state in itself<sup>(176)</sup>. On the contrary, the Report describes the contrast between traditional security and human security as one between “defensive” and “integrative” concepts<sup>(177)</sup>. This means that the two do not contradict each other; nor it is therefore true that the recognition of one automatically precludes the survival of the other.

Moreover, there are sections in the Report where some specific geographical or social contexts are examined and state concerns are put in relation with more human-oriented practices. This is done on the basis that a greater balance between the two should be achieved. One example comes under the section dedicated to “Political security”, where the measurement of highest ratios of military spending to education is taken as the most useful indicator of political insecurity in a country. This because, if a government gives great priority to military strength, it might also “use armies to repress their own people”<sup>(178)</sup>. The Report thus argues that “[i]f a government is more concerned about its military establishment than its people, this imbalance shows up in the ratio of military to social spending”<sup>(179)</sup>. It then makes the example of two countries, Iraq and Somalia, that in the 1980s had shown the highest ratios of military to education and health spending, respectively of 8 to 1 and of 5 to 1.

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<sup>175</sup> SPIGELMAN, *The Forgotten Freedom: Freedom from Fear*, in 59 *International and Comparative Law Quarterly* (3, July 2010), 543.

<sup>176</sup> SHINODA, *op.cit.*, 12.

<sup>177</sup> UNDP Report (1994), 24.

<sup>178</sup> UNDP Report (1994), 32-33.

<sup>179</sup> UNDP Report (1994), 33.

This, in conclusion, actually accounts for a concrete proof to the fact that the Report implicitly recognises that “human security demands a well-proportioned and integrated pursuit of various security measures, and “traditional” territorial and military concerns are simply located in a broad context of human security”<sup>(180)</sup>. However, as we discussed above, the Report is not completely clear on this point; at least, it does not make much effort to show it, which is probably also due to the fact that the text was basically formulated by a UN agency for development. However, since the Report includes among threats to human security also “threats from other states” under the category of “personal security”, it can be said that “the elements of “traditional” security are [actually] incorporated within the context of human security”<sup>(181)</sup>, and at the same time integrated with human-oriented concerns within “threats from the state” and “threats from other groups of people”<sup>(182)</sup>.

## **2. The debated twins: Freedom from fear and freedom from want**

The two “freedoms” that we mentioned in the previous paragraph discussing the content of the UNDP Report of 1994 are indeed inherent to the concept of human security and account for one of the major components of the debate surrounding the security puzzle. Both are complementary parts of the same human security framework and share their conceptual origin in Franklin D. Roosevelt’s elaboration of the “Four Freedoms”. They thus basically originated out of a process of exclusion, or better, of selection from a group of four equivalent freedoms, to eventually end up being recast as the two clashing objectives within the security agenda by most of the academics and statesmen<sup>(183)</sup>.

The first Inaugural Address given by Roosevelt in 1933 just after assuming the Presidency in the United States had already shown the centrality of his concern with freedom from fear, that was nonetheless conceived mainly in terms of ensuring occupation and social well-

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<sup>180</sup> SHINODA, *op.cit.*, 12.

<sup>181</sup> SHINODA, *op.cit.*, 12-13.

<sup>182</sup> UNDP Report (1994), 30.

<sup>183</sup> See, generally, ACHARYA, *op.cit.*, 478-493; KERR, *op.cit.*, 104-116.

being for US citizens<sup>(184)</sup>. This apprehension was obviously due to the situation of severe economic distress in the country, that Roosevelt inherited from his predecessor<sup>(185)</sup>.

Some years later, during the Annual State of the Union Address to the Congress given by Roosevelt on 6 January 1941, the rhetoric of the Four Freedoms then made its first appearance. These freedoms were freedom of speech, freedom of religion, freedom from fear and freedom from want. In this speech, the four freedoms came to be associated to the experience of the Great Depression undergone by the US in the 1930s, as well as to the – at least initially non-military – rhetoric of solidarity with Europe that was facing aggression from Nazi Germany<sup>(186)</sup>.

In the final part of his speech, Roosevelt basically underlined the importance of these four “essential human freedoms” to be looked forward by the world in its future years. In particular, he conceived freedom from want as “economic understandings which will secure to every nation a healthy peacetime life for its inhabitants – everywhere in the world”. On the other hand, freedom from fear was instead presented as the hope for a “world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor – anywhere in the world”<sup>(187)</sup>. The initial meaning of Roosevelt’s freedom from fear is therefore at this point integrated with the dimension of physical violence and the need to counter it worldwide. Later on, the objective of securing freedom from fear in particular would be included by Roosevelt and British Prime Minister Churchill in the Atlantic Charter, thus becoming part of the official declaration of war against Nazi Germany<sup>(188)</sup>. The two heads

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<sup>184</sup> See F.D. ROOSEVELT, *Inaugural Address* (4 March 1933), as published in ROSENMAN (ed.), *The Public Papers of Franklin D. Roosevelt*, Volume Two: The Year of Crisis, 1933, New York: Random House, 1938, 11-16. This address contains the famous quote from Roosevelt – that is, in reality, taken from Montaigne via Thoreau – reassuring American people that “we have nothing to fear but fear itself”.

<sup>185</sup> See KENNEDY, *Freedom from Fear: The American People in Depression and War 1929-1945*, Oxford University Press, Oxford, 1999, 469-70.

<sup>186</sup> SPIGELMAN, *op.cit.*, 543.

<sup>187</sup> F.D. ROOSEVELT, State of the Union 77<sup>th</sup> Address to the Congress (Four Freedoms) (6 Jan. 1941). The full text is available online at <<http://www.millercenter.org/president/speeches/speech-3320>> (last accessed on 11 June 2016).

<sup>188</sup> See *The Atlantic Charter: Declaration of Principles issued by the President of the United States and the Prime Minister of the United Kingdom* (14 Aug. 1941) (hereafter “Atlantic Charter”). See, also, MACGREGOR BURNS, *Roosevelt: The Soldier of Freedom*, Harcourt Brace, Jovanovich Inc., 1970, 34-5, 130. Both texts of the Atlantic

of state thus internationalised and definitely broadened the range of the whole discourse by adding the idea of protection from physical aggression to the original meaning ascribed by Roosevelt to freedom from fear<sup>(189)</sup>.

At the point when the Atlantic Charter was made public, the four freedoms had nonetheless already been reduced to only two. Indeed, along with freedom from fear, the only one to be kept and indicated as one of the goals of World War II was freedom from want. The text of the Atlantic indeed reads that the common policy of US and UK agreed on the point that

[a]fter the final destruction of Nazi tyranny, they hope to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all the men in all the lands may live out their lives in *freedom from fear and want*<sup>(190)</sup>.

It could thus be said that the two freedoms were presented among the justifications for the intervention in the war on the part of the Allies. This also explains the following decision by the UN to establish an Economic and Social Council (the ECOSOC) that did not exist in the previous, crumbling League of Nations, whose original project was concerned only with the first half of the plan, namely the protection from the use and abuse of force by states<sup>(191)</sup>.

Everything then came full circle with Eleanor Roosevelt's chairing of the Human Rights Commission under the aegis of the United Nation, namely the group that was tasked with the drafting of the Universal Declaration of Human Rights. Also thanks to her influence, the Four Freedoms were eventually incorporated in the second recital of the 1948

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Charter and of the Four Freedoms discourse are available online as well as in paperwork. The text of the Atlantic Charter in particular is available online at [http://www.nato.int/cps/bu/natohq/official\\_texts\\_16912.htm](http://www.nato.int/cps/bu/natohq/official_texts_16912.htm) (last accessed 11 June 2016).

<sup>189</sup> SHULMAN, *The Four Freedoms: Good Neighbours Make Good Law and Good Policy in a Time of Insecurity*, in 77 *Fordham Law Review* (2008), 555.

<sup>190</sup> Atlantic Charter (1941).

<sup>191</sup> SHINODA, *op.cit.*, 12.

Declaration<sup>(192)</sup>, and classified as “the highest aspiration of the common people”<sup>(193)</sup>. Later on, the four freedoms would also find recognition in the Preambles of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966. In fact, a recital that is common to the Preambles of both Covenants reads that freedom from fear and freedom from want “can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights”<sup>(194)</sup>.

In the years following the end of World War II, US President Truman kept alive the policy of advancing the freedom from fear agenda by establishing a Committee on Civil Rights that was tasked with proposing solutions to be taken to counter the problem of violence – and threat and fear of violence – against African Americans, including mob violence and police brutality. These measures would later be included in the better-known Civil Rights Act<sup>(195)</sup>. On the contrary, in the European context the drafting of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter “European Convention”) in 1950, despite representing the first international translation of the Universal Declaration in a binding treaty, did not contain any reference neither to freedom from fear or want, nor to the original Four Freedoms. The reasons for that might have been multiple. Spigelman actually makes the point that the disappearance of the Four Freedoms rhetoric in the European Convention was due to the influence exercised by English lawyers in the drafting process of the document itself. According to his reasoning, the intellectual amnesia of British jurisprudence with regards to the natural law origins of human rights discourse<sup>(196)</sup> indeed contributed to produce the elision – and thus the recast – of both

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<sup>192</sup> On this see generally JOHNSON, *The Contributions of Eleanor and Franklin Roosevelt to the Development of International Protection for Human Rights*, in 9 *Human Rights Quarterly* (19, 1987); GLENDON, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, Random House, London, 2001.

<sup>193</sup> See the *Universal Declaration of Human Rights*, 10 Dec. 1948.

<sup>194</sup> *International Covenant on Civil and Political Rights* and *International Covenant on Economic, Social and Cultural Rights*, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 Dec. 1966, entry into force 23 March 1976, in accordance with Art. 49 UN Charter, Preamble, Recital iii.

<sup>195</sup> See SPIGELMAN, *op.cit.*, 544; see also Truman Library, *To Secure These Freedoms: The Report of the President's Committee on Civil Rights* (1947).

<sup>196</sup> Here Spigelman makes reference to the alleged distortion of the theories of natural law and human rights (such as those contained in the work of Blackstone) made in British texts in the 19<sup>th</sup> century. This particular

freedom from fear and freedom from want as some kind of intellectual joke by the Roosevelts<sup>(197)</sup>.

In any case, what is certain is that afterwards the language of freedom from fear would make its first significant reappearance in public policy discourse only at the beginning of the 1990s, within the context of the “golden age of humanitarian activism” that we already mentioned in Chapter One of the present work while exploring Canada’s concept of freedom from fear and of personal security within the human security agenda. This view, that was advanced by the Canadian Foreign Affairs Minister Lloyd Axworthy and then supported by Norway as well in the HSN, aimed primarily at working to foster international efforts directed towards the decreasing of the human costs in violent conflicts<sup>(198)</sup>. Consequently, the main measures proposed by the Canadian government, as we have seen, consisted in the sponsoring of both the Mine Ban Treaty and the ICC Statute and the support for the elaboration of policies for the protection of women and children in conflicts, as well as the issues of small-arms proliferation, child soldiers and child labour.

The Canadian vision on security of the 1990s indeed conceived human security and human development as “mutually reinforcing concepts” that addressed, respectively, the “twin objectives of freedom from fear and freedom from want”. As we have seen, the Canadian position on security contained in the 2000 document entitled *Freedom from Fear: Canada’s Foreign Policy for Human Security* actually separated human security from human development and then established a parallelism between freedom from fear and human security, as well as between freedom from want and development. In this order of ideas, the objective of human security thus became only freedom from fear, that, in the Canadian

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theory is advanced by the author in SPIGELMAN, *Blackstone, Burke, Bentham and the Human Rights Act 2004*, in 26 *Australian Bar Review* (1, 2005), reprinted in CASTLE (ed.), *Speeches of a Chief Justice: James Spigelman 1998-2008*, CS2N Publishing, 2008.

<sup>197</sup> See SPIGELMAN, *op.cit.*, 544. As a source for his theory about the role of English lawyers in the creation of the European Convention he cites BRIAN SIMPSON, *Human Right and the End of Empire: Britain and the Genesis of the European Convention*, Oxford University Press, Oxford, 2001.

<sup>198</sup> ACHARYA, *op.cit.*, 483.

perspective of the 1990s, corresponded to the achievement of “individual security”, or else of freedom from physical threats for individuals (199).

On the other hand, in the same period Japan instead opted for revitalising the twin freedom of freedom from fear, that is, freedom from want. Japan’s view of human security was in fact closer to the essential meaning of the 1994 UNDP Report, with a stress on the importance of helping individuals and communities meet their most basic needs as well as gaining the well-being that is necessary to life fulfilment. This obviously entails securing people not only from military threats but also from a broader range of non-military threats such as famine, diseases, unemployment and environmental degradation(200). In the 1990s, therefore, differently from Canada, Japan drew a direct link between human security and the object of long-term human and economic development(201).

In scholarly debate, this divergence in visions that the Canadian and Japanese views displayed already back in the 1990s turned into a strong dispute among advocates of different human security perspectives. This debate basically consisted in a schism between a “narrow school” that was supportive of the freedom-from-fear approach to security and a “broad school” that instead argued for the prominence of freedom from want as synonym of human security(202). In fact, despite agreeing on the common objective of making people, instead than states, the referent objects of security, and thus countering the traditional state-centric view of security based on military and power politics, they ended up generating a never-ending dispute over the prioritization of the threats to be securitized in a human security framework.

To simplify things, it can be stated that the narrow and broad school focus, respectively, on violence on the one side and on development on the other side. Proponents of the narrow school thus generally conceive human security as “the protection of individuals and

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<sup>199</sup> Department of Foreign Affairs and International Trade of Canada, *Freedom from Fear: Canada’s Foreign Policy for Human Security*, Canada, 2000, 3. With the expression “individual freedom” the document makes reference to the “personal security” side of human security contained in the 1994 UNDP Report.

<sup>200</sup> The Canadian, Norwegian and Japanese views on human security are discussed broadly in Chapter 1 of the present work above.

<sup>201</sup> See Chapter 1 of the present work, at para 3.4.3.

<sup>202</sup> KERR, *op.cit.*, 106.

communities from war and other forms of violence”<sup>(203)</sup>, and thus dedicate their attention to the narrow “freedom from fear” of the threat or use of violence to people, be it by the state or by other organised actors. On the other hand, exponents of the broad schools argue that human security is concerned with a number of threats that extend far beyond the one threat of violence, and thus support the “freedom from want” perspective<sup>(204)</sup>.

According to some, human security would even go beyond the context of freedom from want and human development, to include issues such as the “protection of people from life-threatening dangers, regardless of whether the threats are rooted in anthropogenic activities or natural events, whether they lie within or outside states, and whether they are direct or structural”<sup>(205)</sup>. This definition from the United Nations University has been reported in 2004 by the influential peace researcher Thakur and then perfected by the same author in the attempt to restrain the extent of broad-school understandings of human security. Thakur thus argued that the abovementioned “life-threatening dangers” must have reached the point of crises to account for real threats to security; otherwise, they fall into the broader human development agenda<sup>(206)</sup>.

An even broader conceptualization of human security has been given, for example, by Alkire, who in a 2003 working paper claimed that “[t]he objective of human security is to safeguard the vital core of all human lives from critical pervasive threats, in a way that is consistent with long-term human fulfilment”<sup>(207)</sup>. Broad definitions of human security like this one from Alkire are one of the main reasons why the whole concept still tends to be dismissed by a relevant number of critics. One of the main charges that are brought against the broad school of human security is that the all-encompassing<sup>(208)</sup> nature of human

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<sup>203</sup> Human Security Centre, *Human Security Report 2005*, available online at <<http://www.hsrgroup.org/human-security-reports/2005/text.aspx>> (last accessed on 5 June 2016).

<sup>204</sup> KERR, *op.cit.*, 106.

<sup>205</sup> THAKUR-NEWMAN, *Introduction: Non-traditional security in Asia*, in THAKUR-NEWMAN (eds.), *Broadening Asia's Security Discourse and Agenda. Political, Social and Environmental Perspectives*, United Nations University Press, Tokyo, 2004, 4.

<sup>206</sup> THAKUR-NEWMAN, *op.cit.*, 3.

<sup>207</sup> ALKIRE, *A Conceptual Framework for Human Security*, CRISE Working Paper, Queen Elizabeth House, University of Oxford, 2003, 2.

<sup>208</sup> On this see, generally, FLOYD, *Human Security and the Copenhagen School's Securitization Approach: Conceptualizing Human Security as a Securitizing Move*, in 5 *Human Security Journal* (2007), 38-46; KERR, *op.cit.*, 104-116; PARIS, *Human Security: Paradigm Shift or Hot Air?*, in 26 *International Security* (2, 2001), 87-102; PARIS,

security as freedom from want includes “everything from substance abuse to genocide”<sup>(209)</sup>. In other words, an excessive expansion of the security agenda could risk categorizing everything – and therefore anything – as a security threat. This because, practically speaking, if everything ends up being prioritized, then in the end nothing is<sup>(210)</sup>.

This is the reason why Paris dismisses the entire concept as “inscrutable”<sup>(211)</sup>, on the basis that “the number of casual hypotheses for human insecurity are so vast that frameworks for research and policy are difficult to formulate”<sup>(212)</sup>. As a result, human security could consequently also lose its appeal for policymakers due to this excessively broad agenda<sup>(213)</sup>. To this severe criticism Alkire replies that human security is, on the contrary, contained in its scope, since “it does not cover all necessary, important, and profound aspects of human living”. Instead, “it identifies and protects a limited vital core of human activities and abilities” that pertain to the sphere of “human rights, basic capabilities, or absolute needs”<sup>(214)</sup>.

The narrow approach has undergone some strong criticism as well. Very often indeed, freedom-from-fear oriented approaches are dismissed as mere political tools deployed to foster the interests of the Western liberal system, and thus assimilated to the traditional idea of security focusing on physical violence and the protection of the state<sup>(215)</sup>. Another aspect that usually happens to be criticised is the top-down nature of this approach, that confers on internationally-driven institutions the task of providing human security. In particular, the controversy is fuelled by the issue of interventionism (i.e., of humanitarian intervention)

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*Still an Inscrutable Concept*, in 35 *Security Dialogue* (3, 2004); REMACLE, *Approaches to Human Security: Japan, Canada and Europe in Comparative Perspective*, in 66 *Journal of Social Science* (2008); TADJBAKHSH, “Human Security”: Looking Back before Looking Forward, Paper for the ICHSWA Conference, Birjand, Iran, 26 November 2009.

<sup>209</sup> PARIS, *Still an Inscrutable Concept*, in 35 *Security Dialogue* (3, 2004), 371.

<sup>210</sup> KHONG, *Human Security: A Shotgun Approach to Alleviating Human Misery?*, in 7 *Global Governance* (3, 2001), 232.

<sup>211</sup> PARIS, *Still an Inscrutable Concept*, in 35 *Security Dialogue* (3, 2004), 371.

<sup>212</sup> KERR, *op.cit.*, 107.

<sup>213</sup> McDONALD, *Human Security and the Construction of Security*, in 16 *Global Society* (3, 2002), 283.

<sup>214</sup> ALKIRE, *op.cit.*, 3.

<sup>215</sup> See RYERSON, *Critical Voices and Human Security: To Endure, To Engage or To Critique?*, in 41 *Security Dialogue* (2, 2010), 169-190.

that is often called into question in discussion about the safeguard of people from physical violence<sup>(216)</sup>.

The debate over all of these points is still ongoing. A plethora of scholars have contributed to inform it, and the abovementioned positions are just explanatory of the arguments that have been advanced on both sides. They nonetheless are sufficient to argue some basic counterpoints.

The extent of the contrast between the twin freedoms indeed seems to be widely overstated<sup>(217)</sup>. First, the theorization of the narrow and broad understandings of human security as clashing concepts is wrong. Instead, they are complementary, in the sense that realizing human security requires both “policies that address the narrow school’s focus on violence and the broad school’s focus on development”. In sum, this means that “[e]ach type of policy is equally important”<sup>(218)</sup>. Indeed, one cannot achieve human security by overlooking the physical safety of people, nor can it be done by leaving away the importance of human development and fulfilment. Second, both freedom from fear and freedom from want are people-centred instead of state-centred, since they are part of the same human security framework. They both aim at protecting people, not states, be it from physical violence or from poverty, famine and development problems in general. In other words, both regard the human individuals (as well as their communities worldwide) as the referent objects of security<sup>(219)</sup>. This centrality of the individual will actually constitute a focal point of our upcoming discussion in the following paragraphs.

### **3. Enlightenment origins of the “extended security”: Individual *sûreté* and the role of fear in people’s perceptions of security**

In Chapter One we demonstrated how ideas on the necessity for a more “extended” security were not new in the 1990s, when the concept of human security started to gain true widespread recognition. Indeed, the same stress that was put in the 1980s by the Report of

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<sup>216</sup> On this see RICHMOND, *Emancipatory Forms of Human Security and Liberal Peacebuilding*, in 62 *International Journal* (3, 2007), 460-461.

<sup>217</sup> ACHARYA, *op.cit.*, 483.

<sup>218</sup> KERR, *op.cit.*, 109.

<sup>219</sup> See ACHARYA, *op.cit.*, 483; KERR, *op.cit.*, 106; ALKIRE, *op.cit.*, 3.

the Palme Commission on the very idea of “common security” is in reality a reflection of earlier discussions on the matter. As a matter of fact, the more human-oriented ideas of security of the late XX century were a rediscovery of way earlier political and legal thought on security.

The pluralistic interpretation of security as an objective shared by individuals, communities and states is indeed rooted in the European political thinking of the period going from the mid XVII century to the French Revolution. According to this vision, security was to be seen as the constitutive basis of the relationship between states and individuals or societies, i.e., the reason why individuals would decide to create the state in a collective enterprise. Most of Enlightenment thinkers, in particular, conceived security even more specifically, as a right of the individual. The idea of security as a matter pertaining only to relationships between states, or else, a condition of stability for the state to be enjoyed and safeguarded by governments alone using diplomatic and military policies, would be introduced only afterwards in much of Europe within the context of the Revolutionary and Napoleonic Wars<sup>(220)</sup>.

This relevance of personal security, or, in other words, the security of individuals, had in turn already been acknowledged in Roman political thought. As we will later demonstrate, in that same period, the word also started to intertwine with another important aspect of security, which is that of fear and its related freedom. Personal security and freedom from fear indeed bear a stricter relationship than it is generally recognised by legal and political discourse on security and freedoms.

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<sup>220</sup> ROTHSCHILD, *op.cit.*, 61. In her work, Rothschild actually makes a very interesting point on the process of transition from the conceptualization of security as an individual rights to the reinterpretation of it as a public good. She thus identifies the beginning of this particular transition in the military period of the French Revolution. In that phase, a new rhetoric of military security started to emerge, eventually trapping also those intellectuals that had been strongly opposing collective conceptions of security. In that way, Condorcet as well by 1792 ended up discussing about the *sûreté* of the collectivity, i.e., of the security of the state (he said that France would accept peace only if compatible with “the independence of national sovereignty, with the security of the state”, see *Project d’une exposition des motifs*, in *Oeuvres de Condorcet*, vol. X, 1792, 454). According to Rothschild, the translation made by Paine in 1971 of the *Declaration of the Rights of Man*, represents one of the last instances of use of the word *sûreté* in the original sense. Afterwards (particularly after the Congress of Vienna and the signing of the First Peace of Paris), the word started to acquire the said new meaning, indicating a new type of security that was instead primarily focused on ensuring “*la sûreté des trônes*” (*Paris Peace Treaty* (30 May 1814), Statement of 18 October 1814, in *Aden des Wiener Congresses*, vol. I, Erlangen, ed. Kluber, 1819, 9, 36).

The importance of the dimension of fear in people's perceptions of security and freedom was already acknowledged by Montesquieu in his work entitled *The Spirit of the Laws*. In the introductory paragraph to the chapter dedicated to the separation of legislative, executive and judicial powers he indeed maintains that

[t]he political liberty of the subject, is a *tranquillity of mind* arising from the opinion each person has of his safety. In order to have this liberty, it is a requisite the government be so constituted, as one man need *not be afraid* of another<sup>(221)</sup>.

The political liberty that Montesquieu is referring to in this paragraph is actually not related to states but is instead an objective of individuals. In fact, while book XI of *The Spirit of the Laws* is mainly concerned with political liberty in the context of state formation, in book XII Montesquieu goes on to specify the significance of the expression "tranquillity of mind" as related to the individual, saying that, in this case, political liberty "consists in security, or in the opinion people have of their security"<sup>(222)</sup>. The "tranquillity of mind", however, is achieved only if people are not afraid of one another, which in turn is something that the government, according to Montesquieu, should accomplish through the separation of powers. Security in this sense thus becomes some kind of good that is dependent on perception, or else, on a sentiment-related variable (i.e., the absence of fear) and that individuals aim at obtaining, even, if necessary, by sacrificing in turn other goods<sup>(223)</sup>. Moreover, it also must be specified that the original word used by Montesquieu for security corresponds to the French word *sûreté*<sup>(224)</sup> (instead of the better-known *sécurité*), which was used in that period to specifically indicate the idea of protection of individuals from external dangers or threats<sup>(225)</sup>. This distinction is important to make, since, as we will see, this word

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<sup>221</sup> MONTESQUIEU, *The Spirit of the Laws*, Law Book Exchange, vol. 1, Book XI, Chapter VI, 2005, 185 (emphasis added).

<sup>222</sup> MONTESQUIEU, *op.cit.*, 224.

<sup>223</sup> ROTHSCHILD, *op.cit.*, 61.

<sup>224</sup> The same word may also appear in other works from different authors in a different form as *seureté*, which is the Middle French variant for *sûreté*. The meaning, however, remains the same.

<sup>225</sup> SPIGELMAN, *op.cit.*, 546.

would later on experience a transition in meaning from security for individuals to security of states.

The idea of security as an individual good and a constitutive element of freedom of the person was therefore broadly shared by Enlightenment intellectuals<sup>(226)</sup>. This security of the individual, envisioned as freedom from the fear of potential personal violation, was indeed one of the constitutive ideas of liberal political thought<sup>(227)</sup>, and consequently one that achieved some relevant degree of public recognition particularly in the early, liberal period of the French Revolution. The translation made by Tom Paine of the 1789 *Declaration of the Rights of Man* indicated as natural rights of the human person liberty, security, property and resistance to oppression. Here the word used to relate to security is still the abovementioned *sûreté*, conceived as a private right. It was therefore a condition of the subject alone that was opposed, during the Terror, to the public safety (*salut*) of the *Comité de salut public*<sup>(228)</sup>.

However, as mentioned above, this notion is in turn a reflection of an even earlier Roman political thought. The Latin word *securitas* in fact denoted an inner condition of the individual that corresponded to tranquillity of spirit and freedom from care. This particular state of mind was addressed by Cicero as the “object of supreme desire”, or “the absence of anxiety upon which the happy life depends”<sup>(229)</sup>. In fact, the aforementioned expression by Montesquieu on the connection between political liberty and tranquillity draws upon Cicero’s aphorism stating that “[p]eace is liberty in tranquillity”<sup>(230)</sup>. In the *Lexicon Taciteum*, the notion of *securitas* is translated into *Sicherheitsgefühl*, a word indicating the feeling of being secure<sup>(231)</sup>.

On his own part, Adam Smith in the *Theory of Moral Sentiments* refers to security in the sense used by Cicero, as a feeling of detachment from distress that a wise man should properly find within himself. In *The Wealth of Nations*, the word is still linked to the

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<sup>226</sup> SPIGELMAN, *op.cit.*, 548.

<sup>227</sup> See HOLMES, *Passion and Constraint: On the Theory of Liberal Democracy*, Chicago, Illinois, The University of Chicago Press, 1995, 245, arguing that “security was the *idée maitresse* of the liberal tradition”.

<sup>228</sup> ROTHSCHILD, *op.cit.*, 62.

<sup>229</sup> ROTHSCHILD, *op.cit.*, 61.

<sup>230</sup> SPIGELMAN, *op.cit.*, 548.

<sup>231</sup> ROTHSCHILD, *op.cit.*, 61. The world would later change its meaning to carelessness or negligence, although conserving the connotation as inner condition of the self.

dimension of the individual, although the connotation is less of an inner sort. In fact, in this work Smith identifies “the liberty and security of individuals” produced by “order and good governance” as a necessary prerequisite for the wealth of a state<sup>(232)</sup>. Personal security is also indicated by Smith as the main objective of the judicial system of a state. On the contrary, Smith makes no reference to security when discussing about “the first duty of the sovereign”, namely “that of protecting the society from the violence and invasion of other independent societies”<sup>(233)</sup>. In this case, he indeed mentions security only when indicating the nature of security for the sovereign (or the magistrate). However, the sovereign is here addressed as an individual, with Smith arguing that the feeling of being secure for a sovereign derives from the fact of possessing a strong army that can defend him in case of threats originating from popular discontent. There is therefore in this case no reference to the idea of security as specifically referring to the internal security of the state<sup>(234)</sup>.

Condorcet as well gave importance to the psychological dimension of perceptions of security by individuals, arguing that the reduction of fears in a state is a necessary precondition for prosperity<sup>(235)</sup>. To this, we can add his 1793 draft for a new Declaration of Rights (some sort of redefinition of the 1789 Declaration, which had merely mentioned security among other Rights of Man as freedom, property and resistance to oppression). Here, at Article X, the author holds that security consists of “the protection society affords every citizen in conserving his person, goods, and rights, and a minimum level of subsistence”<sup>(236)</sup>. Condorcet’s outline of security is explained by Alengry through a parallelism with the Anglo-Saxon *habeas corpus*, as therefore something to be guaranteed by society, or, in other words, by the “social pact” of social contract theories<sup>(237)</sup>.

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<sup>232</sup> See SMITH, *The Theory of Moral Sentiments*, 1976 edn., 156, 290; SMITH, *The Wealth of Nations*, 1976 edn., 412.

<sup>233</sup> SMITH, *The Wealth of Nations*, 1976 edn., 689. When discussing the issue of expenditures on justice, Smith even specifies that in those cases when the costs of defence come to be huge “the people should, for their own security”, contribute to the sovereign’s expenditures through the payment of taxes (*Ibid.*, 718).

<sup>234</sup> SMITH, *The Wealth of Nations*, 1976 edn., 707.

<sup>235</sup> ROTHSCILD, *Economic Sentiments: Adam Smith, Condorcet, and the Enlightenment*, Harvard University Press, Cambridge, 2001, 12-15. The “fears” that Condorcet refers to basically range from “the terrors of religion” to political despotism of any sort.

<sup>236</sup> ISRAEL, *Revolutionary Ideas: An Intellectual History of the French Revolution from The Rights of Man to Robespierre*, Princeton University Press, 2014, 356. For the original text see also *Projet de Déclaration des droits naturels, civils et politiques des hommes*, in *Oeuvres de Condorcet*, vol. XII, 1793, 418-419.

<sup>237</sup> ALENGRY, *Condorcet Guide de la Révolution Française*, Paris, Giard and Brière, 1904, 405.

Influenced by the thought of Montesquieu<sup>(238)</sup>, in his *Commentaries* Blackstone on his part acknowledged as “rights of all mankind” three basic rights that corresponded to personal security, personal liberty and private property<sup>(239)</sup>. Personal security, in particular, is conceived by Blackstone as follows, in a way that is reminiscent of Montesquieu’s classification of liberty as “tranquillity of mind”.

The right of personal security consists in a person’s legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation<sup>(240)</sup>.

Blackstone went even further. In his theory, he integrated this conceptualization of personal security with a right to meet the basic requirements of life for individuals (i.e., some sort of social welfare right), as well as including within the right to personal security not only actual violence but also the threat of violence against the individual. The passage that makes reference to this is the following.

Besides those limbs and members that may be necessary to man, (...) the rest of his person or body is also entitled by the same natural right to security from the corporal insults of *menaces*, assaults, beating, and wounding<sup>(241)</sup>.

It is of some relevance also the fact that Blackstone makes a clear separation between the two concepts of security and freedom. Although referring specifically to his historical context, he asserts that

[n]ext to personal security, the law of England regards, asserts, and preserves the personal liberty of individuals<sup>(242)</sup>.

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<sup>238</sup> On this point see generally CARRESE, *The Cloaking of Power: Montesquieu, Blackstone, and the Rise of Judicial Activism*, University of Chicago, Chicago, 2003, 117-128, 153-154.

<sup>239</sup> BLACKSTONE, *Commentaries on the Laws of England*, 18<sup>th</sup> edn., London, 1829-54, vol. 1, 129.

<sup>240</sup> *Ibid.*

<sup>241</sup> BLACKSTONE, *op.cit.*, 134 (emphasis added).

<sup>242</sup> *Ibid.*

This specification is actually quite important, since the friction between the two objectives of liberty and security has remained one of the obscurities of social contract theories of the state since the time of Hobbes, Locke and Rousseau. In short, this apparent contrast traditionally sees liberty as an individual right and security as instead a public good, or, in other words, a collective interest of the state<sup>(243)</sup>. However, as recognised by both Montesquieu and Blackstone, security does not simply pertain to the domain of states but is instead to be conceived as an individual right as well.

However, when it comes to interpreting the text of contemporary human rights treaties and provisions, security is usually incorporated under the broader ban of the right to liberty, to the point that it could be argued that the very idea of security as a natural right of individuals no longer exists<sup>(244)</sup>. The same could also be said of the relevance ascribed to freedom from fear in legal discourse<sup>(245)</sup>. This is unfortunate, since, as we have shown, the relation between the two is manifest. Indeed, people's perception of security is linked to the level of fear that a violation of their rights could happen. An inverse relationship therefore exists between security and the possibility of threatening events, that is in turn related to the increase in the levels of fear. Unfortunately, the individual freedom of people from fear (i.e., the personal sense of tranquillity envisaged by Cicero and Montesquieu) has not featured sufficiently in human rights discourse, despite the growing dominance of generally human-oriented rhetoric over the last decades<sup>(246)</sup>. According to Spiegelman, indeed, "[f]reedom from fear has become the forgotten freedom", the one that has technically vanished from legal discourse<sup>(247)</sup>.

Our conclusion is therefore that fear should be given a more prominent role in human rights discourse, since it is a dimension that is inherent in most of the internationally recognised human rights, as well as in provisions of domestic legal systems of states. In general, despite lacking the status of freestanding right, freedom from fear should at least

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<sup>243</sup> SPIGELMAN, *op.cit.*, 549.

<sup>244</sup> *Ibid.*

<sup>245</sup> SPIGELMAN, *op.cit.*, 545.

<sup>246</sup> SPIGELMAN, *op.cit.*, 550.

<sup>247</sup> SPIGELMAN, *op.cit.*, 545.

get to be recognised in its being a central component of other rights<sup>(248)</sup>. For the purpose of our research, we will therefore identify freedom from fear as a freedom of the individual from the fear that his rights will be violated, in a way that is therefore reminding of the one envisaged by Roosevelt<sup>(249)</sup>.

#### **4. The current status of the human right to security of the person under international law**

The absence of an explicit reference to a right to freedom from fear in human rights instruments<sup>(250)</sup> is unfortunate and ignores the said importance of the dimension of fear in the enjoyment of other rights. Practically speaking, if one only takes into consideration the list of rights set forth in the *Universal Declaration of Human Rights* of 1948, it becomes quite evident that the possibility for people to enjoy all the rights in it contained depends on the possibility of threats of violation and not only on direct transgression of such rights. This means that if people fear that one of their rights might be violated, then it is just as that specific right was not positively experienced by them, since fear prevents them from completely enjoying that right. Legally speaking the right still exists, but people do not feel as if it did<sup>(251)</sup>.

The security of individuals from violence, as well as from the threat of violence of their rights, despite being of essential importance for the individual to both enjoy his own rights

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<sup>248</sup> *Ibid.* The author holds this on the basis that “[f]ear is a socially pervasive human emotion”. In his essay he thus argues that “the most significant impact on personal freedom occurs through the mechanism of fear, rather than through actual direct interference with such freedom”. He then explains this reasoning with a practical example, stating that since social systems (including governmental ones like states) cannot rely on physical restraint alone to enforce rules on people due to lack of sufficient resources, then “[t]he most effective, indeed the most common, form of interference with freedom arises from the self-imposed restraint on behaviour because of the threat of adverse consequences if the behaviour is engaged in”. We will return on this particular conceptualization in the next chapter, while proposing our own model for assessing human security.

<sup>249</sup> SIMPSON, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention*, Oxford, Oxford University Press, 2001, 172-173.

<sup>250</sup> SAUL, *Defining Terrorism in International Law*, Oxford, Oxford University Press, 2006, 29. The one context in which freedom from fear finds overt recognition is that of refugees. The 1951 Convention Relating to the Status of Refugees indeed makes a clear separation between a person who is “unable” to return to his country and one who is “unwilling” to do so due to a “well-founded fear of persecution” carried out on the basis of race, nationality, religion and membership of a specific social or political group (see *Refugee Convention*, Chapter I, Art. 1(2)).

<sup>251</sup> SPIGELMAN, *op.cit.*, 546.

and let the others enjoy theirs as well, has unfortunately been generally overlooked by human rights discourse. The same rights to security of the person is probably one of the least developed among all the human rights guaranteed by international conventions on the matter<sup>(252)</sup>. And, in any case, when advanced, it has usually been reduced to a right to security from physical threats subsumed under the general right to “liberty and security” of the person<sup>(253)</sup>.

This results clear when it comes to analysing basic treaties on the matter, such as the texts of the abovementioned ICCPR, the 1948 Universal Declaration of Human Rights, and the 1950 European Convention. Before beginning our analysis, it is worth specifying that, in the present paragraph, when making reference to the “person” as the object of a right to security, we actually mean “individual” as being subjects of that specific right. “Person” and “individual” will therefore here be used as synonyms, following the line of the human rights instruments that we are going to address, where reference is generally made to a right to “security of the person”, specifically meaning a right directed to individual human beings.

First of all, it can be said that the ICCPR indirectly admits a general right to protection from violence for individuals in two forms: under the general right to life and under the ban on torture and cruel, inhumane or degrading treatment. However, other human rights treaties and declarations contain more specific provisions on the matter. For example, the Universal Declaration of 1948, the one that inspired the drafting of the ICCPR, at Article 3 contains a provision on the protection of the right to life, liberty and security of the human person<sup>(254)</sup> that has been re-structured when incorporated in the text of the ICCPR. In fact, here the original content of Article 3 of the Declaration has been split into two halves, with Article 3 dedicated specifically to the human right to life, and Article 9(1) where the right to

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<sup>252</sup> SPIGELMAN, *op.cit.*, 550. The body of literature and case law on the right to security of the person, except made for Canada and South Africa, is actually very small if compared with that on the majority of other human rights. For a general discussion on the point, see also FREDMAN, *The Positive Right to Security*, and LAZARUS, *Mapping the Right to Security*, in GOOLD-LAZARUS (eds.), *Security and Human Rights*, Oxford, Hart Publishing, 2007.

<sup>253</sup> For a discussion of the matter, see SPIGELMAN, *op.cit.*, 550-564.

<sup>254</sup> *Universal Declaration of Human Rights*, as proclaimed by the GA Res 217/A (Paris, 10 Dec. 1948).

liberty and security of the person was set out as a single expression<sup>(255)</sup>. This separation actually follows the same line of the European Convention of 1950, where the right to life is recognised in Article 2, whereas the single “right to liberty and security of person” is set at article 5<sup>(256)</sup>. The problem is, however, that both Article 9(1) of the ICCPR and Article 5 of the European Convention then elaborate in detail only the right to liberty of the person, with specific provisions on lawful arrest and detention. On the contrary, in these articles the right to security of the person receives no specification at all<sup>(257)</sup>.

Related commentary and case law of a number of jurisdictions seems to follow the same interpretative line. As far as Europe is concerned, the right to security has indeed generally been interpreted as having no operational independence from the related right to liberty set forth in Article 5 of the European Convention<sup>(258)</sup>. This is basically due to what we have already pointed out. Indeed, despite the initial phrase of the article, in which the rights to security and liberty appear to be presented as separated, the reminder then focuses only on deprivation of liberty through detention<sup>(259)</sup>. This has been confirmed by case law related to the same article of the European Convention<sup>(260)</sup>. Attempts at trying to separate the right to security of person from the issue of deprivation of liberty have indeed failed. The European

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<sup>255</sup> The text of Article 9(1) of the Covenant indeed opens reading that “[e]veryone has the right to liberty and security of person”.

<sup>256</sup> *European Convention for the Protection of Human Rights and Fundamental Freedoms* (Rome, 4 Nov. 1950).

<sup>257</sup> After the introductory provision that we already mentioned (*supra*, note 101), Article 9(1) of the ICCPR goes on specifying that “[n]o one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”. The focus on arrest and detention in particular is even more clear in the long list of prescriptions contained in Article 5 on the 1950 European Convention. Here the text indeed opens with the same statement that “[e]veryone has the right to liberty and security of person”, but then switches the focus to liberty alone, specifying that “[n]o one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law”. The “following cases” are all illustrated in the sub-sections to Article 5 of the Convention.

<sup>258</sup> On this see, generally, POWELL, *The Right to Security of Person in European Court of Human Rights Jurisprudence*, 6 *European Human Rights Law Review* (2007), 649; NOVAK, *UN Covenant on Civil and Political Rights: CCPR Commentary*, Kehl am Rhein, NP Engel Publishers, Second edn., 2005, 214; CLAYTON-TOMLINSON (eds.), *The Law of Human Rights*, Oxford, Oxford University Press, Second edn., 2009, 628. For relevant case law see, for example, *East African Asians v United Kingdom* (1981), 3 EHRR 76 (hereafter “*East African Asians*”); *Bozano v France* (1986), 9 EHRR 297. Clayton and Tomlinson in particular note that only in one case has the “security of person” been interpreted as having independent content, namely in *Kamma v Netherlands* (1974), 18 YB 300.

<sup>259</sup> See *East African Asians*, *ibid.*, 220-221.

<sup>260</sup> On this see *East African Asians*, *ibid.*, 222; *Kurt v Turkey* (1999), 27 EHRR 373, 122 (hereafter “*Kurt v Turkey*”); *X v United Kingdom* (1981), 4 EHRR 188, 43; *Mentes v Turkey* (1997), 26 EHRR 595.

position on the matter can be grasped by looking at the Council of Europe's *Implementation Guide to Article 5*, which affirms that

[t]he "right to liberty and security" is a *unique right*, as the expression has to be read as a whole. "Security of person" must be understood in the context of physical liberty and cannot be interpreted as referring to different matters (such as a duty on the state to give someone personal protection from an attack by others, or right to social security)<sup>(261)</sup>.

This basically means that European case law until now has not been willing to recognise the existence of a positive right to security of the person. The imposition of positive obligations on states has indeed been limited to the cases concerned with the "other half" of Article 5, namely to cases related to arbitrary detention and deprivation of liberty of people<sup>(262)</sup>. European commentary as well has refused to accord the right to personal security any substantive content, on the basis that recognising the existence of a positive right to security of the person in some context could possibly cause state action to enter into conflict with other rights when implementing the norm. This risk of imposing on states an unqualified duty not to ignore their security responsibilities and at the same time a responsibility to protect individual citizens from violations of such a right has therefore generally been identified as the main cause for the European Court's reluctance on the matter<sup>(263)</sup>. This particularly given the fact that, in the past, instances of state action in protection of the security of citizens have very often been exploited as official excuses to

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<sup>261</sup> MACOVEL, *Human Rights Handbook No. 5: The Right to Liberty and Security of the Person: A Guide to the Implementation of Article 5 of the European Convention on Human Rights*, Council of Europe, 2004, 6 (emphasis added). This lack of an explicit duty for the state to guarantee personal protection from attacks to the citizen is also emphasized by Clayton and Tomlinson, *supra* note 258, 628-629.

<sup>262</sup> This indeed happened with several cases of individuals arrested in Turkey and then disappeared. In those cases, the European case law generally reminded states of their positive obligation to take preventive measures on the matter and ascertain the existence of possible violations of Article 5 of the European Convention. See *Kurt v Turkey*, *supra* note 260.

<sup>263</sup> POWELL, *op.cit.*, 8-9.

cover violations of other human rights under the alleged banner of humanitarian interventions<sup>(264)</sup>.

These conclusions have obviously been subjected to criticism<sup>(265)</sup>. Moreover, although this line of thought is actually followed in a number of jurisdictions<sup>(266)</sup>, there still are some exceptions, as well as specifications, to be made. The first of these exceptions to the general rule is represented by practice from the Human Rights Committee under the ICCPR. In this context, it is actually possible to identify some cases in which the right to security of the person has surprisingly found separate application from the right to liberty contained in the aforementioned Article 9 of the ICCPR. As a matter of fact, it must be bore in mind that the articles of the ICCPR are basically a binding transcription of part of the content of the previous Universal Declaration of Human Rights of 1948. Moreover, as already said, the Preamble to the ICCPR explicitly makes reference to freedom from fear. All this means that, despite the fact that the provision on “life, liberty and security of the person” contained in Article 3 of the Declaration was split in two in the following ICCPR, there is no actual reason to conclude that the merging of the right to security of the person with that of liberty in Article 9 was made to deprive the former of its status of independent right and of the original substantive content that it had in Article 3 of the Declaration<sup>(267)</sup>.

This interpretation is actually supported by declarations of the Committee itself. In a case concerning a Colombian applicant that had been victim of death threats and subsequently attacked, the Committee held that Article 9(1) of the ICCPR had been violated due to the state not acting in protection of the safety of the person in question. In this respect the Committee indeed held that

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<sup>264</sup> SPIGELMAN, *op.cit.*, 552.

<sup>265</sup> See VAN DIJK-VAN HOOFF-VAN RIJN-ZWAAK (eds.), *Theory and Practice of the European Convention on Human Rights*, Mortsel, Intersentia, Fourth edn., 2006, 457.

<sup>266</sup> In the US, for example, the Fourth Amendment to the 1971 United States Bill of Rights reads that: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated”. In this case, therefore, the scope of the right to security of the person is, if possible, even more limited than in the European case, since it is specifically directed only against “unreasonable searches and seizures”. Consequently, US jurisprudence has come to elaborate this provision more in terms of privacy instead than security. Moreover, such as it happens with the European approach, there is no suggestion that the government might bear positive obligations to protect its citizens’ right to security. On this see RUBENFELD, *The Right of Privacy*, 102 *Harvard Law Review* (1989), 737.

<sup>267</sup> SPIGELMAN, *op.cit.*, 553.

[a]lthough in the Covenant the only reference to the right to security of person is to be found in Article 9, *there is no evidence that it was intended to narrow the concept of the right to security only to situations of formal deprivation of liberty.* (...) It cannot be the case that, as a matter of law, states can ignore known threats to the life of persons under their jurisdiction, just because he or she is not arrested or otherwise detained. State parties are under an obligation to take reasonable and appropriate steps to protect them. *An interpretation of Article 9 which would allow a state party to ignore threats to the personal security of non-detained persons within its jurisdiction would render totally ineffective the guarantees of the covenant*<sup>(268)</sup>.

In general, therefore, it can be said that, differently from European case law, practice of the Human Rights Committee recognises an independent status to the right to security of the person under Article 9 of the ICCPR. This has actually been done in a variety of cases concerning intimidation, threats of violence and persecution<sup>(269)</sup>.

The second exception is instead represented by the South African jurisprudence on the matter. In this case, the specific content of the South African Constitution is the main factor that causes this approach to hugely differ from case law of other nations. In this sense, the first important difference is that provisions of this Constitution cover not only political but also socio-economic rights. The second is that here positive obligations are imposed on the state, through the establishment of three specific duties that lie at the basis of each of the contained rights, namely a duty to respect, to promote and to protect<sup>(270)</sup>. Moreover, the duties set forth in the Bill of Rights contained in Chapter Two of the Constitution are extended horizontally, which means that they operate also in cases of disputes between

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<sup>268</sup> *Delgado Paez v Columbia*, 12 July 1990, No. 195/85, para 5(5) (emphasis added).

<sup>269</sup> See NOVAK, *op.cit.*, 215; JOSEPH-SCHULTZ-CASTAN, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary*, Oxford, Oxford University Press, Second edn., 304-307. Two examples of case-law on the matter are provided by *Chongwe v Zambia* (Communication 821/1998), para 5(5); *Jayawardene v Sri Lanka* (Communication 916/2000), para 7(3). For related commentary see CONTE-DAVIDSON-BURCHILL, *Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee*, Farnham, Ashgate, Second edn., 2009, 116-117; JOSEPH-SCHULTZ-CASTAN, *ibid.*, 306.

<sup>270</sup> *Constitution of the Republic of South Africa*, as adopted on 8 May 1996 (amended on 11 Oct. 1996 by the Constitutional Assembly), Section 7(2).

private parties<sup>(271)</sup>. Finally, the explicit provision on the right to freedom and security of the person is elaborated as follows, affirming that

[e]veryone has the right to freedom and security of the person, which includes the right

- (a) not to be deprived of freedom arbitrarily or without just cause;
- (b) not to be detained without trial;
- (c) to be free from all forms of violence from either public or private sources;
- (d) not to be tortured in any way;
- (e) not to be treated or punished in a cruel, inhuman or degrading way<sup>(272)</sup>.

As it can be seen, the South African Convention contains specific obligations regarding freedom from violence (section 12(1)(c)), as well as on the ban on torture and on cruel, inhuman or degrading treatment, therefore placing those rights within the context of the right to security of the person, contrarily to other human rights instruments that generally tend to classify all of those as separate rights. The emphasis that is here put on the issue of protection from violence is probably due to the writers of the South African Constitution dismissing the conceptual basis of the European approach, whose reference to the security of the person basically added nothing to the better-developed specifications instead annexed to the right to liberty<sup>(273)</sup>. On the contrary, the provisions set forth in the South African Bill of Rights are directed towards protecting in particular (although not only) the physical integrity of individuals against arbitrary arrest, torture, cruel treatment, punishment and violence in general<sup>(274)</sup>. Moreover, as already said, the aforementioned Article 12 explicitly imposes positive obligations on states (as well as provisions to bind non-state actors) to respect, promote and protect the rights contained in the Constitution. It has thus been argued that section 12(1)(c) in particular

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<sup>271</sup> *Constitution of the Republic of South Africa*, Section 8(2).

<sup>272</sup> *Constitution of the Republic of South Africa*, Section 12(1). The following section 12(2) instead contains detailed provisions on bodily and psychological integrity.

<sup>273</sup> SPIGELMAN, *op.cit.*, 556.

<sup>274</sup> See CURRIE-DE WAAL, *The Bill of Rights Handbook*, Cape Town, JUTA and Company Ltd., Fifth edn., 2005, 293.

imposes two conflicting obligations on the state. The right to freedom from state violence protects individuals from police use of an unconstitutional degree of force. At the same time, the right to freedom from private violence imposes an obligation on the state to use violent means where necessary to quell or discourage violent acts by individuals that may threaten the physical security of others<sup>(275)</sup>.

The conflicting nature of this type of dual provision is one of the reasons why the approach is not shared everywhere, as we have seen when considering the European Convention and related case law. This general reluctance is also due to the fact that the obligations that are imposed on states by international human rights instruments vary depending on the single instrument that is taken into account. Many treaties do not entail explicit obligations for states to protect citizens from abuses of the rights by non-state actors. However, there is at the same time a relevant number of treaties and covenants that contain provisions binding states to respect rights as well as to safeguard them by actively working to ensure protection from violations carried out by both state and non-state actors. The effectiveness of this type of provisions nonetheless depends on the following transposition of duties in the domestic legislation of each state, that is obviously subjected to a case-by-case interpretation of the original text of international treaties. Generally, it is constitutional or statutory bills of rights which reproduce provisions of international human rights instruments. The process, however, is not smooth, since issues often arise when it comes to enforcing newly acquired norms at the domestic level<sup>(276)</sup>.

Indeed, whether or not the new domestic provisions get to impose positive obligations on states or even on actors other than the government itself, depends on how the duties in question have been transposed internally. In this sense, the South African Constitution is an example of legal instrument that binds state to positively act to ensure the respect of the contained rights even by part of non-state actors. Other jurisdictions, on the contrary, lack the type of explicit provisions imposing a duty to take action to enforce rights that are

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<sup>275</sup> CURRIE-DE WAAL, *op.cit.*, 304.

<sup>276</sup> SPIGELMAN, *op.cit.*, 559-560.

instead contained in the said Article 12 of the South African Bill of Rights. For this reason, under those circumstances, case law generally tends not to recognise the imposition of positive obligations on states to act via non-specific legal instruments<sup>(277)</sup>. As we have seen, European case law is exemplificative in this sense.

However, academic commentary in particular has recently been trying to deduce positive obligations even from negatively stated obligations. The paradox is that this tendency seems actually to be followed even in practice especially in Europe, where the European Court of Human Rights in some cases has ruled that the state has a positive duty to protect its citizens from non-state actors, even if the said “negatively stated obligations” concerning human rights protection are expressed as if being directed only towards the state<sup>(278)</sup>. This, in particular, has generally been done in relation to the ban on torture and degrading treatment<sup>(279)</sup>, as well as to that on slavery<sup>(280)</sup>.

In other jurisdictions, the interpretation of “negatively stated obligations” has been slightly different and less directed towards the “positive” side. In Canada, for example, the Supreme Court has avoided imposing positive responsibilities on the state, given that the Canadian Charter of Rights and Freedoms contains no explicit obligation to positively guarantee the rights contained<sup>(281)</sup>. The same is for the UK Human Rights Act, which features no provision explicitly imposing positive duties on the state. The only specification on the matter can be found in section 6, with regard to a limit for public authorities not to

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<sup>277</sup> SPIGELMAN, *op.cit.*, 561.

<sup>278</sup> See generally MOWBRAY, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights*, Oxford, Hart Publishing, 2004; VAN DIJK-VAN HOOFF-VAN RIJN-ZWAAK (eds.), *op.cit.*; FELDMAN, *Civil Liberties and Human Rights in England and Wales*, Oxford, Oxford University Press, Second edn., 2002, 53-55.

<sup>279</sup> FELDMAN, *op.cit.*, 257-266. For related case law see also *MC v Bulgaria* (2005), 40 EHRR 20, 148-153.

<sup>280</sup> See *Siliadin v France* (2005), 43 EHRR 16. To the general cases here mentioned, the case involving disappearances of people in Turkey (see *Kurt v Turkey*, *supra* note 260) can be added, since in that occasion the Court ruled that the state had the obligation to take preventive measures as well as investigating the disappearances.

<sup>281</sup> See HIRSCHL, “Negative” Rights v “Positive” Entitlements: A Comparative Study of Judicial Interpretations of Rights in an Emerging Neo-Liberal Economic Order, 22 *Human Rights Quarterly* (2000), 1060 ff. The only case that saw a court imposing on the state an obligation to guarantee legal aid for parents concerned child protection for suspected violation of rights under section 7 of the Canadian Charter (the one featuring provisions on the right to life, liberty and security of the person). See *New Brunswick (Minister of Health and Community Service) v G (J)* (1999), 3 SCR 46. In this specific case, however, the court ruled not on the basis of an alleged duty of protection but instead in support of a duty to facilitate access to justice. On this see also POWELL, *op.cit.*, 114.

act in a way that is discordant with the rights of the Convention, a provision which is adopted in some Australian jurisdictions as well, and was also suggested in a Report by the National Human Rights Consultation<sup>(282)</sup>.

At international level, the doctrine of the Responsibility to Protect that we mentioned in Chapter One of the present work has been advanced on the basis that state sovereignty entails not only power and control but also responsibility<sup>(283)</sup>. Indeed, the original text of the report issued by the International Commission on Intervention and State Sovereignty (ICISS) in December 2001 urged states to take steps for the protection of “the safety and lives of citizens and promotion of their welfare”<sup>(284)</sup>. What is deemed essential, according to this new paradigm, is therefore “for people to be secure, not just for territories within borders to be secure against external aggression”<sup>(285)</sup>. The corollary of this assumption is therefore that whenever a state fails to guarantee its citizens’ security – or, in alternative, it voluntarily refuses to do so – the said responsibility is transferred to the international community of states as a whole<sup>(286)</sup>.

Although the concept itself, as well as the work of the Commission that produced it, is actually the result of a more specific debate on the “dilemmas posed by humanitarian crisis where intervention to protect human lives and the sanctity of state sovereignty are in conflict”<sup>(287)</sup>, the R2P doctrine has nonetheless increasingly been subject to both

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<sup>282</sup> On this see, for instance, section 38 of the *Charter of Human Rights and Responsibilities*, approved in 2006 with an Act of Parliament of the Australian state of Victoria. This document operates in a way that is close to that of the Canadian Bill of Rights and is designed to protect and promote a list of rights that mostly stem from those contained in the ICCPR. See also section 40B of the *Human Rights Act* passed in 2004 by the Australian Capital Territory Legislative Assembly in recognition of a series of fundamental human rights of individuals. Finally, see the 2009 *National Human Rights Consultation Report* from the National Human Rights Consultation Committee, 331-332.

<sup>283</sup> HAMILTON, *The Responsibility to Protect: From Document to Doctrine – But what of Implementation?*, 19 *Harvard Human Rights Journal* (2006), 289-290.

<sup>284</sup> International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Dec. 2001).

<sup>285</sup> See Commission on Human Security, *Human Security now* (New York, 2003), 6.

<sup>286</sup> International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Dec. 2001), xi.

<sup>287</sup> PACE-DELLER, *Preventing Future Genocides: An International Responsibility to Protect*, 36 *World Order* (2005), 18.

misapplications<sup>(288)</sup> and reinterpretations<sup>(289)</sup> of its original meaning, up to the point that its efficiency as operational framework for the protection of human lives seems to be compromised, or, at least, debatable. Moreover, since the R2P was originally designed as systematic solution to the problematics posed by armed humanitarian interventions, the criteria set forth in the first Report are inevitably context-biased. This means that, although the promotion of human security is presented as an objective of the whole framework, the operational scope of the notion is actually limited to the managing of acceptable conditions for military interventions in defence of such security<sup>(290)</sup>. What is more, when in 2005 the doctrine was endorsed by the UN General Assembly through its Outcome Document, states that committed themselves to the principles of R2P did so specifically agreeing that “[e]ach individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity”<sup>(291)</sup>. The focus of the doctrine is therefore limited to this particular set of mass atrocity crimes, so that it has often been interpreted as a practical elaboration of the ban on torture and on cruel and inhumane or degrading

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<sup>288</sup> The Libyan case is a perfect example in this sense. In fact, it can be said that “[t]he Libya intervention of 2011 marked the first time in history that the UN Security Council invoked the “responsibility to Protect” principle (RtoP) to authorize use of force by UN member states”. Although “not explicitly referring to the international community’s responsibility to protect civilians when a state is unwilling or unable to do so itself, the Security Council implicitly invoked it in authorizing member states, pursuant to Chapter VII, “to take all necessary measures (...) to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya” [UNSC Res. 1973 of 17 Mar. 2011, para 4]”. See POWELL, *Libya: A Multilateral Constitutional Moment?*, 106 *AJIL* (April 2012), 245). Despite the fact that the following military intervention by Western states had been authorised by the UNSC, it nonetheless ended up being highly debated, with claims of wrongful application of the R2P principles beginning to emerge in particular among states such as China and Russia. It has indeed been argued that “opponents of R2P, the implementing forces, and those against the intervention in Libya have argued that R2P was, in effect, a fig-leaf for an illegal violation of national sovereignty, whose motives were primarily commercial and strategic in nature, not humanitarian”. See CHORIN, *NATO’s Libya Intervention and the Continued Case for a “Responsibility to Rebuild”*, 31 *B.U.Int.l L.J.* (2013), 367.

<sup>289</sup> See *infra* note 292, 293.

<sup>290</sup> The R2P doctrine actually was conceived in the 2009 Report issued by UN Secretary-General Ban Ki-moon as resting on three equally weighted pillars. The first one, described by Ban Ki-moon as the “bedrock” of R2P indeed theorised the basic responsibility of every state to protect its citizens’ lives from mass-atrocities and crimes against humanity. The second pillar then specified that the international community has the task of assisting the state to fulfil this responsibility to protect. However, when the state manifestly fails to do so, Pillar Three intervenes by allowing for the international community to take “timely and decisive action through peaceful diplomatic and humanitarian means and, if that fails, other more forceful means in a manner consistent with Chapters VI (peaceful measures), VII (enforcement measures) and VIII (regional arrangements) of the UN Charter”. See *Report of the Secretary General: Implementing the Responsibility to Protect*, A/63/677 (12 Jan. 2009), para 11 (a, b, c).

<sup>291</sup> GA Res. 60/1, *UN World Summit Outcome Document* (2005), para 138.

treatment as well as of the provision on protection of the right to life that can be found in many international treaties<sup>(292)</sup>.

At some point, the attempt has been made to interpret this doctrine as entailing a responsibility for states to protect citizens from human rights abuses even if carried out by non-state actors<sup>(293)</sup>. However, as we can infer from the present analysis, a general right to protection from any possible form of violence for people is yet to be established internationally. What already exists is basically a set of separate instruments such as those that have been mentioned in this paragraph, namely the human-related provisions in treaties concerning the ban on torture and cruel or inhuman treatment, as well as the anti-genocide convention, the European Convention, the ICCPR and ICSECR, the R2P doctrine, and the seemingly ambiguous right to security of the person. Moreover, we have seen how the latter, in particular, has progressively been reinterpreted as if assimilated to the human right to liberty. As a consequence, it can be stated the Enlightenment idea of security as a standing right that all individuals should be entitled to has largely been lost<sup>(294)</sup>.

Aside from this, there is nonetheless another important trait of the Enlightenment conception of security that over the centuries has been left behind, namely the idea of security as being linked not simply to a physical dimension (as it now happens with the aforesaid provisions on detention and arbitrary arrest), but also to a more slightly psychological one specifically related to the importance of the role played by fear and perceptions of security in the enjoyment of rights by people.

Overall, the main problem seems therefore to reside on security of the person being generally dismissed (even in those cases when this slightly elusive right happens to obtain some written codification) as a mere “physical” issue, generally related to the threat and perpetration of physical violence towards the individual. In alternative, the psychological dimension of security in general has recently been affirmed, particularly in case law of

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<sup>292</sup> SPIGELMAN, *op.cit.*, 562.

<sup>293</sup> MZIKENGE CHIRWA, *The Doctrine of State Responsibility as a Potential Means of Holding Private Actors Accountable for Human Rights*, 5 *Melbourne Journal of International Law* (2004), 1.

<sup>294</sup> See BILGIN, *op.cit.*, 203, arguing that “[a]lthough, in its early origins, the state was conceived as an instrument for producing security for its citizens, it became the subject of security with the establishment and retrenchment of the state-system”.

regional courts on human rights in relation to cases of violence against women or other types of psyche-related abuses<sup>(295)</sup>. However, as we stated in the beginning of the paragraph, there seems not to be enough focus on the fundamental role played by an important psychologically-related variable of security, that is, the dimension of fear and its related freedom, intended as freedom from the fear that one's rights will be subjected to possible violation. From this perspective, the whole discourse on violence (both physical and psychological) should therefore take more into account how the possibility of violence towards people's rights may as much affect the way people perceive their own security.

In other words, although it is unlikely that the freedom from fear will ever get to be codified as an autonomous right (also due to its inner elusiveness, that is showed by the amount of debate it still generates<sup>(296)</sup>), the dimension of fear should at least be given more consideration in general security discourse, as an integrative dimension of all the rights and norms that are established by men. This exactly on the basis that, even if a right is codified and officially existing within the legal system (or the system of rules) of a specific social context, this eventually comes to be irrelevant if the said right is actually then not made respected nor guaranteed to people. In other words, the right is there, but people do not perceive as having it. This particular aspect will actually constitute one of the basis for the creation of our own model for the evaluation of human security in the following chapter.

## **5. Security as a human phenomenon**

Article 39 of the UN Charter reads that “[t]he 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 (...) to maintain or restore

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<sup>295</sup> The same Bill of Rights contained in the South-African Constitution, which we previously addressed in this paragraph, in Section 12(2) explicitly contains detailed provisions related to bodily as well as psychological integrity of individuals. A state whose case law has over the last decades repeatedly emphasized the psychological dimension of security of the individual is, in this sense, Canada. On this see, for example, *Mills v The Queen* (1986), 1 SCR 863, at 920; *R v O'Connor* (1995), 4 SCR 411, at 111; *Chaoulli v Quebec (Attorney General)* (2005), 1 SCR 791, at 41, 116-119, 123, 205.

<sup>296</sup> The academic debate surrounding the concept of freedom from fear (as well as its counterpart, that is, freedom from want) will be addressed in Chapter 2 below.

international peace and *security*"<sup>(297)</sup>. The measures that might be endorsed to comply with such an objective are then listed in Articles 41 and 42, respectively concerned with measures not involving the use of armed force on the one side, and armed "operations by air, sea, or land forces of Members of the United Nations on the other"<sup>(298)</sup>.

The security framework envisaged in Chapter VII of the UN Charter, however, is largely military-biased. In fact, when in the past the Security Council happened to acknowledge the existence of a "threat to international peace and security", it did so mainly on the basis that the issue in question could destabilise the balance in the international system protected by the Charter. This was done in a number of occasions to even allow military intervention for alleged humanitarian purposes in states where gross violations of human rights were taking place<sup>(299)</sup>, or to stop unlawful acts of aggression by states<sup>(300)</sup>, or else to impose sanctions on states that had repeatedly refused to comply with important international law provisions<sup>(301)</sup>. Resolutions of this kind have generally been directed towards nation-states. However, recently the Security Council has started to undertake such type of declarations and measures also against non-state actors, for example in the context of the war against the rising threat posed by the Islamic State<sup>(302)</sup>.

This operational pattern has nonetheless proved to be problematic in many senses. First of all, the said mechanism implicitly caused the creation of a direct link with what we described as the "traditional" view of security, in the sense that being the UN Charter a treaty signed by states and binding upon states, the immediate referent objects of the

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<sup>297</sup> UN Charter (1945), Chapter VII, Art. 39 (emphasis added).

<sup>298</sup> UN Charter (1945), Chapter VII, Art. 42.

<sup>299</sup> This has recently happened in Libya, see *supra* note 288.

<sup>300</sup> An instance of such type of resolution can be found in Resolution 678, adopted by the UNSC within the context of the Iraqi invasion of Kuwait in the 1990s. In this case, the text of the resolution actually allowed Member States of the UN to use "all necessary means" to implement the requirements contained in the previous Resolution 660, to ensure the withdrawal of Iraqi forces from Kuwait and the restoration of international peace and security.

<sup>301</sup> On this see, for example, Security Council imposes Fresh Sanctions on Democratic People's Republic of Korea, Unanimously Adopting Resolution 2270 (2016), Un Meetings Coverage and Press Release, SC/12267 (2 Mar. 2016), available online at <<http://www.un.org/press/en/2016/sc12267.doc.htm>> (last accessed on 11 June 2016).

<sup>302</sup> See, for example, Security Council "Unequivocally" Condemns ISIL Terrorist Attacks, Unanimously Adopting Text that Determines Extremist Group Poses "Unprecedented" Threat, 7565th Meeting (PM), SC/12132 (20 Nov. 2015), available online at <<http://www.un.org/press/en/2015/sc12132.doc.htm>> (last accessed on 11 June 2016).

security framework that is envisaged in the document are states themselves, more than people. Furthermore, the provision contained in Article 39 has too often be used in cases involving alleged military threats to be countered by military means, so that, as we already said, the content of the UN framework on security appears to be – at least in operational terms – quite biased militarily speaking.

What is more problematic is that in many cases, even if actions or military interventions were declared as being undertaken in the name of humanitarian purposes, these were in reality hiding way more concrete policy objectives, a phenomenon that is at the same time linkable to the very problem of discretion, or discretionality<sup>(303)</sup>. Self-interest has very often been said to be what mainly drives states' decisions in foreign policy issues, which is obviously not true in absolute terms but still happens quite more often than it should. In the context of humanitarian crises, for example, many times important UNSC resolution that were bound to offer support to people in peril have been shut down due to the battle of veto powers within the Council itself, with states that refused to pass a resolution due to its potential for hindering their geostrategic interests in specific conflict areas<sup>(304)</sup>.

The result is that, practically speaking, some issues thus happen to be securitized through UNSC resolutions whereas other do not, so that a questionable discrepancy is generated: on which basis does an event in one part of the world get to acquire the status of “crisis” whereas another is destined to remain marginalised or even ignored, politically speaking? On this point, it has actually been held that “discretionality is hardly distinguishable from arbitrary power”, and that, even if freedom of choice may sometimes appear as a wise

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<sup>303</sup> See BELLAMY-WHEELER, *op.cit.*, 514-515.

<sup>304</sup> This problem is actually intrinsic to the very mechanism at the basis of the voting system of the UNSC itself, that, giving permanent members veto power, actually allows them to reject a resolution every time they perceive that some vital national interests are at risk. This happened, for example, in 2013 in the context of the Syrian crisis with the failed attempt at implementing R2P to foster a humanitarian intervention in the country, causing some authors to conclude that, due to this mechanism, also “the implementation of R2P will inevitably [always] be selective”. See PATRICK, *Does Syria Mean the End of the Responsibility to Protect?* (13 June 2013), available online at

<<http://www.theatlantic.com/international/archive/2013/06/does-syria-mean-the-end-of-the-responsibility-to-protect/276866/>> (last accessed on 11 June 2016).

solution in some decision-making procedures, “[r]easonable arbitrariness [actually] is not rational law enforcement”<sup>(305)</sup>.

On this basis, it is therefore difficult to think of the UNSC as a neutral and fair judge of what security should be defined as. At the same time, it is impossible to confer upon such UNSC resolutions the status of primary source of indirect definitions of security, given that, despite their actually being enforced as third-grade sources of law, they still count as political decisions taken by political actors that, while acting in behalf of the maintenance of “international peace and security” according to the provisions of the Charter, inevitably still try to keep their interests intact in doing so.

As we have seen, a clear definition of security still does not exist, nor does a universally recognised norm or treaty on it. In fact, the Security Council has until now taken its decisions on the basis of no universally recognised definition of security, but instead of a framework that was elaborated more than fifty years ago under post-war circumstances that today clearly appear historically biased. UNSC resolutions alone, therefore, cannot be considered an objective and exhaustive source for grasping the complexity of the security phenomenon. If so, however, how should this conceptual puzzle that we call “security” be conceived?

According to the reconstruction that we conducted in this chapter, it seems that security could be portrayed as some kind of social necessity, i.e., a necessity that is inherent in the nature of human beings<sup>(306)</sup> and possibly even inspired the very constitution of what we today refer to as “nation-states”. Back in the XVII century, security was indeed portrayed by Hobbes as the founding reason for the establishment by men of the social contract that gives birth to the state, or, in his words, the Leviathan. In his work, Hobbes maintains that “as long as this natural right of every man to every thing endureth, there can be no security to any man”<sup>(307)</sup>. For this reason, the main motive a man should renounce what Hobbes

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<sup>305</sup> VERNENGO, *The Enforcement of Morality and Law from a Logical Point of View*, in KOCH-NEUMANN (eds.), *Legal System and Practical Reason*, Franz Steiner Verlag, 1994, 245.

<sup>306</sup> An interesting theory on this, although more directly linked to psychological studies, is represented by Maslow’s theorization of the hierarchy of needs, addressed by HEYLIGHN, *A Cognitive-Systemic Reconstruction of Maslow’s Theory of Self-Actualization*, in *37 Behavioral Science* (1992), 39-57.

<sup>307</sup> HOBBS, *Leviathan or the Matter, Form and Power of a Common-Wealth Ecclesiasticall and Civill.*, London, 1651, 80.

defines “a man’s right to anything”, that is, the right to do as he pleases and that, in his opinion, lies at the origin of the condition of perpetual war in the state of nature, “is nothing else but the security of a man’s person, in his life, and in the means of so preserving life as not to be weary of it”<sup>(308)</sup>.

According to general social contract theory thought, in fact, humans constituted states so as to feel secure from the external harsh environment where the law of *homo homini lupus* did not guarantee an equitable level of security. Afterwards, the compound of treaties and norms that have been created throughout the centuries up to the present time – as well as the constitution of the system of international law itself – can be seen to respond to this very necessity of covering all possible fields of uncertainty and struggling to guarantee the progressive achievement of security in any sphere possibly related to the human.

This conceptualization of security as a necessity of man is nonetheless two-sided. First, it is human-oriented in the sense that we already explored in this first two chapters while explaining the “human revival” in academic and policy debate from the 1990s onwards. In this sense, the post-Napoleonic focus on security as a matter pertaining only to states can be considered as some kind of deviation from the original sense of the concept itself as one of the basic components of human life. It is true that after the 1648 Peace Treaties of Westphalia and Osnabruck in particular, sovereign rule and territoriality started to become bound to the extent that their preservation happened to become the essential objective of modern statehood and government<sup>(309)</sup>. However, we also know that international law conceives the state as an aggregate constituted not only by sovereignty and territory but also by its people<sup>(310)</sup>, that – according to the abovementioned social contract theories – are those who eventually created it by giving up some freedoms in turn of the guarantee for greater protection and security for their lives. And despite the general prevalence of the Westphalian idea of sovereignty and security as matters pertaining only to states, concerns about the human have never really vanished, which is demonstrated by the

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<sup>308</sup> HOBBS, *op.cit.*, 82

<sup>309</sup> MCGREW, *Globalization and Global Politics*, in BAYLIS-SMITH-OWENS (eds.), *The Globalization of World Politics*, Fifth ed., Oxford, Oxford University Press, 2009, 24.

<sup>310</sup> Both international jurisprudence and commentary actually conceive the state as constituted by the triad of government-people-territory. On this see, generally, FOCARELLI, *op.cit.*, 22-29.

abovementioned revitalization of humanitarian claims that started to emerge just after World War II and then exploded in the 1990s.

This nonetheless brings us to reflect upon a second aforementioned remark. If it is men themselves who established the institution of the state for the said reasons and then engaged themselves in the progressive construction of a puzzle of norms that nowadays still stands as an unfinished work in constant mutation, this means that security does not exist in itself. Security is instead a social fact, an artefact created by men, and not simply a condition that men crave to bestow upon themselves. This is actually the view that Critical Security Studies (CSS) support when considering the nature and constitution of reality itself and questioning the “traditional” (or, in other words, the realist) configuration of both security and security threats that we addressed in the first chapter of this present work<sup>(311)</sup>.

Despite the internal divergences that exist between different schools of thought within the group itself, Keith Krause stressed the importance of a number of assumptions that indeed tie the CSS group together. The most relevant to our analysis consist first, of the fact that “[p]rincipal actors (states and others) are social constructs”, and second, that “[t]he structures of world politics (...) are socially constructed”<sup>(312)</sup>. Poststructuralist theory, in particular, puts the emphasis on the fact that structures are always produced by human interaction<sup>(313)</sup>. Institutions such as sovereignty, norms of any type possible, international treaties and covenants, international organizations and the state itself, are therefore structures that have been created by men with the specific purpose of constructing and guarantee a certain – and, hopefully, increasing – level of social order, in pursuit of greater security. They are pure social facts that are basically taken for granted but in reality depend on human agreement for their very existence<sup>(314)</sup>. Hence, it is human beings themselves that

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<sup>311</sup> For an overview of CSS perspectives on the matter see, generally, MUTIMER, *op.cit.*, 67-85; AGIUS, *Social Constructivism*, in COLLINS (ed.), *Contemporary Security Studies*, Third ed., Oxford University Press, 2013, 87-103; BARNETT, *op.cit.*, 150-165; HANSEN, *Poststructuralism*, in BAYLIS-SMITH-OWENS, *The Globalization of World Politics*, Fifth ed., Oxford Press, 2009, 168-179.

<sup>312</sup> MUTIMER, *op.cit.*, 78.

<sup>313</sup> HANSEN, *op.cit.*, 169.

<sup>314</sup> BARNETT, *op.cit.*, 155.

in their everyday interactions throughout the epochs have come to construct piece by piece the puzzle that we today call “security”.

## **6. Concluding remarks**

All this being said, there still remains an important point to be made. In fact, considering security as a “human” phenomenon, i.e., a necessity that is socially constructed through the interaction of beliefs and ideas of different types of social actors, explains the reason for the never ending debate that we presented. In other words, the puzzle of security can be conceived as both a self-standing unity (that is, some kind of comprehensive “idea” or “vision” of security that dwells in each person’s mind), and at the same time as the aggregate of all the different visions, perspectives and practical realizations on the whole idea of the puzzle itself.

This actually explains why no universal and all-encompassing definition or norm on security has yet been created or agreed upon, up to the present time. As the title of Onuf’s work *The World of Our Making* (1989) suggests, the mutual constitution of agents and structures that is argued by constructivists actually explains how it is possible for different understandings of security to coexist. Actors mould the world just as much as the world shapes them; in other words, it is us who, through our actions, beliefs and interests, create the structures of the world in which we live, structures that at the same time then influence our behaviour and goals in life<sup>(315)</sup>. In light of this, our previous discussion on the importance of the role played by human perceptions in the enjoyment of people’s security and related rights acquires a whole new impact as well.

Given these reasons, any category of security – included the more “traditional” ones – could therefore logically be subsumed under a comprehensive “human security” label. In this sense, human security can easily be used to indicate the security phenomenon as a whole, instead than a particular conceptualization limited to the interest for the “humanitarian” side of security. Security would thus become “human” not because of mere a reconceptualization of the topic itself from a human-oriented perspective, but instead

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<sup>315</sup> AGIUS, *op.cit.*, 88.

because the quest for security is in itself a purely human phenomenon, a necessity that men in their realization direct towards themselves.

The complexity of the puzzle is therefore given by the fact that any actor tends to construct security in a different way, according to their beliefs, perceptions and interests, so that the pieces come to be shuffled in a way that makes it seem as the solutions possible were multiple. In reality, the puzzle is always the same, the final objective remains the same, but disaccord seems to be making the path towards its completion way trickier than it should be<sup>(316)</sup>.

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<sup>316</sup> From this point onwards, when mentioning “security” or “human security” we will refer to the said meaning of a puzzle constituted of pieces (norms, treaties, institutions and other structures or “social facts”) that are treated and considered differently according to the actor considered, a puzzle that thus becomes a pure product of men and is at the same time created and held in place by their actions and interactions, carried out in the attempt to solve it in their favour and win security for themselves.

## Chapter 3

### Going Deeper into the Security Puzzle: Structural Mechanics of the Elusive Human Security

OVERVIEW: 1. Introduction: Human security dilemmas – 2. The human security conceptualization dilemma and the human security implementation dilemma – 3. The governmentality-enforcement-absence nexus – 4. Identifying human security: The construction of the human security board – 5. Explaining the identity between human security and governmentality: The human security compass – 6. Concluding remarks

#### 1. Introduction: Human security dilemmas

As our previous analysis has shown, the absence of a clear norm or definition of security seem to stem directly from a complexity that is inherent in the puzzle itself. So far, we have clearly demonstrated the extent of the controversy that surrounds the concept of security, as well as its more recent “human” counterpart. There is basically a general lack of consensus about the meaning of the concept itself, due to the fact that its value seems to vary according to people’s ideas, culture and perceptions of reality<sup>(317)</sup>.

The attempts at finding a rigorous, common definition of security, as we have seen, have been numerous throughout the epochs, by part of different – and at times even competitive – schools of thought. As for human security, the writers of the UNDP Report that we broadly analysed similarly emphasise that, “like other fundamental concepts, such as human freedom, human security is more easily identified through its absence than its presence”<sup>(318)</sup>. This is also because “most people *instinctively* understand what security means” and thus vice versa also *perceive* the emergence of threats to their immediate security<sup>(319)</sup>.

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<sup>317</sup> Instituto Español de Estudios Estratégicos, *op.cit.*, 1.

<sup>318</sup> UNDP Report (1994), 23.

<sup>319</sup> *Ibid.* (emphasis added).

Despite this, and at the same time due to the subjectivity that is obviously inherent in people's perception of levels of security, we still face the existence of at least a couple of dilemmas regarding security that, the more time passes, the more they appear to grow unsolvable. This chapter will be dedicated to giving account of the existence first, of what we will define as a human security "conceptualization dilemma", and second, of its related counterpart, that is, the human security "implementation dilemma". Our analysis in this chapter will therefore describe the mechanisms underpinning these dilemmas which are still currently feeding the flame of the whole debate surrounding the concept itself. In the end, we will bring together all the pieces that we have so far collected, in order to construct an analytical model that will help us frame the security puzzle from a whole new and different perspective, resulting in the assessment of the presence, within a given social context and for given aggregates of actors, of either human security or human insecurity.

## **2. The human security conceptualization dilemma and the human security implementation dilemma**

The concept of security – particularly if declined in its "human" variant – still remains rather controversial in many points<sup>(320)</sup>. In fact, although many commentators have portrayed human security as representing some kind of new paradigm to be used as a guide for both academic researchers and policymakers, some criticism has been advanced to the potential usefulness of the framework itself.

First, it has been argued that human security as a concept presents the same problem of other concepts such as that of "sustainable development", that is, everyone seems to support it but no one clearly knows what it means, since an accurate (and fixed) definition for it is still lacking. One of the problems is indeed that "[e]xisting definitions of human security tend to be extraordinary expansive and vague, encompassing everything from physical security to psychological well-being", so that it is easy for critics to oppose the concept

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<sup>320</sup> On this see, for example, *UN General Assembly Thematic Debate on Human Security*, New York, 22 May 2008, available online at <<http://www.un.org/ga/president/62/ThematicDebates/humansecurity.shtml>> (last accessed on 11 June 2016). See also, KING-MURRAY, *Rethinking Human Security*, in 116 *Political Science Quarterly* (2001), 585-610; ACHARYA, *Human Security: East versus West*, in 56 *International Journal* (2001), 442-460.

arguing that it “provides policymakers with little guidance in the prioritization of competing policies goals and academics little sense of what, exactly, is to be studied”<sup>(321)</sup>.

In addition, some even consider the ambiguity of human security as an *ad hoc* characteristic that has been constituted precisely with the goal of keeping the concept under a veil of vagueness that would thus allow it to be used to address an ideally infinite number of issues and goals, expanding the margins of action on behalf of security for states, NGOs, international institutions, development agencies, and so on. As we have seen in Chapter One of the present work, when the human security trend exploded in the 1990s, this “cultivated ambiguity” was efficiently exploited as a glue slogan to hold together different perspectives, interests and goals of a coalition of “middle powers” guided by Canada, Norway, Japan, and a number of NGOs. The fact that some important results have been achieved under the banner of human security – such as the said signing of the anti-personnel landmines convention and the creation of the International Criminal Court – indeed does not eliminate the fact that the concept is still not well defined. Basically, critics of human security thus argue that – irrespective of the positive or negative outcomes – until now the concept has practically worked as an unspecified slogan for action on the behalf of political goals that vary case by case depending on the actors involved<sup>(322)</sup>.

Others have even gone so far as to warn that “the human security discourse and agenda could inadvertently undermine the international human rights regime”<sup>(323)</sup>. This has been argued on the basis that human security classifies as a useful tool only if it helps identifying “new threats to well-being, new victims of those threats, new duties of states, or new mechanisms for dealing with threats at the inter-state level”, since in those cases “it adds to the established human rights regime”. Whereas, “[w]hen it simply rephrases human rights principles (...), at best it complements human rights and at worst it undermines them”<sup>(324)</sup>. In fact, according to this view, a broad and vague concept of human security would do even more than simply overlooking the whole human rights regime. That is, it hinders “the

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<sup>321</sup> PARIS, *Human Security: Paradigm Shift or Hot Air?*, in *26 International Security* (2, 2001), 88.

<sup>322</sup> *Ibid.*

<sup>323</sup> HOWARD-HASSMANN, *Human Security: Undermining Human Rights?*, *34 Human Rights Quarterly* (1, Febr. 2012), 88.

<sup>324</sup> *Ibid.*

primacy of civil and political rights as a strategic tool for citizens to fight for their rights against their own states”<sup>(325)</sup>.

In any case, the definition given by the writers of the UNDP Report in 1994 is still considered the “most authoritative” formulation of the concept<sup>(326)</sup>, although, as we have seen, states such as Canada, Japan and Norway took advantage of it to construct different human security policies that best suited their specific interests. This theoretical mist becomes even worse when it comes to academic accounts on the concept, since the majority of works actually feature mere restatements – or, at times, even enlargements – of the list of human security issues that was originally given in the Report.

Jorge Nef, for example, proposes a scheme in five points that constructs human security as encompassing (1) personal, physical and environmental security, (2) economic security, (3) social security, meaning also “freedom from discrimination based on age, gender, ethnicity, or social status”, (4) political security, and (5) cultural security, that is, “the set of psychological orientations of society geared to preserving and enhancing the ability to control uncertainty and fear”<sup>(327)</sup>. Other writers then expand this list to include even more issues, such as psychological security, which is based on the establishment of “conditions fostering respectful, loving, and humane interpersonal relations”, and communication security, which is instead focused on the importance of “freedom and balance in information flows”<sup>(328)</sup>.

Those who have tried to avoid the messy-list approach have nonetheless elaborated definitions that still remain way too extensive. An example is the framing of human security by Caroline Thomas as the supply of “basic material needs” and the achievement of “human dignity”, which, in her opinion, also means “emancipation from oppressive power

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<sup>325</sup> HOWARD-HASSMANN, *op.cit.*, 88.

<sup>326</sup> COCKELL, *Conceptualizing Peacebuilding: Human Security and Sustainable Peace*, in PUGH (ed.) *Regeneration of War-Torn Societies*, London, Mcmillan, 2000, 21.

<sup>327</sup> NEF, *Human Security and Mutual Vulnerability: The Global Political Economy of Development and Underdevelopment*, IDRC Books, Second ed., 1999, 25.

<sup>328</sup> REED-TEHRANIAN, *Evolving Security Regimes*, in TEHRANIAN (ed.), *Worlds Apart: Human Security and Global Governance*, New York, I.B. Tauris, 1999, 39, 47.

structures – be they global, national, or local in origin and scope”<sup>(329)</sup>. Similarly, Robert Bedesky includes under the human security banner “the totality of knowledge, technology, institutions and activities that protect, defend and preserve the biological existence of human life; and the processes which protect and perfect collective peace and prosperity to enhance human freedom”<sup>(330)</sup>.

Reading through all these alleged “definitions” of human security, where basically anything that can potentially cause a decline in human well-being is portrayed as a security threat, one is naturally brought to question whether it is really possible for the term to still retain some analytical usefulness. In other words, the perception that may emerge from this type of narrative is that, unfortunately, when everything is prioritised, then nothing in reality is. Therefore, if all of this really correspond to human security, is there something still left out from it? How is it possible to bound these many perspectives together to create – if not a proper definition – at least a common understanding of the concept?

There actually seems to be a true dilemma on how to conceptualize security. This dilemma basically stems from the fact that the concept of security – and, in particular, its “human” variant – intrinsically needs to encompass a broad range of issues and the same time also have conceptual clarity and definition to acquire operational efficiency and be possibly deployed as a guideline for policy and research. However, the necessary equilibrium between these two components seems impossible to achieve due to the said security perception gap amongst actors struggling to achieve their security.

As a result, if priority is given to the broadening of the security agenda in order to guarantee the most extensive range of action possible, the concept ends up being accused of losing in significance and usefulness<sup>(331)</sup>. On the other hand, if a definition is attempted to

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<sup>329</sup> THOMAS, *Introduction*, in THOMAS-WILKIN (eds.), *Globalization, Human Security, and the African Experience*, Lynne Rienner Publishers, 1999, 3.

<sup>330</sup> BEDESKI, *Human Security, Knowledge, and the Evolution of the Northeast Asian State*, Centre for Global Studies, University of Victoria (8 Febr. 2000), available online at <<http://www.globalcentres.org/docs/bedeski.html>> (last accessed on 11 June 2016).

<sup>331</sup> See DEUDNEY, *The Case Against Linking Environmental Degradation and National Security*, *19 Millennium – Journal of International Studies* 19 (3, December 1990), 463, arguing that “[i]f everything that causes a decline in human wellbeing is labelled a “security threat”, the term loses any analytical usefulness and becomes a loose synonym of bad.”

be given by circumscribing both the meaning and range of action of security, the risk is that some important issues might be left out, and that, most of all, this would be done in different ways according to the actors considered on a case-by-case basis, i.e., with discretionality<sup>(332)</sup>. These are basically the main reasons why agreement on an objective conceptualization of security still seems impossible to be achieved. In other words, given that perception is something that varies according to the actor that is taken into consideration, human security as well cannot bear a fixed, once-for-all meaning.

At the same time, these are also elements which seem to trigger the existence of a second dilemma concerning human security, a dilemma related to implementation. In fact, as we have seen, there seems to be no unitary approach to security matters on which the generality of actors agrees. This is showed by the amount of contrasting theories that we addressed in the first chapter regarding the significance of security and how to realize it. The results of this theoretical divergence are then reflected in the different policies on security realised by states and other actors at any level from the sub-state to the international one.

This dilemma regarding how to implement a notion that has actually yet to find proper and unitary codification, in reality depends on the exact same variables that fuel the very existence of the aforementioned conceptualization dilemma. In other words, on perception and individuality. The human security implementation dilemma, exactly as its counterpart, is therefore related to the fact that those who create and then implement policies on security are at the same time also subjects of security, that therefore bear their own ideas, beliefs and convictions (which are always affected by their social and cultural environment) on what is to be considered legitimate, useful, acceptable, necessary, or even futile in security policy. We will return on this point in the following paragraphs.

### **3. The governmentality-enforcement-absence nexus**

According to the analysis here conducted, we can therefore easily conclude that the never-ending struggle to get to the “ultimate definition” of security is quite pointless, since the perception variable that we addressed in the previous paragraphs will always make it

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<sup>332</sup> The issue of “discretion” (or “discretionality”) has already been addressed above in Chapter 2, at para 5.

impossible to merge into a single definition the disparate visions of security from the actors of the international community. However, there seems to be a way to solve the dilemma without sticking onto struggling to get to a common definition of security. This would basically entail blending the two components that we previously analysed (that is, the role of perception in security discourse, and the importance of the dimension of fear) with what we will hereafter call the “GEA nexus”. In other words, by looking at security from a perspective of governmentality, enforcement and absence of policies.

Governmentality, in particular, is a key concept to our understanding of the security puzzle. It was first introduced by French philosopher Michel Foucault during his 1977-78 series of lectures on *Security, Territory, Population*. In fact, although in this context the word “governmentality” does not yet appear explicitly, the lectures are generally concerned with the problem of how to govern, how the process of governing unfolds and how it is rationally conceived, as well as “how to govern oneself, how to be governed, by whom should we accept to be governed, how to be the best possible governor”<sup>(333)</sup>.

In his study of power and political rationality, Foucault would soon come to conceptualize governmentality as basically “the way in which one conducts the conduct of men”<sup>(334)</sup>. In this sense, Foucault developed the concept within a specific context of research that was related to the rational political practice of government under liberalism and its more recent product, that is, neoliberalism, in a chain of reasoning that brought him to establish a paradox that conceives liberal governments as being at the same time producers, managers and organizers of freedom<sup>(335)</sup>.

The analysis made by Foucault is very specific and goes deep into tracing the mechanics that made possible the emergence of neoliberal governmentality in the XVIII century. However, what is interesting for the purpose of our research is the said conceptualization of governmentality as a process of manipulation and control of the behaviour of men. The

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<sup>333</sup> FOUCAULT, *Security, Territory, Population: Lectures at the Collège de France 1977-1978*, Basingstoke, Palgrave Macmillan, 2007, 88.

<sup>334</sup> FOUCAULT, *Birth of Biopolitics: Lectures at the College De France 1978-79 (“21 February 1979”)*, New York, Palgrave Macmillan, 2008, 186

<sup>335</sup> FOUCAULT, *Birth of Biopolitics: Lectures at the College De France 1978-79 (“14 February 1979”)*, New York, Palgrave Macmillan, 2008, 163.

neologism obviously draws upon the word “government” (or *gouverner*, in the original French phrasing) in its literal sense, which might bear different meanings. It may thus simply mean “to [physically] direct or move forward”, but also “to provide support for”, “to conduct someone” in a moral or spiritual way, or else to “impose a regimen” on someone under one’s control<sup>(336)</sup>. In other words, the reasoning made by Foucault aims at arguing that

[t]his word [that is, government,] must be allowed the very broad meaning it had in the sixteenth century. “Government” did not refer only to political structures or to the management of states; rather, it designated the way in which the *conduct* of individuals or of groups might be directed – the government of children, of souls, of communities, of the sick (...). To govern, in this sense, is to *control the possible field of action of others*<sup>(337)</sup>.

The very concept of governmentality therefore fits perfectly in Foucault’s broader research into the relation between the subject and productive power, that is, the way in which culture makes human beings subjects by constituting particular positions, beliefs and ideas as the natural ones, so that only a selected range of discourses actually becomes knowledge and is interpreted by social actors as the “truth”<sup>(338)</sup>. Scholars who have subsequently reinterpreted or broadened Foucault’s understanding of the concept, have generally tended to portray governmentality as a particular *ratio* of government based on “a set of “intellectual techniques” for rendering reality thinkable and practicable”<sup>(339)</sup>. Some scholars have then transported this assumption within a neoliberal context to argue that government informs our behaviour “by working through desires, aspirations, interests and beliefs, for

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<sup>336</sup> FOUCAULT, *Security, Territory, Population: Lectures at the Collège de France 1977-1978*, Basingstoke, Palgrave Macmillan, 2007, 121-122.

<sup>337</sup> FOUCAULT, *The Subject and Power*, in FOUCAULT (ed.), *Power: Volume 3: Essential Works of Foucault 1954-1984*, London, Penguin, 2002, 326, 341 (emphasis added).

<sup>338</sup> On this see, generally, FOUCAULT, *The Subject and Power*, in FOUCAULT (ed.), *Power: Volume 3: Essential Works of Foucault 1954-1984*, London, Penguin, 2002; HANSEN, *op.cit.*, 168-180.

<sup>339</sup> NIKOLAS, *Governing “Advanced” Liberal Democracies*, in BARRY-OSBORNE-ROSE (eds.), *Foucault and Political Reason: Liberalism, Neo-Liberalism and Rationalities of Government*, Chicago, The University of Chicago Press, 1996, 42.

definite shifting ends and with a diverse set of relatively unpredictable consequences, effects and outcomes". This argument that neoliberal government does not come as externally imposed but is instead exercised by way of organizing the freedom(s) of subject beings, basically reaffirms Foucault's aforesaid vision of liberal governments as managers of people's freedom(s).

Although the concept has been declined and interpreted in a number of different ways by Foucault himself and following scholars<sup>(340)</sup>, what is of particular interest for us is this idea of governmentality as a form of governing that is realised through the conduct (or control) of conducts of people. For the purposes of our research, however, we will draw on this very idea and then make a step forward, theorizing governmentality as an advanced form of law enforcement where people, after having been brought to becoming governors of themselves, then control their conducts with no longer the need for the government to struggle to enforce norms and policies on them. This particular form of control, or else, of rendering people governable by unconsciously making them consenting subjects of the government, is nonetheless possible only via a process of internalization of the practices of government

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<sup>340</sup> In his lectures on *Security, Territory, Population*, Foucault offers three particular understandings of governmentality to provide deep specification of the concept, stating that it may indicate first, "the ensemble formed by the *institutions, procedures, analyses, reflections, calculations and tactics* that allow the exercise of this very specific albeit complex form of power, which has as its target population, as its principal form of knowledge political economy, and as its essential technical means apparatuses of security"; second, "the tendency that, over a long period and throughout the West, has steadily led to the pre-eminence over all other forms (sovereignty, discipline and so on) of this type of power, which may be termed "government"; and third, the outcome of the process that, starting from the Middle Ages and throughout the XV and XVI centuries led the state to progressively become "governmentalized" (see *supra*, note 334, at 108). Among the examples of subsequent re-elaborations of the term, mention can be made of Hunt and Wickham definition of governmentality as "the dramatic expansion in the scope of government, featuring an increase in the number and size of the governmental calculation mechanisms" in the mid XVIII century with the development of the modern system of bureaucracies (see HUNT-WICKHAM, *Foucault and Law*, London, Pluto Press, 1994, 76). Kerr, instead, in his critique of the concept imagines governmentality as if it were a contraction of another expression which is "government rationality", or, in other words, as a way of thinking about government and governmental practice (see KERR, *Beheading the King and Enthroning the Market: A Critique of Foucauldian Governmentality*, in 63 *Science and Society* (2, 1999), 174. Dean, on the other hand, splits governmentality into "govern" and "mentality" in the attempt to reframe the concept as indicating not exclusively an instrument to be used for investigating the how of government itself, but also a means of indicating how and what people think about the way they happen to be governed. He then specifies that a complete definition of governmentality should be comprehensive of all the possible specifications offered by Foucault, and should as well not be limited to focusing only on government of the state. This means that "government" should instead be conceived in terms of any possible "conduct of conduct" (see DEAN, *Governmentality: Power and Rule in Modern Society*, London, Sage, 1999, 10).

and of resulting policies. In other words, this process entails the progressive development by social actors of a self-imposed conviction concerning the legitimacy of a given norm or policy, that thus ends up being accepted and automatically implemented.

This steps basically follows the previous necessary, partial implementation of norms and regimes due to the fear of negative consequences if a contrasting behaviour is engaged in, which we will define as “enforcement” of law and policies. A similar view is also supported by Spigelman, whose work we previously used to analyse the role played by perceptions of fear concerning security.

In this regard, Spigelman actually argues that

[t]he most significant impact on personal freedom occurs through the mechanism of *fear*, rather than through actual direct interference with such freedom. No social system, including any governmental system, can possibly operate by reliance on physical restraint or direct interference alone. This must be so by reason of the limitation on resources available to those who wish to interfere with the freedom of others. The most effective, indeed the most common, form of interference with freedom arises from the *self-imposed restraint on behaviour* because of the *threat of adverse consequences if the behaviour is engaged in*<sup>(341)</sup>.

In the case of an enforced policy, however, the perception of security, or, in other words, the level of freedom from fear, of people will logically be lower than in the case of a governmentalized – i.e., internalised – policy. This because, in the case of an enforced policy, people are compelled to obey rules not because they perceive them as legitimate, but instead because they know that they are obliged to do so by law. Therefore, the perception of people about their security from violation by others of their own rights is consequently inferior than it would be if the said freedoms and policies were genuinely applied and respected by people out of an implicit recognition of their status of norms. Henceforth, the scale of freedom from fear ranges from the highest level under a situation of governmentality and

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<sup>341</sup> SPIGELMAN, *op.cit.*, 545.

goes down through the enforcement stage until reaching the lowest level possible, that is, the absence of policies, which characterizes those fields of politics that still lack recognition or an apparatus of law to foster corresponding regulation and rights protection. This because, if a field is characterised by absence of policies, it means that a particular issue or problem does not feature a related right or norm that applies in its protection, or else, that the said right is not recognised by everyone despite its normative existence in some contexts.

This line of reasoning results clearer if looking back at our analysis – made in Chapter Two – of the role played by perception in security discourse and the following reconceptualization of freedom from fear as the freedom from the fear that one’s rights will be violated. To make things simple, this particular assumption entails that perceptions of security by individuals, that is, their convictions on the levels of freedom from fear for their person, are to be subsumed under a social variable which corresponds to the “collective” or “social” behaviour of aggregates of men. In this way, each aggregate actors comes to be characterised by a specific, case-by-case understanding of security which basically results from a combination of their own collective perceptions on the security matter under scrutiny, and then has to be combined with how the other actors behave and think about that particular issue.

These social aggregates can obviously be of more than one type: amongst them, we will selectively identify, the national governments, international courts, international organizations, NGOs, public opinion, press and media, international state diplomacy, and multilateral fora of discussion. All these will be considered as “social actors”, or else “social aggregates”, in their being constituted by different types of interactions by men that are inherently “social”, and whose inner dissimilarities and unique features are what produces the different understandings of security that each of them generates.

All these elements enable us to combine governmentality, enforcement and absence of policy to construct a single, cohesive understanding of the mechanics that lie at the basis of the functioning of security. In order to fulfil this task and better explain the functioning of the aforementioned GEA nexus, we will now move on to construct an imaginary board that will enable us to identify the bullseye where human security actually resides.

#### **4. Identifying human security: The construction of the human security board**

The human security board is basically a model that takes inspiration from the original structure of a dartboard, with circular areas that enclose a central bullseye, and then applies these basics to the analysis of human security. For the creation of our human security board, we will therefore start from the outer circle and then move inwards to finally reach the bullseye of human security. In doing so, we will identify the three aforementioned areas, that is, governmentality, enforcement and absence, the latter being the one placed in the outer part of the board. Each one of them will be analysed specifically, with particular attention to the fact that the “absence of policy” agglomerate is in turn to be separated into three autonomous zones.

This scheme draws on our previous analysis and brings all the elements together to visually produce a metaphorical differentiation of the possible levels of perception of the status of norms and policies by part of social actors<sup>(342)</sup>. The starting point of our reasoning remains the impossibility to enclose human security within the boundaries of a single norm or definition, given that subjective perceptions play a central role in defining what human beings see as security and how they evaluate it. This process, in turn, also depends on whose actors’ perceptions are taken into consideration for the analysis. Our model for assessing human security is therefore slightly different from those have been generally proposed, due to a focus on perceptions and behaviours of actors towards norms on security, rather than on a classical analyses and calculus based on pure numerical data and percentages.

In our work, we thus argue that perceptions on security can be sorted into different areas that basically denote the social status achieved by a specific norm or policy for specific aggregates of actors in determined social contexts. To each of these areas in turn correspond different levels of freedom from the fear of violation of such rule, up to the most desirable one which comes with the governmentalization of the norm itself. Attaining the governmentalized status for a norm indeed means that, under the specific set of circumstances analysed, the norm has been internalized by people up to the point that is

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<sup>342</sup> Given that our scheme is aimed at the assessing of the status of either already-formed norms, or rights, or policies, or rules of behaviour, we will hereafter often use these terms as if they were interchangeable (although their meaning is not obviously the same).

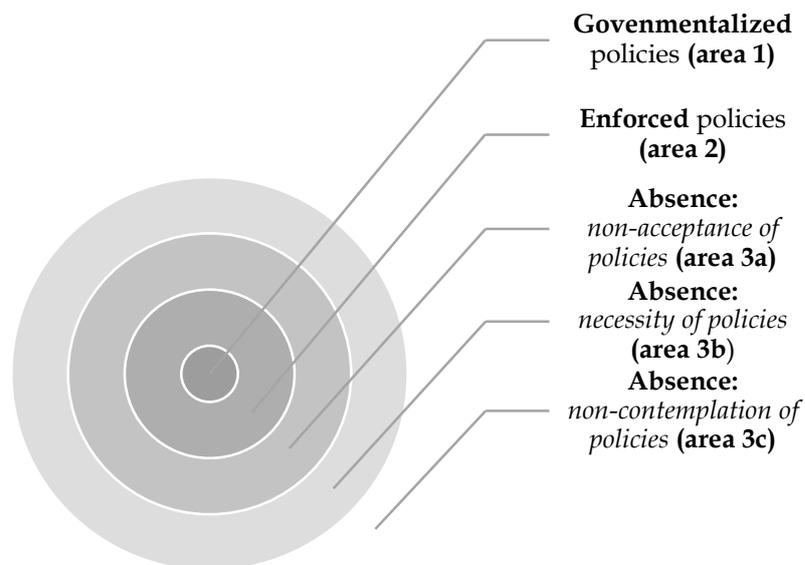
taken for granted and automatically respected with no longer debate over its legitimacy. Consequently, this means that, as far as that specific norm is concerned, actor X perceives to be “secure”, that is, he unconsciously expects both himself and the others to automatically comply with the norm’s provisions. To this point, therefore, corresponds the highest level of perception of human security possible for the social actor involved.

Starting from our demonstrated assumption that a universal definition of human security is not reachable (which is also the reason for the lack of a general norm and clarity of enforcement for it), we thus argue that human security is instead a human condition that has to be examined and assessed on a case-by-case level, in relation to specific contexts and social actors. It basically consists of the absence of fear that a norm or policy related to the security of people will be violated, or, vice versa, in the conviction that the said norm will positively be respected and upheld by the whole of the social actors of a given context. Security thus becomes inextricably linked to the perception that individuals or, if considered in aggregate, social actors have of the status attained by a specific norm within the social and cultural context in which they live. In other words, the fear that a norm protecting a particular right of actor X could be violated influences the perception of security for that specific actor concerned.

Social actors therefore experience greater sense of security proportionally to the increase in the levels of absence of fear that the norm considered will be violated. These, we will see, grow higher towards the centre of our scheme (see *Figure 1*), where the mechanism of governmentality guides norm implementation by actors, and are instead non-existent in the outer portion of the board, where the absence of policy branches into the sub-area of non-contemplation. The circle that limits the external border, separating the inside of the board from the outside, is instead the second section of the absence compound, that is, necessity of policy. The third one, placed between enforcement and necessity, namely non-acceptance, will be addressed more thoroughly down below.

Eventually, the analysis carried out through this scheme will bring us to theorize human security as a matter of perception of the gap between necessity of policy and governmentality, on the ground that it is in the human perceptions of policies as necessary,

non-accepted, or enforced that the seeds of insecurity lie. We will now therefore move on to analyse each part of the scheme step-by-step, moving from the central bullseye to progressively cover the whole area of the board, and even beyond.



*Figure 1: General scheme for the human security board*

**Area 1: Governmentalized policies.** In the central area of the board we place those norms that have been governmentalized by social actors. Drawing from our previous definition of governmentality, we define governmentalized norms and policies as rules of behaviour that have been internalised by people up to the point that they become taken for granted and are therefore applied automatically and unconsciously by them.

Following the perspective of rules created for the safeguard of human beings, this entails that governmentalization is the mechanism that ensures maximum adherence to a norm's prescriptions, and consequently, the highest level possible of security for people, as far as the said norm is concerned. Within our model, we thus identify governmentality as the proper bullseye to be reached in order to achieve a complete level of human security.

Policies and norms might not always get to become governmentalized in absolute terms. In fact, except for those norms that in specific contexts have been taken for granted for such

a long period of time that their governmentalized status applies to any possible social actor (such as it happens with some constitutional norms featured in the Constitutions of some liberal, democratic states), it is generally difficult for a norm or right to achieve to be perceived as governmentalized by all of its beneficiaries. What is to be done, therefore, is considering on a case-by-case level the aggregates of social actors whose perceptions towards a particular norm are to be examined and, for each one of them, verify their behaviour in reaction to the exposure of the norm's regime. Basically, if actor X implements a norm unconditionally, without discussing its legitimacy, this means that the said norm has been internalized by him up to the point that it can be said to have become governmentalized.

A final specification to be made is that this analytical mechanism applies to governmentalized norms as much as it applies to norms pertaining to the other levels of perception that will be analysed down below.

**Area 2: *Enforced policies.*** As previously said in our outline of the GEA nexus, enforced policies are those rules of behaviour that have already obtained codification as norms and are therefore implemented by actors in societies where law envisages them.

However, differently from governmentalized policies, which people also implement out of a self-imposed conviction on their status as legitimate rules of law, enforced norms generally have to be made respected by political and judicial entities that detain power, such as state governments, international organizations, and domestic or international courts, which ensure that people comply with the said norms' provisions. This is the reason why perceptions of security on a specific right by social actors diminish when they perceive and apply a norm as an enforced one. In fact, in this case they tend to respect it because they know that law thus proclaims, and that they will incur in negative consequences if violating its prescriptions. However, there is no self-imposed constraint that prompts them towards implementation. In other words, they do not envisage the norm as legitimate.

This means that the risk of violation is higher for enforced policies than it is for governmentalized ones, that instead have been entirely internalized and accepted by

people. As a consequence, when a rule is perceived and treated in a context by actor X as if being simply enforced, this means that the said actor will also inevitably fear about possible violations of the norm carried out by other actors pertaining to the same social environment, a process which inhibits its enjoyment of the rights deriving from it. The process is also inversely true, so that, when actor Y applies a norm as enforced, he obviously expects actor X to be doing the same, given their coexistence in the same context, and this therefore reduces the levels of freedom from fear of reciprocal violation of the norm for both actors, inhibiting their security.

For this reason, we argue that, in the case of an enforced policy, people perceive an inferior level of freedom from fear of the violation of their norm-related rights, which corresponds to a reduced level of human security enjoyment with regard to the said norm, i.e., to greater human insecurity. This is why in our board we place the enforcement area just after the governmentalized one, since it basically symbolizes an earlier, less genuine and self-interest-biased, stage of norm perception and implementation by social actors.

**Area 3: Absence of policy.** Norms falling within the range of the absence of policy area are basically norms characterised by the lack of some constitutive elements that thus hinder the possibility for their very existence, or, in alternative, their recognition by social actors. This broader category is actually more complex than it might appear at first glance, featuring three different sub-sectors that we will label, respectively, *non-acceptance of policy*, *necessity of policy* and *non-contemplation of policy*.

The collocation of these three zones is obviously not casual. The area of *non-acceptance of policies* (3a) is put right after the enforcement area, since it holds policies which, although already existing and being enforced on people by political and judicial entities detaining power, are somehow rejected. In other words, due to contingent reasons and milieu influences, they happen to not be recognized in their status of norms. This is actually what happens when actor X is conscious of the existence of a specific rule that must be obeyed

but still decides not to respect it because, from his particular point of view, he perceives it as unacceptable.

A practical example of this kind of situation can easily be made by looking at the norm banning the international use of force (i.e., Article 2(4) of the UN Charter), the one established to safeguard states from external acts of aggression. In fact, throughout the decades after its official establishment, there have been several instances of states that unilaterally decided to opt for using force disregarding the Charter's provisions, mainly in cases of military interventions for alleged humanitarian purposes<sup>(343)</sup>, but sometimes also with true acts of aggression<sup>(344)</sup>.

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<sup>343</sup> In the majority of cases concerning unilateral humanitarian interventions the states involved actually argued for the existence of a customary right to intervention that would allow them to bypass the provisions of the Charter. In alternative, claims of "implied authorization" for military campaigns received from the UN Security Council through some specific resolutions have also been advanced. The first has been argued in some occasions by the United Kingdom. In 1992 the UK indeed proposed a doctrine of unilateral humanitarian intervention bases on a list of guiding principles that revolved around: first, the existence of a real humanitarian crisis to be tackled; second, the unwillingness or inability of the state in question to deal with the said crisis; and third, the necessity for the intervention to be kept limited in its time and scope. For early stages and later developments of the doctrine, see *UK Materials on International Law*, 63 *BYIL* (1992), 826-827; 70 *BYIL* (1999), 595; 71 *BYIL* (2000), 643-646; 72 *BYIL* (2001), 695-696. The case for alleged "implied authorizations" received from the UNSC is instead mainly related to a set of military interventions carried out by coalitions of states particularly in the 1990s, during the "golden era" of humanitarian intervention. The first appearance of this claim of implied authorization followed *Operation Provide Comfort*, carried out in 1991 by a coalition formed by USA, UK and France in protection of Kurds in northern Iraq after the condemned invasion of Kuwait by Iraqi forces under UNSC Resolution 661. A way more controversial intervention carried out under this same circumstances was the one performed by NATO forces in 1999 in the context of the Kosovo crisis. In fact, when *Operation Allied Force* began in March 1999, the justifications offered by NATO members did not immediately appear to be clear – at least legally speaking – but the statement that they were acting to support "the requirements of the international community" actually resembled a claim of implied authorization (see *SIMMA, NATO, the UN and the Use of Force: Legal Aspects*, 10 *EJIL* (1999), 9).

What basically happened in those cases is that single states or coalitions, operating from within the framework of the norm (since the norm is actually enforced), tried to change it through practice by pursuing their own interests in the attempt to persuade other states of the legitimacy of their claims and the consequent necessity for law to adjust according to them. Normatively speaking, they basically tried to construct an *opinio iuris* in support of their own claims to push for a transformation of the norm. This they did out of a non-acceptance of the provisions of the ban on the use of force, which brought them to try to change it through non-conformant practice.

<sup>344</sup> Speaking of the 1991 intervention in Iraq, mention can be made of the well-known Iraqi invasion to annex Kuwait, carried out on behalf of the conviction on the artificiality of Kuwait as a creation of imperial powers, coupled with an increasing economic imperative caused by the enormous war debts deriving from the war with Iran (see *DUNNE, Liberalism*, in *BAYLIS-SMITH-OWENS* (eds.), *The Globalization of World Politics*, Oxford University Press, 2009, 107). Leaving out all those more or less recent uses of force that have been justified under alleged humanitarian pressures, a recent and thoroughly debated act of "aggression" that can be mentioned is the on-going one carried out by the Russian Federation against Ukraine for the annexation of Crimea. For an in-depth analysis of the facts and legal implications of the case, see, for example, *GEIß, Russia's*

This type of mechanic is therefore triggered by a perception of insecurity concerning the norm that is called into question. In fact, if actor *X* feels that the provisions of a given norm does not protect his specific interests, or else, if he perceives that his security could be better ensured in a different manner, the norm is categorised as non-accepted, which in turn opens the way for an increased probability of violation of the norm by part of the actor himself. As a consequence, the levels of security for those who are instead compliant with the norm's provisions decrease, parallel to the increase of fear of possible violations of the rights safeguarded by the disputed norm.

This means that, for actors that refuse to accept the legal status of a norm (or else, that perceive a norm as non-accepted), the perception of fear is given by the fact that they do not see their interests as protected by the said norm, which entails a slightly greater level of insecurity than under mere enforcement conditions. On the other hand, insecurity similarly increases also for the aggregate of actors that instead implement the norm under enforcement or, even worse, under governmentalized conditions that see the rule as internalized and consider the right by it protected as unquestionable and taken for granted.

An important specification to be made on this point is that this type of mechanic may also affect the so-called customary norms, i.e., those norms that, according to international law, are accepted by the generality of states. In fact, this "generality of states" might not necessarily comprehend the totality of them; it is indeed well-known that there may be cases of so-called "permanent objectors", who oppose the constitution of the norm since the very beginning, or, more simply, of states that do not develop an *opinio iuris* in support of the emergence of the norm and that, despite being obliged to comply with it when it acquires a customary status, thus keep silently opposing to it<sup>(345)</sup>.

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*Annexation of Crimea: The Mills of International Law Grind Slowly but They Do Grind*, in 91 *International Law Studies* (2015), 425-449.

<sup>345</sup> This is actually a point that we already covered while addressing the cases of violation of the norm concerning the ban on the international use of force, which, despite finding written codification in the UN Charter, is now considered as having acquired customary status as well. This means that there might be customary norms that, although being accepted by the *generality* of states (by whom, if there is a strong *opinio iuris* on the matter, we can consider as being governmentalized), are still opposed more or less strongly by others, whose behaviour therefore falls instead under the category of non-acceptance of policies.

Therefore, although it may appear at first sight that customary norm should automatically be incorporated within perceptions of governmentality, according to our human security board, it does not always work like that, since, as we have seen, customary norms are not necessarily upheld by *all* the possible actors of the international community. This nonetheless does not exclude the possibility for a customary norm to become governmentalized in those context where it appears to be completely internalized by some given actors.

What follows is then the *necessity of policy area* (3b), which features perceptions related to a desire for still non-codified norms to emerge and become officially established. Policies situated in this area of the board therefore have no actual legal status, but are nonetheless deemed to be necessary by some actors that thus behave in support of their development.

This is actually the mechanism that lies at the basis of any type of norm constitution, with new, yet-to-be rules that are given resonance – at times in contrast with old, predominant ones – through the propaganda that single actors or aggregate of norm-advocators carry out to persuade others of the legitimacy of – as well as the necessity to create – the new norms.

In a situation like this, where actor *X* is genuinely convinced that he should be protected in a specific right that instead, in lack of an *ad hoc* norm, has yet to be granted to him, what happens is therefore that the said actor engages in a process of persuasion where he tries to convince the greatest number possible of actors to follow his line and support the adoption of the new norm. This is obviously done out of a perception of insecurity that is triggered when actors feel that they lack protection in a right that does not yet exist, but they still consider important for their own security.

In other words, when actors experience this type of situation, it means that perceptions of fear have reached a level that is greater than those which characterise the previously analysed areas. This because, in this case, the right that is felt as necessary to safeguard is not even guaranteed by existent law regimes. Freedom from fear thus decreases significantly, with the consequent increase in human insecurity as far as the right that is

perceived as necessary is concerned. These are the reasons why we categorise this type of security perception under the necessity of policy area<sup>(346)</sup>.

The *non-contemplation of policy area* (3c) is perhaps the most problematic to frame, since it holds policies that basically do not yet exist because there is no need for them to exist. In other words, social actors do not feel the necessity to create a norm for a specific field of action, be it unconsciously (because they do not perceive themselves as being in a situation of lacking a specific right and thus needing the establishment it), or due to specific purposes (i.e., in those cases where the establishment of a norm is avoided due to specific interests the actor has in doing so).

This also entails, paradoxically, that in this area human security cannot be assessed, but, at the same time, it is also impossible to dismiss it as a human insecurity area. In other words, this area is somehow self-standing and disconnected from human security. This is because to non-existent policies corresponds no fear from social actors for the violation of their rights, being those rights not even contemplated in their existence. Fear is in fact here intended in the sense that we already gave of anxiety for the potential violation by part of others of one's rights. In this area, therefore, there basically is no norm violation-related fear, given that social actors either do not feel the need to create a norm in protection of a right

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<sup>346</sup> There are evident similarities between this mechanism of norm advocacy and the *opinio iuris*, or, in other words, the subjective element that, along with *diuturnitas* (or practice) is constitutive of international customary norms. *Opinio iuris*, which is also more extensively referred to as *opinio iuris ac (or sive) necessitatis*, indicates the genuine conviction that the principles entailed by a norm are judicially relevant and binding (*opinio iuris*), and, for this reason, are followed as law. In order to get to this point, the advocated norm first experiences an initial phase of assessment where it still has to properly emerge as generally accepted source of law, and is therefore advocated by supporting actors merely on the basis of its alleged necessity (*necessitatis*). Although this mechanism is usually adopted in law commentary to explain the emergence of customary norms (which are characterised by their being recognised as sources of law independently from their possible codification in written form), it may well be applied to any process of law emergence. As a matter of fact, any type of norm, be it contained in treaties, as well as in any other source of law, is created by men out of the very necessity of filling a gap in the existing system of law. Actors in fact sign treaties and pacts, and establish new regimes, out of a conviction that these are necessary for the safeguard of important rights and interest of them. As we hereby argue, perceptions on the necessity for greater safeguard in specific dimensions of the lives of social actors are what triggers the quest for the creation of new norms in support of the advocated rights. This is eventually done out of a sense of insecurity that comes from the perception that some important rights that should be protected are instead lacking a normative framework that can grant compliance and respect.

that they do not even conceive as necessary to them, or else, they dismiss it due to strategic or political calculations. In any case, the result is the same.

Scholars from the so-called “Cultural Turn” opposing traditional understandings of security would probably link this whole process to a cultural variable, under the claim that “in order to understand why states behave the way they do in world affairs, culture and national identity must be analysed”<sup>(347)</sup>. The cultural environment in which people live is actually a variable that significantly influences people’s interactions, perceptions and beliefs, and contributes to the construction of subject positions, i.e., what constructivists would call “identities”. Identities are not given; instead, they emerge through a historical process of interaction among people<sup>(348)</sup>, and their importance lies in the fact that “they tell us who actors are, what their preferences and interests are, and how those preferences might inform their actions”<sup>(349)</sup>. Constructivist theory, differently from traditional security studies, actually gives great attention to how culture contributes to the construction of those values and rules that constitute actors’ identities<sup>(350)</sup>. Under these circumstances, norms therefore come to be strictly linked to actors’ identities and, at the same time, unveil their interest and perceptions of the self and others<sup>(351)</sup>. This whole discourse is mainly applied by constructivists to the traditional actor of security studies, which is the state; however, the scheme very much applies to any type of “social” actor, that is, to any actor whose identity can be said to be constituted through the interaction and sharing with others of ideas, beliefs and common understandings of the world, that is, through shared knowledge. The reason why a social actor would *not contemplate* the possibility to create a specific policy, right, or, generally, norm, to cope with and regulate a particular issue is therefore, as already said, that its mentality and ideas do not bring him to consider the act as necessary, or, which is perhaps worse, calculations of interests shut the door on this very possibility.

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<sup>347</sup> HIXSON, *The Myth of American Diplomacy: National Identity and US Foreign Policy*, Yale University Press, New Haven & London, 2008, 5.

<sup>348</sup> AGIUS, *op.cit.*, 92.

<sup>349</sup> AGIUS, *op.cit.*, 91.

<sup>350</sup> AGIUS, *op.cit.*, 93.

<sup>351</sup> BARNETT, *op.cit.*, 161.

It is, therefore, unfortunately impossible to speak of the existence of “freedom from fear” for this zone, since actors that perceive an issue as having this particular status cannot be said to be freed from the constraints of fear. They simply avoid it, be it consciously or not. This is the reason why in our scheme the non-contemplation of policy zone is placed outside the actual area of the human security board. If there is no fear, this means that it is not possible to evaluate the extent of freedom from it and thus, in turn, of human security as well.

This obviously does not entail that this area is somewhat “securer” than others. On the contrary, this complete lack of will towards regulation is perhaps what makes the zone potentially even more perilous than the other ones. This because, even though people do not perceive it, or are tricked by contingent actors or by cultural influences into ignorance and carelessness, there still remains the fact that issues relegated within this borders lack regulation. This implies that important rights and norms that could potentially be established and protected instead are not. For this reason, matters relating to this area should actually be handled as to progressively make them scale through the other zones towards the centre of the board, where, as we argue, the conditions for human security are instead actually ensured.

To make a concrete example, this type of process is what actually happened to the right of women to vote, that is, women suffrage, a right whose development came very slow and generally opposed, until suffrage movements started to break out in several countries in the XIX century. The spreading campaigns by several national and international organizations to achieve voting rights for women slowly made the progressive extension of women suffrage possible in an increasing number of countries. The UN as well joined in encouraging the process, first, by inserting the right in Article 21 of the Universal Declaration of Human Rights of 1948; second, by adopting in 1954 the Convention on the Political Rights of Women; and, third, adopting in 1979 the Convention on the Elimination of All Forms of Discrimination Against Women, which identifies women suffrage as a basic right for states parties to the convention.

This progression actually shows how this right went through the said whole process of transition from the outer zone of non-contemplation of policies to, first, the necessity one (with the birth of movements in support of the establishment of the right), then, second, the enforcement one (with its progressive recognition in an increasing number of countries and the adoption of international resolutions and conventions in its protection). Finally, in those scenarios where nowadays the right is established and absorbed to the level that no one would even think about denying it, since it is integrated into the mentality of actors, the right can be said to have reached the status of a governmentalized policy that contributes to increase the level of human security (or, in turn, to the decrease of freedom from fear of the right's violation).

What happened in this case is that an increasing number of aggregates of social actors, reciprocally influencing themselves, started to develop a self-conviction on the necessity for that very norm to exist (perception of *necessity of policy*), up to the point where the norm was created and its enforcement spread in an increasing number of contexts, with the norm imposing itself on actors that complied with it under the provisions of law (or else, they obeyed it due to the norm being *enforced* on them by governments and other political and judicial actors). Finally, the norm managed to be taken for granted and be internalized (i.e., perceived as *governmentalized* by people), so that its application and respect became automatic and unconscious, and it was no longer a matter of debate.

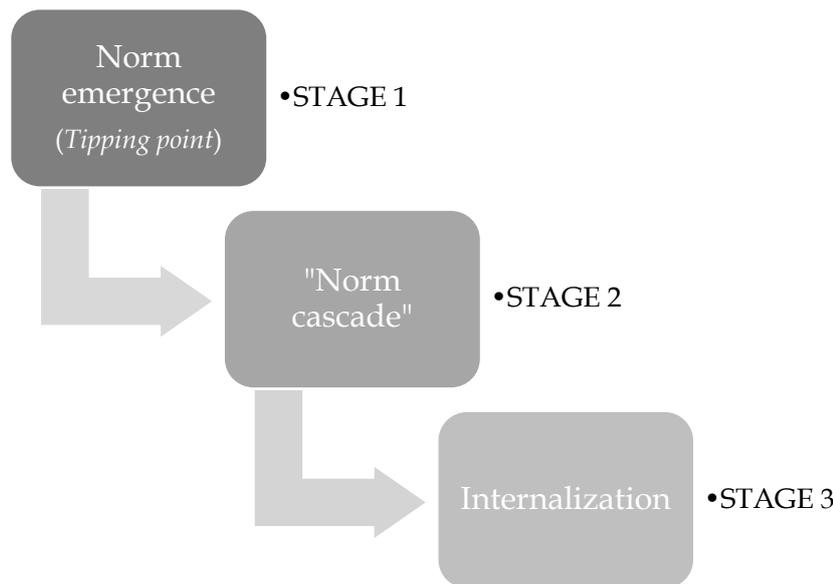
Our elaboration of this mechanics is actually quite similar to the "*life cycle of norms*" proposed by Finnemore and Sikkink (see *Figure II*). Following the line of the said constructivist thought, these scholars actually consider norms as the product of shared knowledge and practices, i.e., as "collective expectations about proper behaviour for a given identity"<sup>(352)</sup>, or, in other words, as "standards of appropriate behaviour for actors with a given identity"<sup>(353)</sup>. Social constructivist theory indeed classifies norms as restraints to behaviour that actors create and respect basically out of both a sense of worry about costs

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<sup>352</sup> KATZENSTEIN (ed.), *The Culture of National Security. Norms and Identity in World Politics*, Columbia University Press, 1996, 5.

<sup>353</sup> BARNETT, *op.cit.*, 161.

and a sense of self<sup>(354)</sup>. These norms, however, do not appear out of the blue, but are instead the result of a specific political process, which sees these expectations on proper behaviour spread among people until they are taken for granted<sup>(355)</sup>. This type of process is then transferred by the authors on a three-point scheme that mainly revolves around a cycle of emergence, institutionalization, and internationalization of norms.



*Figure II: Finnemore and Sikkink's "life cycle of norms"*

In their work, Finnemore and Sikkink apply the framework to the exact same example we made before, that is, to women suffrage. Their cycle of norms entails a mechanism of norm-formation that basically works as follows: it all begins with some "agents" which have "strong notions about appropriate or desirable behaviour in their community" (actors that the authors label "norm entrepreneurs"), and are therefore "critical for norm emergence because they call attention to issues or even "create" issues by using language that names,

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<sup>354</sup> In their work, Finnemore and Sikkink indeed argue that "norms produce social order and stability", since they "channel and regularize behaviour", so that "they often limit the range of choice and constrain actions". To this, they also add that "[s]hared ideas, expectations, and beliefs about appropriate behaviour are what give the world structure, order and stability". See FINNEMORE-SIKKINK, *International Norm Dynamics and Political Change*, in 52 *International Organization* (4, 1998), 894.

<sup>355</sup> BARNETT, *op.cit.*, 161.

interprets, and dramatizes them". In other words, they use the instruments of persuasion to influence and change the behaviour of other actors, up to the point that they achieve to "persuad[e] a critical mass of states to become norm leaders and adopt new norms"<sup>(356)</sup>.

This is the point where the norm can be said to have reached a "threshold or tipping point". Regarding this, the authors nonetheless specify that, "[i]n most cases, for an emergent norm to reach a threshold and move toward the second stage, it must become institutionalized in specific sets of international rules and organizations"<sup>(357)</sup>, although "[i]nstitutionalization is not a necessary condition for a norm cascade", and it may "follow, rather than precede, the initiation of a norm cascade"<sup>(358)</sup>. In any case, after the crossing of the tipping point, "[m]ore countries begin to adopt new norms more rapidly even without domestic pressure for such change", in a process that resembles a "contagion" effect in which "international and transnational norm influences become more important than domestic politics for effecting norm change"<sup>(359)</sup>.

The central factor that favours the progress of norm cascades is nonetheless the "active process of international socialization" brought about to "induce norm breakers to become norm followers"<sup>(360)</sup>. The reason why norm cascades are so efficient in persuading actors to adhere to the new norms lies primarily in the identification of states as members of an international society, a mechanism that produces "peer pressures" among countries when in a same region more and more states begin to conform to new norms. According to the authors, these pressures would thus tend to push the still-non-conformed states to adhere to these new norms basically out of a desire for legitimation, conformity or esteem<sup>(361)</sup>.

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<sup>356</sup> FINNEMORE-SIKKINK, *op.cit.*, 896-901.

<sup>357</sup> FINNEMORE-SIKKINK, *op.cit.*, 900. This view is also supported by GOLDSTEIN-KEOHAN (eds.), *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change*, Cornell University Press, 1993.

<sup>358</sup> FINNEMORE-SIKKINK, *op.cit.*, 900.

<sup>359</sup> *Ibid.* On this see also RAMIREZ-SOYSAL-SHANAHAN, *The Changing Logic of Political Citizenship: Cross-National Acquisition of Women's Suffrage Rights, 1980 to 1990*, in 62 *American Sociological Review* (Oct. 1997), 735-745.

<sup>360</sup> Quoting from BARNES-CARTER-SKIDMORE, *The World of Politics: A Concise Introduction*, St. Martin's Press, 1980, 35, Finnemore and Sikkink define socialization as the "induction of new members (...) into the ways of behaviour that are preferred in a society". In other words, socialization is a mechanism that pushes states change their behaviour and conform to new emergent norms when they happen to be supported by the international society of states.

<sup>361</sup> FINNEMORE-SIKKINK, *op.cit.*, 902-904.

In the end, as this process unfolds and cascades progress, Finnemore and Sikkink argue that “norms may become so widely accepted that they are internalized by actors and achieve a “taken-for-granted” quality that makes conformance with the norm almost automatic”<sup>(362)</sup>. This therefore entails that “internalized norms can be (...) extremely powerful”, since “behaviour according to the norm is not questioned”. At the same time, however, these norms are also “hard to discern”, given that “actors do not seriously consider or discuss whether to conform”<sup>(363)</sup>.

In sum, therefore, what Finnemore and Sikkink theorize is that “[n]ew ideas about appropriate behaviour compete with existing norms, then cascade (or spill over) and become institutionalized”<sup>(364)</sup>. According to this mechanism, therefore, [n]orms do not appear out of nowhere but are constructed by actors who have strong ideas about appropriate or desirable behaviour”<sup>(365)</sup>. This is then what brought two other researchers, namely Berger and Luckmann, to conceptualize the institutionalization of norms as “habitualized human activity, from the individual to the collective”<sup>(366)</sup>. In the case of suffrage, therefore, what happened is basically that a cycle of norms was triggered by the emergence of new ideas on suffrage and women, opposing traditional beliefs regarding the role that the latter should have in society<sup>(367)</sup>, a passage that in our elaboration<sup>(367)</sup> of the scheme

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<sup>362</sup> FINNEMORE-SIKKINK, *op.cit.*, 904.

<sup>363</sup> *Ibid.*

<sup>364</sup> AGIUS, *op.cit.*, 93.

<sup>365</sup> *Ibid.*

<sup>366</sup> *Ibid.*

<sup>367</sup> *Ibid.* In their reconstruction of the process, Finnemore and Sikkink illustrate that, despite the existence of several domestic movements supporting suffrage in the XIX century, it was only in 1904 that advocates of women’s rights founded the International Women Suffrage Association (IWSA), which demarked the emergence of a true international campaign in support of suffrage. In fact, prior to this point, the existence of three or four different campaigns made general coordination lacking. They then collocate the “tipping point” towards norm cascade around 1930, since it was in the period ranging from 1890 and 1930 that a number of Western countries (such as Australia, Finland and New Zealand) started to adopt female suffrage as a result of increasing pressures from domestic organizations. After 1930, instead, international and transnational pressures gained much more importance in persuading more and more states to conform to the new norm. The authors indeed conclude that, whereas “the first stage of norm emergence lasted over eight years” and it therefore “took from the Seneca Falls Conference in 1848 until 1930 for twenty states to adopt women’s suffrage”, then “[i]n the twenty years that followed the tipping point (...) some forty-eight countries adopted women’s suffrage norms” (FINNEMORE-SIKKINK, *International Norm Dynamics and Political Change*, in 52 *International Organization* (4, 1998), 896). On this see generally also RAMIREZ-SOYSAL-SHANAHAN, *op.cit.*, 735-745.

corresponds to the norm relocating from the non-contemplation of policy perceptive area to the necessity of policy one.

In conclusion, Finnemore and Sikkink argue with their framework that the process of norm emergence follows a specific “cycle”, or, in other words, a path which is characterized in each stage by the action of different players that behave according to distinct motives and pursue their ends by means of several mechanisms of influence<sup>(368)</sup>. These are briefly summed up in the following table.

	<i>STAGE I (norm emergence)</i>	<i>STAGE II (norm cascade)</i>	<i>STAGE III (norm internalization)</i>
<b>Actors</b>	Norm entrepreneurs with organizational platforms	States, international organizations, networks	Law, professions, bureaucracy
<b>Motives</b>	Altruism, empathy, ideational, commitment	Legitimacy, reputation, esteem	Conformity
<b>Dominant mechanisms</b>	Persuasion	Socialization, institutionalization, demonstration	Habit, institutionalization

*Table I: Stages of norms* <sup>(369)</sup>

The mechanism described by the two authors, however, specifically represents a study on the evolution and influence of norms in society. Finnemore and Sikkink thus create a scheme to address the various transitional phases that are undergone by norms in order to emerge and then become established. What is of particular interest is their recognition that “[c]ompletion of the “life cycle” is not an inevitable process”, since, they argue, “[m]any emergent norms fail to reach a tipping point”<sup>(370)</sup>.

This is actually something that we similarly acknowledge in our board for security perceptions, although the perspective is quite different. In fact, our analysis is focused on identifying human security in its essence, to demonstrate how, depending on the contexts

<sup>368</sup> FINNEMORE-SIKKINK, *op.cit.*, 895.

<sup>369</sup> Taken from FINNEMORE-SIKKINK, *op.cit.*, 898.

<sup>370</sup> FINNEMORE-SIKKINK, *op.cit.*, 895.

and social actors that are taken into consideration for analysis, a norm can be perceived in totally different ways, so that corresponding levels of human security vary. This produces a spectrum of perceptions of security among the actors considered that ranges from the lowest level possible (or even inexistence) to the highest, where human security is granted by the internalization of norms' provisions. Therefore, even if logically speaking it would be possible to establish some kind of parallelism between the stages of Finnemore and Sikkink's cycle and the areas of our board<sup>(371)</sup>, this must be done with some caution.

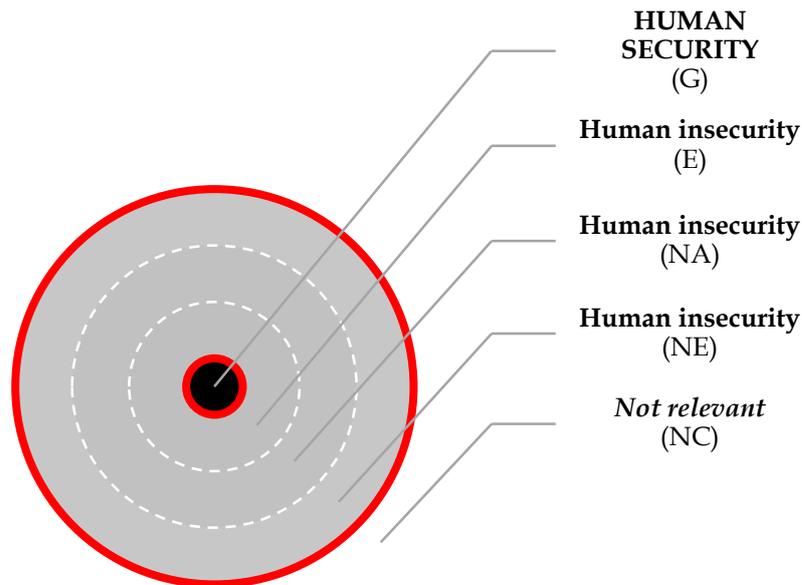
In fact, despite the apparent analogies between the two schemes, our analysis does not aim at identifying the stages of evolution of norms from the point of view of norm-producers, but is instead, as the name itself indicates, centred around a board where for each norm considered, darts symbolising actors' perceptions are shot in order to visually establish, for each social actor, the levels of freedom from fear of violation of the norm considered, or else, how much secure they feel with respect to it. In other words, although we recognize that the process that norms undergo to get international recognition follows the reconstruction made by Finnemore and Sikkink, we are not interested in a stage-like analysis of norms; we are instead interested in unveiling the mechanisms that explain why a universal and unitary understanding of human security is not possible, i.e., in showing how and why human security qualifies as the compound of different – and also contradictory – human perceptions about the levels of security granted by the respect of norms safeguarding rights created by men for men.

This is the reason why we eventually theorize human security as being a matter of perception of the gap between governmentality and necessity, or, in other words as a security which cannot be measured "objectively" once for all, since it depends on the

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<sup>371</sup> Basically, the parallelism would see norm emergence compared to an ideal passage from our non-contemplation area to the necessity of policy zone through the tipping point, then norm cascade related to the enforcement area, and, finally, norm internalization coupled with our idea of governmentality. The non-acceptance of policy area is actually left out and cannot be compared to any of Finnemore and Sikkink's stages due to the very nature of their own analysis. The authors themselves in fact state that, "by definition, there are no bad norms from the vantage point of those who promote the norm" (see FINNEMORE-SIKKINK, *op.cit.*, 892). In fact, giving that they analyse the evolution of norms from the perspective of norm-entrepreneurs who advocate for their creation, it logically follows that these said norms are automatically accepted by them. Otherwise, they would not initiate a propaganda in their support.

perception that human beings have of their security, that varies according to the status that they attribute case-by-case to their rights. Within the board, human security will thus be placed in the central bullseye zone, whereas the compound formed by enforcement, non-acceptance and necessity will identify human insecurity-biased areas of perception (*Figure III*).



*Figure III: Distribution of human security and human insecurity in the human security board*

Those who feel completely safeguarded in their enjoyment of a right, to the point that, having governmentalized it, they are no longer aware of the fact that – as any other norm – that right as well is part of the law to which they are subjected, can therefore be said to bear the highest level possible of human security, where they are free from the fear that the norm that protects them will be violated (see *Figure III*, area “G”). For this reason, as already said, we place the area of governmentalized norms at the centre of the board, symbolising the bullseye that must be hit in order to reach human security.

As we explained throughout the analysis of the following areas of the board, the enjoyment of the rights deriving from an established norm, and thus the levels of human security for actors, then progressively decrease from enforcement to necessity of policy,

where the fear that the still non-existent right could potentially be violated is obviously at its highest (see *Figure III*, areas “E”, “NA”, and “NE”). As previously noticed, non-contemplation instead does not entirely relate to human security, due to the fact that the lack of willingness to consider an issue as a potential matter of security, or, in alternative, the absence of cognitive recognition by actors of a deficiency of rights in a specific system of law, do not completely relate to the human security framework (see *Figure III*, area “NC”). Indeed, assessing a level of human security, or, vice-versa, of human insecurity, for actors who are unwilling or unable to recognise the existence of a norm and the rights stemming from its provisions is not possible, and, in any case, it would be completely useless, since actors that bear such type of perceptions evidently do not feel the need to be made secure under the said normative provisions.

In conclusion, the human security board can function as a helpful tool to visually deconstruct the constitution of human perceptions of security and locate them in a way that makes it possible to separate human security-related ones from human insecurity-related ones. It basically is a graphic demonstration of the human security dilemmas that we discussed so far, that is, of the impossibility of achieving and realizing a unique understanding of security, in a world where a rainbow spectrum of interest-biased perceptions of security guides the creation, implementation and interaction of norms at any level possible, from the domestic sphere to the international realm.

## **5. Explaining the identity between human security and governmentality: The human security compass**

Which are the direct consequences of this mechanism of diverging perceptions? Why did we decide to suggest normative darts direct towards governmentality as bullseye of our imaginary dartboard? The answer is actually quite simple, and lies on an important implication related to the issue of security perceptions that we only briefly mentioned in our former analysis of the board.

When discussing about the characteristics of each single area, we indeed hinted at how actors’ perceptions on security might inevitably end up affecting the way others experience

their own security, or, in other words, the enjoyment of specific rights by other actors belonging to the same social environment. This actually brings us to propose a further elaboration of the board model which we will call “human security compass”. This second scheme will help us graphically demonstrate how this variable influences norm-related realization of human security, as well as why governmentality should be the number-one target to address by the greatest number of actors possible in order to ensure the achievement of security for all.

The compass thus basically represents an advanced form of the board that allows to deconstruct perceptions of actors from a same social environment, in a way that makes it visible if their interactions are affected by human insecurity seeds or not. Any norm, policy or security issue can therefore be analysed through a dedicated compass where perceptions of selected actors from a specific context will be placed, so as to assess its status within the selected social environment. A norm or policy can therefore feature in more than one compass, depending on the compound of actors whose perceptions are analysed, given that the number of combinations of actors that can be made is potentially limitless. However, each compass can be dedicated only to one single norm or policy, since each of this scheme is meant to assess the status of a given issue within a selected social context.

Speaking of governmentality within the board, we argued that it represents the mechanism that ensures the maximum level of adherence to a norm’s prescriptions by people, and thus, in turn, also the highest level possible of security for them, as far as the said norm is concerned. However, we then pointed out that a critical loophole to this scheme emerges in cases where a norm has not yet got to be internalized by all the actors pertaining to a same social environment.

The implications of such a situation are easy to discern. Basically, even if the large majority of actors considered have internalized a norm’s provisions, it takes only one non-governmentalized actor to bring insecurity within a social context. This is logically caused by a mechanism of self-interest that is more likely to emerge for actors that have yet to internalize a particular rule of behaviour. In other words, if actor X is not sufficiently

convinced of the legitimacy of a given norm, this will make him more prone to violate the norm's provisions under special circumstances, for example if he sees that his personal benefits at risk, to the point that he is rather willing to bear the costs of violation of the norm if this enables him to uphold his interests. It follows that, in such cases, the enjoyment of security that would be guaranteed to the others (i.e., to compliant actors) by a collective adherence to the norm is compromised by the threat of potential violation.

This mechanism is what the compass shows by graphically making non-compliant behaviour emerge out of the circle of governmentalized perception. The logical process at the basis of the scheme is quite simple: perceptions of security (the object of the board) favour the production by actors of specific ideas and beliefs regarding norms, which, in turn, then influence their behaviour. The human security compass, therefore, classifies the behaviour of selected types of aggregates of social actors by placing it in the pertinent perceptive zone of the board, according to how they react to the norm under analysis. In other words, if the behaviour of actor X is placed in zone "E" instead of "G", it means that practice from him reflects an enforced perception of the norm instead than a governmentalized one.

Before getting deeper into the working mechanism of this model, we will have a look at the basic structure of the compass, in order to familiarize with the scheme and explain the reasons for our personal organizational choice regarding the categories of aggregates of social actors to be put in it. The compass is in fact inspired to a particular metaphorical elaboration of human security proposed by Rothschild, who describes the process of rediscovery of human security concerns during the 1990s in the following terms.

The ubiquitous idea, in the new principles of the 1990s, is of security in an "extended" sense. The extension takes four main forms. In the first, the concept of security is extended from the security of nations to the security of groups and individuals: it is extended downwards from nations to individuals. In the second, it is extended from the security of nations to the security of the international system, or of a supranational physical environment: it is extended upwards, from the nation to the biosphere. The extension, in both cases, is in the sorts of entities whose security is to be ensured. In

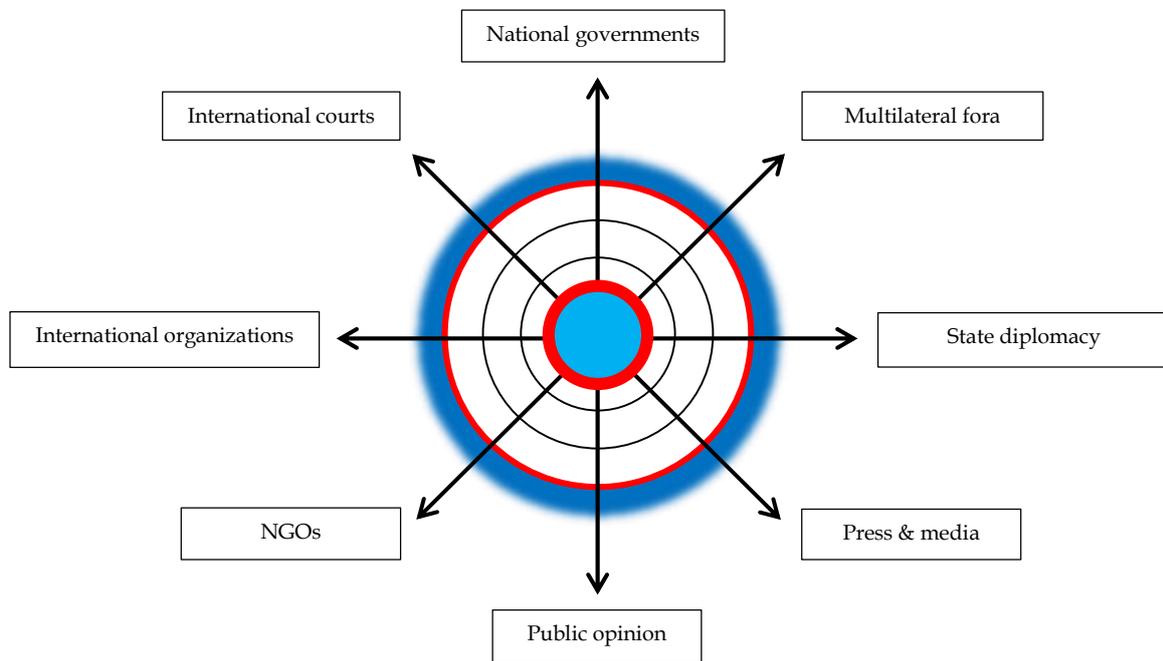
the third operation, the concept of security is extended horizontally, or to the sorts of security that are in question. Different entities (such as individuals, nations, and “systems”) cannot be expected to be secure or insecure in the same way; the concept of security is extended, therefore, from military to political, economic, social, environmental, or “human” security. In a fourth operation, *the political responsibility for ensuring security* (or for invigilating all these “concepts of security”) *is itself extended*: it is diffused *in all directions* from national states, including upwards to international institutions, downwards to regional or local government, and sideways to nongovernmental organizations, to public opinion and the press, and to the abstract forces of nature or of the market<sup>(372)</sup>.

In the first part of her elaboration, Rothschild is actually restating what we already mentioned in the second chapter of this present work while addressing the phenomenon of the extension of security in the 1990s. In other words, she emphasises that this new perspective on security entailed the extension of actors both upwards and downwards (so that not only states but also individuals began to be considered part of the security problem), and the extension of security to a wider range of spheres outside the traditional, military one (that is, the political, economic, social, environmental, and, obviously, the “human”). What is of greater interest for us is, however, the second part of the discourse, where she argues that, under this new trend of “extended security”, “the political responsibility for ensuring security is itself extended”, or else, “diffused in all directions”. She thus mentions, among others, national states, international institutions, NGOs, public opinion and the press as driving forces of this “extended” security. These, along with some additions, are the actors that we choose as basic pillars for the construction of our human security compass (*Figure IV*).

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<sup>372</sup> ROTHSCHILD, *op.cit.*, 55 (emphasis added)

*Context of analysis: WORLD LEVEL*



*Figure IV: Basic structure of the human security compass*

The scheme in *Figure IV* represents the basic structure of a human security compass. As it can be seen, the circular form is taken directly from the human security board, with the central area indicating governmentalization of policies and the subsequent areas corresponding, in order, to enforcement, non-acceptance, necessity and non-contemplation of policies.

For the purpose of explaining the working mechanism of the model, we will simplify things by assuming as context of analysis of norm *X* the world level. As the model shows, the behavioural perspectives under analysis belong to social aggregates under the banner of:

- *National governments*: this aggregate features perspectives from state governments of the international community on a given norm. These perspectives, however, are specifically representative of the behaviour conducted domestically in reaction to the norm's provisions. In this case, therefore, state government are considered in their

domestic expression as actors, instead than in their international one. In cases of sub-divergences of views within the aggregate itself, the different positions will be deconstructed and located in the scheme along the “national governments” line through specific behavioural points to be put in the appropriate perceptive area;

- *International courts*: the compound composed by the judicial positions advanced by international courts on the status and application of a given norm. If a norm has yet to be legally established and still resembles more of a policy, opinions of international courts on the issue may very well help establishing the status of the yet-to-be norm. As for governments, in case of divergences among judgements rendered by courts due to different interpretations on the status achieved by the said norm, these will be positioned in the appropriate areas;
- *International organizations*: this aggregate may potentially become quite complex in its composition, according to the width that is selected. In fact, since the scheme is open to modifications, one could possibly choose to circumscribe the selection of international organizations to be included in the analysis, for example simplifying the aggregate by including only main organizations such as the UN, EU, OSCE, NATO and so on. In any case, so as to avoid making this branch of the compass politically biased, when working on a world level context it would be appropriate not to limit the selection to organizations featuring similar points of view. For example, if the norm under analysis were to be the one on humanitarian intervention, given the variety of positions on the issue, the coalition of NAM states would have to be included so as to make the scheme more complete. The final decision on how to conduct the analysis is nonetheless always up to the analyser himself;
- *NGOs*: within this aggregate we identify all those civil society groups of action that work as organizational platforms for norm promotion both domestically and internationally (such as Greenpeace, the Red Cross, etc.), and that sometimes also

- unite in larger transnational advocacy networks (such as those aiming at the promotion of human rights, ban on landmines or environmental concerns<sup>(373)</sup>);
- *Public opinion*: the aggregate made of people's perceptions on security issues. As for the other actors, also under public opinion there might occur some disaggregation of the compound into separate sub-aggregates diverging in perception and behaviour towards a given norm. Under public opinion we include also academics and researchers' outlining of security issues;
  - *Press & media*: this aggregate brings together the different perspectives offered by media and press on security issues related to a given norm. this aggregate might actually end up being quite difficult to assess, given the increasing, exceptional variety of means offered by today's sources of information and communication through social media and web technology. In this case as well, possible disaggregation of the compound is strictly related to the amount of controversy generated by the issue in analysis and the width of the context itself;
  - *State diplomacy*: the compound of positions expressed by state governments in their international relations with other states and international actors. In this cases, therefore, contrarily to the aforementioned "national governments" aggregate, the behaviours and positions of governments are considered in their materialization as international actors. Given that this aggregate line comprises international manifestation of states in their relations, also behavioural accounts of institutions such as inter-governmental bodies may be here represented (an example of this is given by the independent work of FATF), being these some kind of derivative "products" of diplomatic interactions between states;
  - *Multilateral fora*: the aggregate of positions emerging from compounds of state perspectives under specific political fora of discussion. Among these fora, the most known are probably the various G-s (i.e., the G-8, G-10, G-20, etc.).

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<sup>373</sup> On this see generally KECK-SIKKINK, *Activists Beyond Borders: Advocacy Networks in International Politics*, Ithaca: Cornell University Press, 1998.

It goes without saying that the internal complexity of each of these aggregates – as already specified for international organizations – is directly proportional to the width of the context of analysis that is chosen for a specific compass. For example, the analysis of the status of a norm in the European context (instead than in the worldwide one) will entail a significant simplification in the composition of each one of the aggregate actors above. Moreover, the analytical context might very well be made even more definite by adding specifications of time and case<sup>(374)</sup>.

As for the other elements of the scheme, the compass basically reproduces the same structure of the board. Therefore, the circular zone at the centre (evidenced in light-blue) represents governmentality, or, in other words, what we previously identified as the bullseye of human security. The red line circumscribing the zone represents what we will call “human security frontier”, since behaviours that cross this border automatically step into the shaded areas of human insecurity conditions. The thicker red line of the frontier, coupled with the thinner, external one, instead delimit the boundaries of the human insecurity zone, which extends past governmentality, from enforcement to necessity of policy. Beyond that, the blurred area in dark blue indicates the phantom-policy area of perception where norms are not even contemplated.

Having explained the basics of the model, we will now move on to discuss its working mechanism by means of two hypothetical examples, one featuring a compass assessing a norm under human security, whereas the other presenting a norm falling under human insecurity. The determination of the status of a norm X in the schemes will be done by drawing what we will define as “human security route”, that is, the path covered by human security through the actors, drawn by following the analytical tools offered by the compass. The disposition of the line in the scheme is actually what will give us the final clue on the status achieved by the norm within the chosen context.

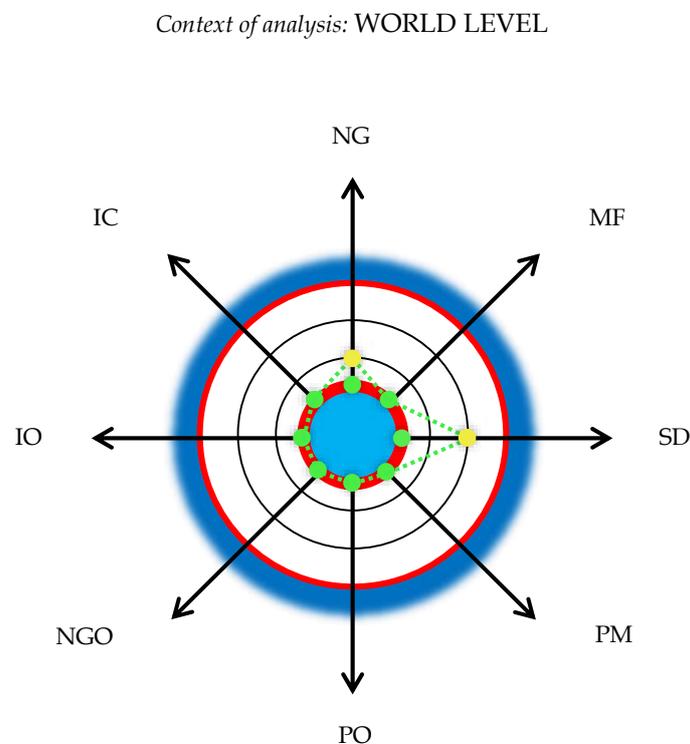
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<sup>374</sup> This can be done, for example, in cases when there is the need to analyse the behaviour of a compound of actors towards a specific norm within the context of a particular case study or judicial proceeding.



In the compass this is shown by the positioning of the human security route within the scheme. The route (traced in the light-green dashed line) is constructed by joining the various points placed along the lines pertaining to each actor. Each of these points is actually located as to signal the positioning of its respective actor's behaviour in the pertinent zone. In this case, therefore, having all actors internalized the norm's provisions, all the points are situated along the periphery of the human security frontier (that is, still within the board area "G"), so as to indicate that all of them have managed to reach the frontier and enter the sphere of governmentality.

**Case 2: Norm falling under human insecurity.** This second case instead represents a human security route that escapes the borders of the human security frontier. This is basically the case of a norm that still has to be governmentalized by *at least one* of the actors of the context under analysis. As for the precedent scheme, to simplify things we will keep the world level as analytical basis for the compass (*Figure VI*).



*Figure VI: Example of a compass assessing human insecurity*

For this demonstration we will assume that a hypothetical state *B* (that may well also be composed in itself by an aggregate of different states) has dissociated from both the “national governments” and the “state diplomacy” aggregates *A*, due to disaccord over the status of the norm *X* under analysis. His position will be settled within enforcement as far as the NG aggregate line is concerned, and within non-acceptance as far as the SD aggregate line is instead concerned. In the scheme, the differing position of aggregate *B* is represented by the yellow points. In these cases, where some aggregate lines present more than one point, thus indicating a fragmentation of behaviour and perception towards the norm within the aggregate itself, the human security route will have to move across the most external points. This to ensure that the visual assessment of non-governmentalized behaviours and the consequences they produce will not be cut off from the scheme analysis. In the present case, therefore, in the aggregate lines of NG and SD, which feature both a green point pertaining to aggregate *A* and a yellow point symbolizing actor *B*, it is the latter that has to be connected to the remaining points of the scheme to form the human security route (see the path followed by the said light-green dashed line in *Figure VI*).

What could this situation represent? The answer is quite straightforward. The positioning of behavioural points for actor *B* indeed indicates:

- first, that, domestically speaking, the norm is enforced by the government, although not governmentalized;
- second, that, internationally, the state nonetheless acts as if it did not recognize the legal status of the norm.

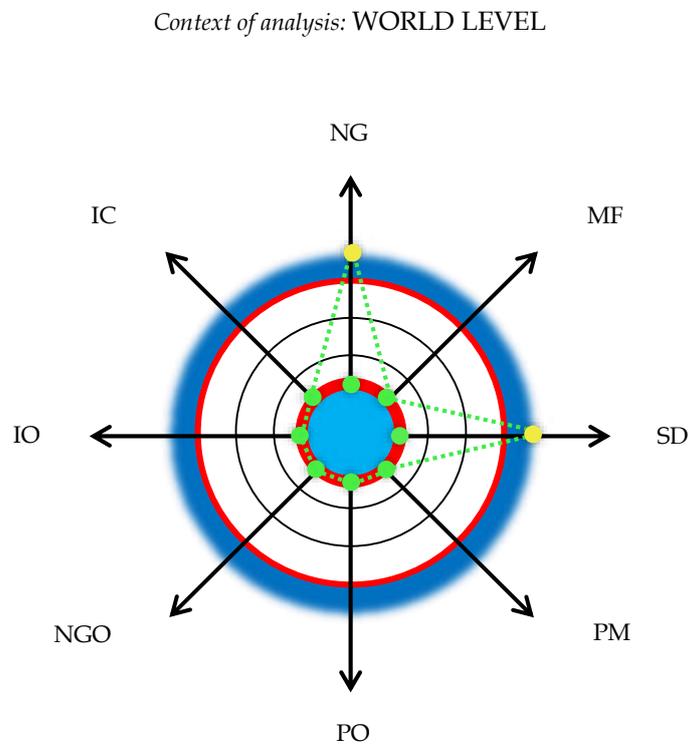
This kind of scenario is actually quite common, and displays in situations where states violate international norms despite having integrated them in their domestic systems of law. A norm that particularly suits this situational analysis is clearly the aforementioned ban on the use of force enshrined in the UN Charter. In cases when a state uses force to perform an

act of aggression towards another state – for whatever reason – this is actually done on the basis of a refusal by the state to accept the limits imposed by the norm itself, be it out of a calculus of self-interest or due to some kind of disapproval of parts of the dispositions of the norm itself according to situational contexts and cases.

Examples of this kind of pattern are countless. We actually mentioned a few of them in the previous paragraph while dealing exactly with the explanation of the non-acceptance of policy zone within the board. In that occasion, we indeed brought instances of violation of Article 2(4) of the UN Charter as practical examples for the analysis. Among these, the aforementioned Iraqi invasion of Kuwait in 1991, as well as the more recent invasion of Crimea by Russian forces, stand as a perfect illustrations of the trend represented in *Figure VI*, for all the reasons that we have already explained above.

This type of social behaviour is what triggers the movement of the human security route outwardly and makes it escape beyond the borders of the human security frontier, towards human insecurity. The basic idea that this second compass tries to convey with its graphical representation is, therefore, that within a given social context for a norm to fall under human insecurity it is sufficient for even just one of the actors considered to detach itself from governmentality. In other words, the lack of internalization of a norm's provisions by some actors entails growing levels of fear by compliant, governmentalized actors for potential norm violation. Indeed, those who ensure the respect of the norm towards the others and thus in turn also bear some expectations on the enjoyment of the rights deriving from it, are inevitably affected by non-governmentalized behaviours, to the point that the said enjoyment of rights is compromised, and perceptions of insecurity arise. This is actually the same mechanism that we already discussed when illustrating the reasons for the location of the human insecurity gap in the board between enforcement and necessity of policy. Perceptions that happen to be placed along E/NA/NE lines are therefore to be considered potential sources of instability and, therefore, of disequilibrium in the whole context of analysis of the scheme. This dynamic is shown in the compass by the human security route overhanging from the borders of the human security frontier as a consequence of the location of behavioural points of non-governmentalized actors outside governmentality.

As for the cases of actors' behaviours falling under non-contemplation of norms, the corresponding points will be placed along the blurred line of the dark-blue area past the NE red border, generating a particular perceptive-related dilemma that is worth mentioning. In fact, placing the behavioural point for actor *B* along the NC line entails that he in himself is excluded from perceptions of insecurity, given that the point is located outside the E-NE area enclosed within the red borders. As we have argued in our analysis of the board, indeed, actors that perceive a norm as not even contemplated cannot possibly develop sentiments of fear towards violation of the norm, given that they either do not recognize the need for a specific right to exist and being protected, or they ignore the fact that they should be supposed to claim it as theirs. However, a closer look at the compass shows that, even if the behavioural point related to actor *B* is detached from the inside of the compass, the light-green human security route that links and keeps together all behavioural instances – included the yellow point pertaining to actor *B* – in so doing indeed crosses the areas of human insecurity (see *Figure VII*).



*Figure VII: Consequences of non-contemplative behaviour assessed by the compass*

The compass thus makes a step forward compared to the board, and shows how, in this particular case, the non-contemplative behaviour of an actor towards a specific norm or policy is deemed to cause perceptions of human insecurity not for himself but instead in all the other actors whose perceptions make their behaviour fall under any of the other areas of the compass.

## **6. Concluding remarks**

The general conclusions that we draw from these exemplificative compasses are therefore that:

- human security for both behaving and perceiving actors is granted only under conditions of governmentality. In other words, both “active” human security (i.e., the one which derives from behaving in a way that is compliant with a given norm due to genuine convictions on its legitimacy) and “passive” human security (i.e., the feeling of being secure in one’s right under a norm’s provisions, that is granted by the lack of fear that others will violate it) are ensured only when all the actors pertaining to a specific social context achieve to governmentalize the norm, or else, to completely internalize it;
- in case even just one of the actors (or one aggregate of actors) belonging to the same social context under analysis steps out of the governmentalized zone delimited by the human security frontier, this entails the creation of conditions of insecurity under the norm for *all* the other actors involved in the scheme. As it has been shown, this mechanism is caused not only by behaviours that verge on the area of human insecurity (that is, that reach the enforcement, non-acceptance or necessity zones), but it is also true for non-contemplative behaviours that fall beyond the area of human insecurity (even though, in this case, non-contemplative actors are instead spared from insecurity perceptions);

- movement of the human security route towards the frontier of governmentality should be promoted, whereas governmentalized perceptions and behaviours should be deterred from abandoning the frontier. In other words, a process of gradual governmentalization for all those actors whose beliefs on a norm still linger within any of the other perceptive zones is required in order to foster the collective enjoyment of human security by all the actors of a same social environment. On the contrary, the lingering of behaviours and beliefs within zones that extend beyond the frontier of governmentality implies the permanence of insecurity conditions, and should therefore be avoided and “corrected” by fostering a slow process of internalization of norms by still non-governmentalized actors.

## CASE STUDY

### **The Compass in Action<sup>(375)</sup>**

*Cryptocurrency as the ultimate challenger of the security frontier:  
Making Bitcoin regulation emerge from the phantom area of security policy*

In this case study we will give the account of a practical application of the compass model to a contemporary security issue that emerged only a few years ago within the context of the brand new system of internet-based payments, that is, the problem posed by decentralised, math-based virtual currencies. These are completely “non-tangible” currencies whose only link with reality lies in exchange offices. Among these new-born currencies, the currently most problematic and best-known seems to have become the Bitcoin<sup>(376)</sup>.

Definitions of “virtual currency” and of “bitcoin” have been given by the FATF in its 2014 report on virtual currencies to propose a useful vocabulary that would help provide some common conceptual tools to better cope with the new challenges and risks posed by these cyber currencies. FATF thus defined a virtual currency as “a digital representation [i.e., in form of digital data] of value that can be digitally traded and functions as (1) a medium of exchange; and/or (2) a unit of account; and/or (3) a store of value, but does not have legal tender status (i.e., when tendered to a creditor, is a valid and legal offer of payment) in any jurisdiction”. This basically means that virtual currencies are “not issued nor guaranteed by any jurisdiction, and fulfil[l] the above functions only by agreement within the community of users”<sup>(377)</sup>. Virtual currencies may then be both convertible or non-convertible,

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<sup>375</sup> All online links in this chapter have been last accessed on 11 June 2016.

<sup>376</sup> “Bitcoin” (capitalised) is generally used to refer to the software that is used to produce this currency, as well as to the related peer-to-peer network deriving from it. On the contrary, “bitcoin” (lowercase) indicates the single units of the cyber currency.

<sup>377</sup> FATF, *Virtual Currencies – Key Definitions and Potential AML/CFT Risks*, June 2014, 4, available online at <<http://www.fatf-gafi.org/media/fatf/documents/reports/Virtual-currency-key-definitions-and-potential-aml-cft-risks.pdf>>. These characteristics are therefore what distinguishes virtual currencies from

depending on whether or not they are exchangeable for real, fiat currencies. The particularity of convertible virtual currencies is that, differently from their counterparts, which are issued by a rule-making central authority, they can be both centralised or decentralised. The latter basically differ from centralised virtual currencies in their being “distributed, open-source, math-based peer-to-peer currencies that have no central administrating authority, and no central monitoring or oversight”<sup>(378)</sup>.

Bitcoins feature as a prominent example of decentralised virtual currencies. Launched in 2009 by Satoshi Nakamoto (probably a pseudonym), they actually represent the first decentralised convertible virtual currency created, as well as the first instance of cryptocurrency<sup>(379)</sup>. FATF described bitcoins as “units of account composed of unique strings of numbers and letters that constitute units of the currency and have value only because individual users are willing to pay for them”. What might make bitcoins extremely palatable for users is that they are “digitally traded between users with a high degree of anonymity and can be exchanged (purchased or cashed out) into US dollars, Euros, and other fiat or virtual currencies”. In fact, although registers of bitcoin transactions are publicly available, the Bitcoin addresses that identify these transactions (and that are basically constituted of strings of letters and numbers) may not always be directly linked to identifiable individuals. This is the reason why the Bitcoin is said to be “pseudo-anonymous”<sup>(380)</sup>.

This pseudo-anonymity is actually what seems to cause trouble to the Bitcoin, making it highly vulnerable to the risk of money laundering and terrorist financing abuse, given that this type of virtual currency system allows for anonymous funding and transfers of money

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both “fiat currencies” (that is, the “real”, national currencies that freely circulate in a state since they are issued and designed as legal tender, which means that they are also accepted as exchange medium) and “e-money”, which is the mere digital representation of a fiat currency that is used for the purposes of making electronic transfers of value denominated in fiat currency.

<sup>378</sup> FATF, *Virtual Currencies Report*, 5.

<sup>379</sup> In the same report FATF defines cryptocurrency as “a math-based, decentralised convertible virtual currency that is protected by cryptography”, or, in other words, that “incorporates principles of cryptography to implement a distributed, decentralised, secure information economy”. See FATF, *Virtual Currencies Report*, 5.

<sup>380</sup> FATF, *Virtual Currencies Report*, 5-6.

from a sender to a recipient that might not even be traceable<sup>(381)</sup>. This because, when making transactions, bitcoin users are not even required to provide identification, given that Bitcoin addresses work as simple accounts, with no names necessarily attached to them. What makes things even worse is that, currently, the system is not controlled by a central body or authority, nor there still is available software to carry out anti-money laundering controls over suspicious transactions, which makes law enforcement nearly ineffective. In fact, due to this mechanic, investigations and seizures can only be conducted towards individual exchangers but they cannot target a single responsible central administrator, since there is none. Moreover, the infrastructure that supports virtual currency is generally very complex, with countless entities involved in the process, spread across countries in the attempt to take advantage of regulatory gaps. In other words, components of these networks generally tend to relocate in jurisdictions that lack an adequate anti-money laundering and counter-terrorist financing (AML/CFT) system so as to avoid controls<sup>(382)</sup>.

This concern over the possibility for virtual currencies to provide criminals and terrorist financiers with a non-traceable tool to move illicit funds that cannot be traced nor be subjected to law enforcement measures by authorities has been at the centre of most of the debate on the Bitcoin since its very appearance in the cyber market. However, after the recent terrorist attacks that struck Paris in November 2015, and the subsequent attacks also in Brussels, the topic gained renewed and increased weight, particularly within the European agenda.

Interior and Justice Ministers of EU states indeed gathered in Brussels in the aftermath of the events, advocating – among other things – tighter controls over virtual currencies, while

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<sup>381</sup> It actually seems to be a general conviction that bitcoins represent some kind of safe-haven for darknet illicit activities such as drug, arms and human trafficking. On this see generally DIRECTORATE OF INTELLIGENCE, FEDERAL BUREAU OF INVESTIGATION, (U) *Bitcoin Virtual Currency: Unique Features Present Distinct Challenges for Deterring Illicit Activity 2* (2012). The text of the document, which is available online at

[http://www.wired.com/Images\\_blogs/threatlevel/2012/05/Bitcoin-FBI.pdf](http://www.wired.com/Images_blogs/threatlevel/2012/05/Bitcoin-FBI.pdf), actually reads that “Bitcoin will likely continue to attract cyber criminals who view it as a means to move or steal funds as well as a means of making donations to illicit groups. If Bitcoin stabilizes and grows in popularity, it will become an increasingly useful tool for various illegal activities beyond the cyber realm”.

<sup>382</sup> FATF, *Virtual Currencies Report*, 9-10. The same document from FATF gives account of some cases of abuse of virtual currency for money laundering purposes, namely the *Liberty Reserve*, *Silk Road* and *Western Express International* cases.

on February 2016 the European Parliament's Committee on Economic and Monetary Affairs (ECON) issued a motion calling for the EU Parliament to address the issue of virtual currencies, also proposing a set of regulatory solutions<sup>(383)</sup>. The basics provided by the motion are basically the same individuated by the FATF report. On the same month, also the European Council released a statement concerning its conclusions on the fight against the financing of terrorism. In this occasion, underlining "the importance of achieving rapid progress on legislative actions" on "the field of virtual currencies", the Council in particular called upon the EU Commission "to submit targeted amendments, based on proper analysis, to the 4<sup>th</sup> Anti-Money Laundering Directive (AMLD) (...) as soon as possible, and no later than the second quarter of 2016"<sup>(384)</sup>.

The EU Commission did not wait long before answering the call. On March 2016, an Action Plan for strengthening the fight against terrorist financing was issued by the Commission, in support of the plan for amendments to the said AMLD. After recognizing that "[v]irtual currencies are currently not regulated at EU level", it thus proposed "to bring anonymous currency exchanges under the control of competent authorities by extending the scope of the AMLD to include virtual currency exchange platforms, and have them supervised under Anti-Money Laundering / countering terrorist financing legislation at national level"<sup>(385)</sup>. This proposal actually came just after a Europol report stating that no evidence was found that bitcoin is currently used for terrorist financing<sup>(386)</sup>. This, however, did not stop the Commission from including virtual currency exchanges under the

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<sup>383</sup> Committee on Economic and Monetary Affairs, *Draft Report on virtual currencies*, 2016/2007(INI), 23 Feb. 2016, available online at

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML%2BCOMPARL%2BPE-575.277%2B01%2BDOC%2BPDF%2BV0//EN>. This actually comes as the last of a series of motions, two others having been issues to the EU Parliament, respectively, on 3 Feb. 2014 and 25 Nov. 2015.

<sup>384</sup> On this see *Council conclusions on the fight against the financing of terrorism*, *European Council Press Releases and Statements*, 50/16 (12 Feb. 2016), available online at [www.consilium.europa.eu/en/press/press-releases/2016/02/12-conclusions-terrorism-financing/#main-accessibility](http://www.consilium.europa.eu/en/press/press-releases/2016/02/12-conclusions-terrorism-financing/#main-accessibility).

<sup>385</sup> See EUROPEAN COMMISSION, *Communication from the Commission to the European Parliament and the Council on an Action Plan for strengthening the fight against terrorist financing*, COM(2016) 50/2, Brussels (Mar. 2016).

<sup>386</sup> The Report actually declares that "[d]espite third party reporting suggesting the use of anonymous currencies like Bitcoin by terrorists to finance their activities, this has not been confirmed by law enforcement". See Europol Public Information, *Changes in modus operandi of Islamic State terrorist attacks*, The Hague, 18 Jan. 2016, 7.

proposed amendments, with the aim of effectively suppressing the anonymity of bitcoin transactions.

Despite negative findings, also media coverage kept associating bitcoins to terrorist financing. The German magazine *Der Spiegel*, in particular, argued that G7 states suspected the Islamic State was using digital currencies to transfer funds secretly<sup>(387)</sup>, whereas Ghost Security Group, an offshoot of the International hacktivist collective Anonymous, claimed to have evidence that ISIS activists performing attacks in Paris had obtained funds through Bitcoin payment systems<sup>(388)</sup>. Both claims – the first one in particular – were later declared to be wrong, but resulting media coverage on bitcoins and virtual currencies nonetheless grew stronger as a consequence, fuelling a general call for supporting stricter controls over cryptocurrencies.

In the meantime, on late February the ECON had adopted with a 54-to-1 vote a virtual currencies and blockchain report that, although recognising the potential offered by innovations such as bitcoins, at the same time called, among others, for the establishment of a taskforce with focus on the regulation of virtual currencies<sup>(389)</sup>. Jakob Von Weizsäcker, author of the report, indeed declared that “IT innovations can spread very rapidly and become systemic”, and for this reason the Committee was calling upon the Commission “to establish a taskforce to actively monitor how the technology evolves and to make timely proposals for specific regulation if, and when, the need arises”<sup>(390)</sup>. On 26 May 2016, the European Parliament approved in a non-binding resolution the aforementioned proposal for the establishment of a taskforce on bitcoin and blockchain technology study to be put

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<sup>387</sup> *G7 plan to get tough on virtual currencies after Paris attacks: Spiegel*, Reuters, 18 Nov. 2015, available online at <<http://uk.reuters.com/article/uk-france-shooting-g7-finance-idUKKCN0T72H720151118>>.

<sup>388</sup> *Anonymous Reveals ISIS Militants Linked To Paris Attack Had Bitcoin Funding*, posted on We Are Anonymous (16 Nov. 2015), available online at <<http://anonhq.com/anonymous-reveals-isis-militants-linked-to-paris-attack-had-bitcoin-funding/>>.

<sup>389</sup> European Parliament Committee on Economic and Monetary Affairs, *Draft Report on Virtual Currencies*, 2016/2007 (INI), 23 Feb. 2016. The text is available online at <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML%2BCOMPARL%2BPE-575.277%2B01%2BDOC%2BPDF%2BV0//EN>>.

<sup>390</sup> European Parliament Press Release, *MEPs call for virtual currency watchdog to combat money laundering and terrorism* (26 May 2016). The original press release is available online at <[http://www.europarl.europa.eu/pdfs/news/expert/infopress/20160524IPR28821/20160524IPR28821\\_en.pdf](http://www.europarl.europa.eu/pdfs/news/expert/infopress/20160524IPR28821/20160524IPR28821_en.pdf)>.

under the leadership of the European Commission<sup>(391)</sup>. Now, we therefore only have to wait and see if the European Commission will actually achieve to bring virtual currency exchange payments under control of the AMLD.

This being said, outside the European position on this hot topic, that seem to be clearly converging towards support for a common policy of regulation, how are the rest of world actors reacting to bitcoins? The question that we will try to address by drawing on the visual tools offered by the human security compass therefore is: are we sooner or later likely to obtain some coherent and cohesive bitcoin regulation at the international level? In other words, which are the current perceptions and behaviour of actors of the international community towards the possibility of a cohesive bitcoin regulation policy? And how does this situation affect the general conditions of security?

We will therefore start our analysis by deconstructing, one by one, using currently available data and information, the visions and behaviours of the aggregates of actors that provide sufficient account on their position over bitcoin regulation as to allow us to correctly place them within the compass.

### *National governments*

The complexity of the challenge posed by virtual currencies to law enforcement procedures and regulation of states has, since the very offspring of the phenomenon, caused national governments worldwide to take different, and slightly contrasting, positions over the issue. The wide range of regulatory responses that emerged with the advent of virtual currencies-related risks actually reflects the policy priorities of each different jurisdiction, so that keeping up with updates on the status of bitcoin regulation in countries is actually quite difficult given the ever-changing nature of fintech and the constant evolution undergone by policies everyday on such unpredictable topics. However, analysis of available regulations and statements from both government offices or central banks makes it is possible to identify three main sub-aggregates. These are constituted, respectively, by governments

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<sup>391</sup> European Parliament resolution of 26 May 2016 on virtual currencies (2016/2007(INI)), available online at <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0228+0+DOC+XML+V0//EN&language=EN>>.

that still not regulate Bitcoin<sup>(392)</sup>, governments that instead already perform regulation and law enforcement<sup>(393)</sup>, and, finally, a small compound of governments that have imposed – or are currently discussing about enacting – a domestic ban on Bitcoin<sup>(394)</sup>.

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<sup>392</sup> Making a complete list of governments that still refuse or do not feel necessary to regulate bitcoins is quite difficult, given that, as already said, domestic policies and positions of states on the matter are easily to be subjected to continuous changing according to the progress of technology and the evolution and spread of Bitcoin itself. However, a general idea of the situation can be grasped by looking at some useful online sources of information such as those offered by the recent Report on virtual currencies issued by the IMF (see *infra* note 395) and the survey on *Regulation of Bitcoin in Selected Jurisdictions* conducted by US Library of Congress (the link to the 2014 Report is here <<http://www.loc.gov/law/help/bitcoin-survey/>>). The document gives an account of states' domestic positions over bitcoin (although updated to 2015). Among these countries we can find Argentina, Belgium, Chile, Colombia, Cyprus, Croatia, Denmark, Estonia, Greece, Hong Kong, India, Indonesia, Ireland, Israel, Italy, Malta, Netherlands, Nicaragua, New Zealand, Poland, Portugal, Luxemburg, Pakistan, Philippines, Slovakia, Slovenia, South Africa, Spain, Taiwan, Turkey. Some other countries that were classified by the report as non-regulative have in the last years actually moved towards either regulation (such as the UK, Canada and Japan) or outlawing of the bitcoin (Russia). Worth mentioning is also the fact that this very aggregate is quite various in its composition, given that, although states are united by their lack of bitcoin regulation, their common acceptance or tolerance over bitcoin use and circulation comes out of different reasons and is based on a non-unified classification of the status of Bitcoin as a means of payment. In fact, whether there are states that seem to have come to recognise the status of bitcoin as “money”, although not as legal tender, some others tend to consider it more as a commodity, while others monitor its use and have also issued statements warning against bitcoin and discouraging its use, despite letting it circulate freely. This actually tells us that the universe of bitcoin is slightly complex and progress towards concrete unification of policies and visions over the status of virtual currencies in general will be hard to achieve without proper commitment by single states domestically as well as internationally.

<sup>393</sup> Among these, the most notable ones for enacting specific regulation over bitcoins are Brazil (that enacted in 2013 a law on payment systems also regulating the creation of electronic currencies), Bulgaria (where bitcoins are regulated by the law on payment system and services), Canada (that has amended previous regulations so as to put bitcoin under anti-money laundering law controls), China (that does not admit Bitcoin as a currency, so that banks and payment institutions in the country are not allowed to deal in bitcoins, despite China currently being the main producer of bitcoins), France (that for the time being is applying already existing regulations), Germany (applying existing regulations as France), Japan (whose Diet passed on 25 May 2016 a bill delegating bitcoin and general virtual currencies exchanges regulation to the country's Financial Services Agency), Sweden (where bitcoins are considered currency and their trade is regulated by the Financial Supervisory Authority), UK (whose Treasury has recently announced a plan to put bitcoin wallets under customer due diligence controls, in order to tackle anonymity), and US (that for many years has been the leader in bitcoin regulation, although now it is falling behind other jurisdictions, since there are other countries, such as the UK, that are “beginning to start regulatory regimes that don't merely tolerate cryptocurrency firms, but welcome them with open arms”, see TORPEY, *The United States is Falling Behind in Bitcoin Regulation*, in *Bitcoin Magazine* (25 Apr. 2016), available online at <<https://bitcoinmagazine.com/articles/the-united-states-is-falling-behind-in-bitcoin-regulation-1461604211>>. The UK and the US, in particular, among others, have worked hard to establish both the nature of tax treatment on virtual currencies and the enforcement of AML/CFT regulations to virtual transactions.

<sup>394</sup> The list of main countries where bitcoins have been banned comprises Bangladesh, Bolivia, Ecuador, Iceland, and Kyrgyzstan. Russia and Thailand are special cases in their own. In fact, there is still an ongoing debate in Russia on the public danger that can be caused by potential criminal misuse of bitcoins.) The Russian Finance Minister has recently proposed a bill to ban bitcoins that would deem the use of virtual currencies as criminal offence, therefore implying serious criminal liabilities for those caught buying, making transactions and mining bitcoins, with case-by-case fines and imprisonment up to 7 years. This ban was openly supported

The reason why we separate this latter group from the one that enacts regulation is that imposing a ban on the use and circulation of bitcoin and declaring it illegal in a county's jurisdiction is not the same as opting for regulating its use and control it. In other words, using the language of the compass, a ban corresponds to a refusal of a specific policy or norm (hence, to *non-contemplation of policy*), that, in this case, accounts for a lack of will to advance bitcoin regulation, in favour, instead, of a policy of criminalization. On the contrary, the application of some form of control over bitcoin corresponds to an actual enforcement of the need for regulative policy on the issue itself.

Surprisingly, the aggregate composed by non-regulative governments is more suitably subsumable under *non-contemplation* together with the bitcoin-banner group, even if following a different logic linked to a lack of perception of need for regulation. In other words, both these groups will fall under the outer, *non-contemplation* rank of the compass, the former due to a neglect of regulative policy in favour of outlawing (aggregate "NG3"), the latter out of the absence of recognition for the need to enforce regulative policy on bitcoins (aggregate NG2"). On the other hand, the aggregate that is already supporting and implementing regulative policies (aggregate "NG1") will instead be placed under the banner of the *enforcement area* in the compass (see *Figure VIII* below).

### ***International organizations***

As far as the European Union's position over bitcoin regulation, we have already seen that calls for stricter controls and overseeing of bitcoin transactions are starting to produce some concrete results, with the Commission currently working to put virtual currencies under control of the AMLD. This therefore leaves us with no doubt as to placing EU position in the compass within the *necessity of policy area*.

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by the chairman of Sberbank (Russia's largest bank in asset terms), and, despite facing opposition from the Ministry of Justice, the draft will still be submitted to the Duma (the lower chamber of the state's Parliament). On the other hand, Thailand saw its Central Bank declaring bitcoins illegal in 2013 due to the lack of existing law on the matter. However, bitcoin businesses in the country did not stop their activities, since the ban was never really put in practice. Recently, on 10 May 2016, all of a sudden, the Bank of Thailand has declared that bitcoins are not illegal but has at the same time warned against its use.

Apart from the EU, there is another important international organization that has recently expressed its position over the tough topic of bitcoin regulation, namely the International Monetary Fund. On 20 January 2016, the IMF issued its first report on virtual currencies, where it classified virtual currencies as a “relatively novel phenomenon” that “emerged in the absence of effective regulation”, a process that actually came with “some potential benefits, such as low transaction fees and processing time, but has left unaddressed the risks that VCs pose”. According to IMF, cryptocurrencies in particular have the potential to threaten the financial system in many ways, with “immediate and pressing concerns about financial integrity (anti-money laundering/combating the financing of terrorism (AML/CFT)), consumer protection, tax evasion, and the regulation of capital movements”, with a potential for future “[c]oncerns about financial stability” that, although not immediate, still are worth monitoring<sup>(395)</sup>.

For this reasons, after a thorough examination of the causes that make virtual currencies a hard challenge to cope with for regulators, the report underlined the necessity for regulation to be flexible, in order to be able to adapt to the continuous changes and evolutions in technology. Therefore, bearing in mind the chaotic approaches that have until now been taken by states towards bitcoins, the report called upon states to increase international cooperation to foster regulation. It actually affirmed that “developing international standards and best practices could (...) provide guidance on the most appropriate regulatory responses in different fields, thereby promoting harmonization across jurisdictions”<sup>(396)</sup>. The development of such policy responses could be helpful in a number of ways, since “[s]uch standards could also set out frameworks for cooperation and coordination across countries over such questions as the sharing of information and the investigation and prosecution of cross-border offenses”<sup>(397)</sup>.

The report concluded by acknowledging that “[r]egulators in some areas (for example, AML/CFT) have made considerable progress in developing effective responses”, but “a

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<sup>395</sup> International Monetary Fund, *Virtual Currencies and Beyond: Initial Considerations*, IMF Staff Discussion Note, Jan. 2016, 24.

<sup>396</sup> International Monetary Fund, *Virtual Currencies Report*, 26.

<sup>397</sup> *Ibid.*

great deal of work remains to be done to put in place effective frameworks to regulate VCs in a manner that guards against the risks while not stifling financial and technological innovation”<sup>(398)</sup>. It goes without saying that IMF’s position, along with that of the European Union<sup>(399)</sup>, will be aggregately placed in the compass under the banner of the *necessity of policy area*.

### ***Public opinion***

In the last few years, the use of virtual currencies, and in particular of bitcoins, has spread significantly worldwide, although in some countries more than in others. A remarkable number of “bitcoin consumers” has emerged, so that, even if the Bitcoin still has to get to be known everywhere, its popularity seems to have the potential to spread very fast, thanks to the practical advantages that virtual currencies can give to ordinary investors, consumers, merchants and businesses.

Online sources offer some interesting insight in people’s perceptions over bitcoin use and regulation through consultation of poll results uploaded in a number of websites. Unfortunately, the majority of information available in this sense comes from countries such as the US and UK, which are prominent bitcoin users and regulators. Data that can be gathered, however, offer some interesting material to use to at least give some account of people’s opinions on bitcoins.

What seems to emerge from these results is a general will (in UK in particular it corresponds to almost half of British bitcoin users) to support bitcoin regulation, at least among those who declare knowing bitcoins or having used them. As for those who are not familiar with bitcoins, polls report that it sometimes happened that, after a brief explanation about the money system, many of them (an average half) opted for supporting the need for

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<sup>398</sup> International Monetary Fund, *Virtual Currencies Report*, 35.

<sup>399</sup> A quite similar position to that of the EU and the IMF has been advanced also by the United Nations Office on Drugs and Crime (UNODC), that, just as the FATF, has been working to promote prevention and law enforcement against money laundering threats associated to virtual currencies. Of the same opinion is also the OECD (see the *Working Party No. 2 on Competition and Regulation* of 26 Oct. 2015, available online at <[http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WP2\(2015\)9&doclanguage=en](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WP2(2015)9&doclanguage=en)>).

better regulation. At the same time, a recent survey from Coin Centre revealed that, at least as far as the US is concerned, a great percentage of the population is unexpectedly unfamiliar with Bitcoin<sup>(400)</sup>. It also seems that the recent wave of terrorist attacks in Europe (in Paris and then Brussels) may have nonetheless added to the general sentiment of discomfort towards the lack of bitcoin regulation (at least among the bitcoin-aware public), a sentiment that in 2014 had already emerged among bitcoin investors and entrepreneurs in particular after the sudden collapse of two of the major platforms for bitcoin exchanges (i.e., the Canadian Bitcoin bank Flexcoinm, and Mt. Gox)<sup>(401)</sup>.

These trends are actually quite comprehensible. On the overall, therefore, it seems that the population is still divided among a relevant portion of people that still ignore about the existence of bitcoins and the way virtual currencies work, and a slightly more niche group that instead already uses bitcoins and is thus aware of both pros and cons involved, and seems to be prone to support greater regulation on the matter. For the purpose of our visual analysis in the compass, we will therefore begin by identifying within the public opinion compound two sub-aggregates, the former representing those ignoring the issue of bitcoin and the need for its regulation, to be placed in the *non-contemplation area* (aggregate “PO3”), and the latter, that is, the one linked to bitcoin-aware users that call for greater regulation, that will be positioned under *necessity of policy* (aggregate “PO2”).

The sub-aggregate of academic researchers and related commentary is to be placed under public opinion as well. There seems to be general agreement among academics on the necessity for regulation of the Bitcoin<sup>(402)</sup>, although, as we have seen, the dilemma that

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<sup>400</sup> Some basic information concerning public polls on bitcoin can be found at the following links: <<https://99bitcoins.com/almost-half-british-bitcoin-users-believe-cryptocurrency-regulation/>>; <[www.thehill.com/regulation/finance/193086-poll-almost-half-want-bitcoin-regulation](http://www.thehill.com/regulation/finance/193086-poll-almost-half-want-bitcoin-regulation)>; <<https://coincenter.org/2015/01/coin-centers-new-bitcoin-public-sentiment-survey/>>; <[www.coincenter.org/survey/](http://www.coincenter.org/survey/)>; <<https://www.isidewith.com/poll/1569980570>>; <[www.cnbc.com/2014/03/25/more-we-know-bitcoin-the-less-we-trust-it-poll.html](http://www.cnbc.com/2014/03/25/more-we-know-bitcoin-the-less-we-trust-it-poll.html)>; <[www.bitcoinvox.com/article/1513/wsj-poll-on-the-future-of-bitcoin](http://www.bitcoinvox.com/article/1513/wsj-poll-on-the-future-of-bitcoin)>.

<sup>401</sup> On this see *Bitcoin investors call for digital currency regulation*, in EveningStandard. (5 Mar. 2014), available online at <<http://www.standard.co.uk/business/business-news/bitcoin-investors-call-for-digital-currency-regulation-9170280.html>>.

<sup>402</sup> SONDEREGGER, *A Regulatory and Economic Perplexity: Bitcoin Needs Just a Bit of Regulation*, in 47 *Washington University Journal of Law and Policy* (2015), 178. On this, see generally also FRICK, *Why Bitcoin Entrepreneurs Are Begging for more Regulation*, in *Harvard Business Review* (26 Mar. 2014), available online at <<http://blogs.hbr.org/2014/03/why-bitcoin-entrepreneurs-are-begging-for-more-regulation/>>. The author

governments are faced with is proving quite hard to be solved. Indeed, whereas regulation seems necessary, given the potential “ideological underpinnings” of Bitcoin (i.e., the more or less explicit threat that it poses to sovereign privileges of states), governments are at the same time inevitably “awed by its technological potential”. The problem is that “Bitcoin rejects centralized control and exists exclusively on the Internet, meaning that true, effective regulation can exist only through worldwide cooperation, which is costly, not to mention highly complex”<sup>(403)</sup>. Given the general agreement among researchers on the necessity for cooperation and support for the development of some level of regulation over bitcoins, this sub-aggregate as well will be placed in the compass within the range of the *necessity of policy area* (aggregate “PO1”, see *Figure VIII* below).

### ***Press & media***

As always, media and press seem to go with the flow. In this years, researchers have often tried to demonstrate the connection between media coverage after periodical bitcoin system collapses and following peaks in bitcoin popularity.

It actually seems that media and press coverage has played a central role in the diffusion and advertising of bitcoins worldwide. In the last few years, discussions about bitcoins have indeed found an increasing space in social media, in online blogs and in the press as well, up to the point that some have come to suggest a connection between bitcoin direct and indirect publicity by media and subsequent price rises. Back in November 2013, Alex Wilhelm from TechCrunch commented on the mind-blowing price rally that bitcoin was experiencing (the biggest one since its very creation, with bitcoin trading at an average of \$645 per coin), adding that the bitcoin had “never been worth more, or generated more headlines that [he could] recall”. His conclusion was therefore that “the two are likely

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also underlines that the current uncertain status of regulation worldwide is one of the causes limiting Bitcoin development.

<sup>403</sup> SONDEREGGER, *op.cit.*, 178. See also DAVANEY, *Carper: US Should “Lead Way” in Bitcoin Regulation*, in *The Hill* (3 Feb. 2014), available online at <<http://thehill.com/regulation/legislation/197310-carper-us-should-lead-way-in-bitcoin-regulation>>. Here the author states that “[t]his report underscores that Bitcoin and other virtual currencies are present and growing in major economies, supporting the call for increased global cooperation”.

connected”<sup>(404)</sup>. The phenomenon even pushed some authors to rise concerns over the clear possibility of a bitcoin bubble taking place<sup>(405)</sup>.

Commentators seem to have come to agreement on a pattern that sees prices hiking up whenever Bitcoin undergoes some type of regulative attention due to system disruptions of some kind that are followed by waves of media coverage<sup>(406)</sup>. This actually happened in many occasions, first, for example, when the Silk Road online market was shut down due to illicit activities carried out through bitcoin payments. The event was hugely covered by media, and, despite an initial breakdown, bitcoin prices soon started to climb up. The pattern indeed seems to repeat itself any time the Bitcoin is put under some regulative spotlight. It thus re-happened when media coverage spiked up in November 2013 after the decision of a US Senate Committee to declare bitcoin as a “legitimate financial service”. The event had been preceded in April by what commentators described as a “huge press cycle”, that pushed bitcoin prices suddenly up for a week. Then, the following collapse of the Mt.Gox exchange platform due to a DDoS attack made the bitcoin value drop momentarily, just to quickly bounce back in the span of a week, apparently pushed by the same pattern of media-fuelled demand rise<sup>(407)</sup>. According to Mike Hearn, a Bitcoin core developer, the mechanic would actually be based on self-fuelling price fluctuations. Basically, “[s]udden price movements attract the attention of the media, which writes about it, and that then causes more people to decide to get involved so the price goes up, so more people start speculating”. This process then undergoes an acceleration “until it turns into a pure speculative bubble which then pops, leaving the price down from the peak but up from where it started”<sup>(408)</sup>.

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<sup>404</sup> See WILHELM, *Bitcoin \$645? Yeah, That's Totally Reasonable* (18 Nov. 2013), available online at <[www.techcrunch.com/2013/11/18/bitcoin-645-yeah-thats-totally-reasonable/](http://www.techcrunch.com/2013/11/18/bitcoin-645-yeah-thats-totally-reasonable/)>.

<sup>405</sup> On this see, for example, AUTHERS, *Time to Take the Bitcoin Bubble Seriously*, in *Financial Times* (11 Dec. 2013), available online at <<http://www.ft.com/cms/s/0/4ad1bba0-61fa-11e3-aa02-00144feabdc0.html#axzz2pZf9xP1n>>.

<sup>406</sup> On this see, for example, BARFORD, *Bitcoin: Price v Hype*, in *BBC News Magazine* (13 Dec. 2013), available online at <[www.bbc.com/news/magazine-25332746](http://www.bbc.com/news/magazine-25332746)>. See also the research conducted by GORBATAL, *Exogenous Regulatory and Technological Shocks, and Bitcoin's Path to Legitimacy*, SASE Conference Paper, University of California - Berkeley, (June 2016), available online at <<https://sase.confex.com/sase/2016am/webprogram/Paper4763.html>>.

<sup>407</sup> BARFORD, *op.cit.*

<sup>408</sup> *Ibid.*

Although it is obviously quite difficult to precisely picture the extent of media and press coverage on bitcoins, some have attempted a sample measurement using the media database Lexis Nexis. The results that have been obtained speak for themselves. Research under the “bitcoin” entry across news in English language resulted in up to 2,631 articles only as of November 2013. In the same month, Bitcoin seems to have appeared up to 14,179 times in online media and blogs, according to the estimates of PR software company Cision UK<sup>(409)</sup>. November 2013 is indeed remembered for having seen the price of bitcoin increase of more or less five times its previous value, and media coverage has been blamed for being in great part responsible for this exceptional and sudden rise in bitcoin demand<sup>(410)</sup>.

As for bitcoin regulation, both press and media seem to be actively pushing for it – probably reflecting, and at the same time in turn also fuelling, the reaction of general public opinion – any time a disruptive event of some kind involving bitcoins occurs. It happened after the aforementioned collapse of Mt.Gox. More recently, a wave of press-related push towards bitcoin control followed the terrorist attacks in Paris and Brussels, with media openly associating terrorist funding with bitcoins (despite various reports assessing the contrary, see previous sections above) and consequently fuelling general anxiety and calls for stricter controls<sup>(411)</sup>. In this sense, the “press & media” aggregate and the “public opinion” aggregate are bound in a slightly tight relationship. It is actually well-known how media and press play on a strategic amplification of people’s perceptions and fears to make audience, and the bitcoin case is no exception. For all of these reasons, the PM aggregate itself will be placed within the compass under the *necessity of policy area*.

### ***State diplomacy***

As of now, at international level states have shown some reticence towards committing to some serious work for the creation of mechanisms of cooperative bitcoin regulation. The reasons are multiple, given the practical, legal and technical problems that would have to

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<sup>409</sup> *Ibid.*

<sup>410</sup> *Ibid.*

<sup>411</sup> On this see, for example, *Brussels Terror Attacks Revive Terrorism-Crypto Connection, Fuelling European Push To Control Bitcoin*, in CCN.LA (26 Mar. 2016), available online at <<https://www.cryptocoinsnews.com/terrorism-crypto-connection-european-control-bitcoin/>>.

be faced in order to accomplish such an objective, which we thoroughly outlined throughout the previous sections.

As a matter of fact, instances of cooperation between states at international level until now seem to be mainly directed to the advancing of bitcoin-related technological efficiency, more than on the necessity to foster cooperative regulation. Examples of this obviously principally come from leading countries in the bitcoin sector, such as the UK and Australia. It is actually recent news that the British Financial Conduct Authority (FCA) and the Australian Securities and Investments Commission (ASIC) have signed a pioneer agreement focused on supporting respective fintech companies attempting to enter the others' market by granting some financial concessions from their general regulative frameworks<sup>(412)</sup>. At the same time, Standard Australia, which is the Australian standard-setting authority, called for the International Standard Authority (ISO) to begin working on the creation of a set of international standards concerning blockchain technologies sustaining the bitcoin. The main purpose would be to foster "interoperability between the different blockchain traders around the world", in order "to unloc[k] the potential for blockchain"<sup>(413)</sup>. This type of process, therefore, "requires international standards (...) and the best to do it is through the ISO", as Adrian O'Connell (Standard Australia's chief executive) declared in a recent interview with *The Australian*<sup>(414)</sup>.

Despite this, some attempts at promoting less domestic-biased perspectives over bitcoin regulation seem to be on the way of emerging. Indeed, apart from the aforementioned work that is currently being made at European level by some EU members in particulars in the attempt to build a more cohesive framework to cope with bitcoin, coordinate, and tighten regulation on the matter, worth mentioning is also a particular initiative that has recently

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<sup>412</sup> On this see *British and Australian Financial Regulators Sign Blockchain Agreement*, in CCN.LA (1 Apr. 2016), available online at <<https://www.cryptocoinsnews.com/british-australian-financial-regulators-sign-blockchain-agreement/>>.

<sup>413</sup> See *Australia Calls for Global ISO Blockchain Standards*, in CCN.LA (13 Apr. 2016), available online at <<https://www.cryptocoinsnews.com/australia-calls-global-iso-blockchain-standards/>>.

<sup>414</sup> See *Australia Pushes ISO for Blockchain Standards*, in *The Australian* (13 Apr. 2016), available online at <<http://www.theaustralian.com.au/business/markets/australia-pushes-iso-for-blockchain-standards/news-story/514516e87f4ff244a8e81e41f6fe7ef0?nk=fb8f1d6cb4fcfb77828b6593f23042bd-1460563924>>.

been established by Germany and Austria. The project is called “Prosecution and Prevention of Organized Financial Crime with Virtual Currencies” (BITCRIME), and will be funded through joint initiative of the German Federal Ministry of Education and Research (BMBF) and the Austrian Federal Ministry for Transport, Innovation and Technology (BMVIT)<sup>(415)</sup>. This bilateral research project will be focused on “prevention and prosecution of organized financial crime committed with virtual currencies”. Members of the project have indeed acknowledged that the constant increase in the use of virtual currencies worldwide (with the related amount of aforementioned risks that this process is already generating) is making them “attractive to actors in organized financial crime”, also in face of “effective prevention and prosecution strategies [currently still] lacking”. For these reasons, the goals set forth by this project focus on developing “innovative and workable approaches toward regulating virtual currencies in a way that is compatible with their fundamental nature”. In the words of their own founders, “[t]he bilateral cooperation promotes this holistic and interdisciplinary approach to the growing challenges posed by virtual currencies”, with the special aim to elaborate “actionable, internationally applicable and interoperable solutions for Europe and beyond”<sup>(416)</sup>. In the same direction has long been working also the aforementioned FATF, namely the inter-governmental body whose role in the support for the necessity of increasing international cooperation for bitcoin regulation has already been addressed above.

Overall, internationally speaking the positions of governments worldwide seem therefore to alternate some embryonic forms of commitment to cooperation for bitcoin regulation to a still excessively high degree of indifference towards the issue. Under the framework of the compass, this type of situation will be captured by positioning these sub-aggregates of the “state diplomacy” line, respectively, under *necessity of policy* (aggregate “SD1”) and under *non-contemplation* (aggregate “SD2”, see *Figure VIII* below).

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<sup>415</sup> On this see *Germany and Austria Fund a Bitcoin Financial Crime Research Project*, in CCN.LA (7 May 2016), available online at <<https://www.cryptocoinsnews.com/bitcoin-financial-crime-research-project-developed-germany-austria/>>.

<sup>416</sup> All quotes are taken from the official webpage of the project, that can be found at <<https://www.bitcrime.de/en/index.html>>.

### ***Multilateral fora***

Within the context of international fora, bitcoin regulation seems not to have taken much hold yet. General commentaries and discussions on the Bitcoin and virtual currencies in general, as well as on the risks and challenges that they pose to an increasingly transforming international environment, have obviously been made. However, no relevant call for cooperation in bitcoin regulation had, at least until now, really emerged at this level.

On April 2016, however, the Chamber of Digital Commerce (CDC) surprisingly announced the establishment of a Global Blockchain Forum (GBF)<sup>(417)</sup>, created through the “partnering of the leading trade associations for the blockchain and digital asset industries”<sup>(418)</sup>, with the special aim of creating “industry best practices and international regulatory interoperability”. The most interesting characteristic of this forum is perhaps its “bring[ing] together the leading trade associations to engage with governments”<sup>(419)</sup>, so that the work of policymakers, associations and stakeholders will have a better chance of achieving greater coordination and regulative efficiency in the future. The following extract from CCN.LA press release on the GBF offers a clear insight on the potential that a serious commitment from this forum could unravel in the creation of a cohesive regulative system that nonetheless does not hinder the advance of blockchain innovations. The text is basically a comment of Perianne Boring, CDC founder and president, over the GBF project.

[I]t makes no sense to duplicate resources and efforts. [T]he organizations will move faster and farther by working together. In addition, (...) many of the associations’

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<sup>417</sup> See SHIN, *Bitcoin Technology Organizations Launch Global Blockchain Forum To Address International Policy*, in *Forbes* (12 Apr. 2016), available online at <<http://www.forbes.com/sites/laurashin/2016/04/12/bitcoin-technology-organizations-launch-global-blockchain-forum-to-address-international-policy/#1000c19d6465>>. The link to the project is here: <<http://www.digitalchamber.org/global-blockchain-forum.html>>.

<sup>418</sup> Among the main founders we can mention the said Chamber of Digital Commerce, the United Kingdom Digital Currency Association, The Japan Blockchain Association, the Association of Crypto-Currency Enterprises and Startups, Singapore (ACCESS) and the Australian Digital Currency Commerce Association (ADCCA).

<sup>419</sup> Both quotes are taken from *Global Blockchain Forum Launched to Coordinate Regulatory Interoperability and Best Practices*, in CCN.LA (12 Apr. 2016), available online at <<https://www.cryptocoinsnews.com/global-blockchain-forum-launched/>>.

members have an international presence. For such members, it is important to have similar rules, standards and best practices across borders. “Interoperable” is a word that commonly describes how different digital currency protocols should work together (...). Not having unified policies among jurisdictions can be expensive for startups. CDC believes companies that operate in the U.S. must abide by different state rules for “money transmitters” and pay between \$2 million and \$5 million annually in compliance costs. (...) Conflict-of-law issues can arise in which a company could not be in compliance with all the laws (...). [T]his [is] a huge impediment to investment, innovation, and industry growth. Similar problems exist among countries. The U.S. government can pursue a direction in defining the technology, while in the U.K., regulators view it in a completely different way. Companies with customers in both nations will face very costly compliance costs. The GBF will support best practices among participants. It will also improve awareness of blockchain technology and the social and economic impacts it creates. Another goal is to work with government agencies and world organizations to develop consistent policy, regulation and legislation. (...) GBF members have already begun work on certain projects, collaborating with government, industry and academia to develop real world application standards such as identity management. One initiative, distributed identity (d.ID), attempts to develop blockchain-powered identities for persons not connected to entities like Facebook or Google. (...) [R]egulators will face more complicated tasks going forward as the blockchain expands to applications beyond currency. [R]egulations have to be established narrowly so when new applications like smart contracts or settlement and clearing come to market, they don’t face regulatory limbo. As the blockchain expands, regulation must be flexible enough to allow for innovation<sup>(420)</sup>.

Overall, despite the general lack of interest displayed by multilateral fora towards the possibility for cooperation over bitcoin regulation, this recent creation of the GFB leaves open the possibility for some serious international cooperation in the near future, and is therefore exemplificative of an increasing perception that a more thorough general

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<sup>420</sup> *Ibid.*

commitment towards regulative cooperation by both worldwide companies and agents involved in the business and national governments themselves is actually needed. For this reason, this compound as well will be divided under the compass in two sub-aggregates that are exemplificative of these two current approaches. The former will therefore be placed under *non-contemplation of policy* (aggregate “MF2”), whereas the latter under the banner of *necessity of policy* (aggregate “MF1”, see *Figure VIII* below).

### ***International courts and NGOs***

While conducting this analysis of each of the aggregate lines of the compass, we purposely skipped two of them, namely the IC and the NGO lines. This has actually been done out of a general lack of information on the positions taken by both compounds as far as the issue of bitcoin regulation policies is concerned. This is not to say that neither of these actors are somehow related to the bitcoin world. The connections already exist, but, for now, are of different sort.

Searching through the Internet, evidence is indeed easily found on the increasing links that are being established between NGOs worldwide and bitcoins as an innovative and practical means of fundraising<sup>(421)</sup>. This type of new donation mechanic has also fostered the birth of parallel projects and start-ups aimed at helping NGOs raising funds through bitcoin donations. Among these, two of the most prominent ones are the Bulgarian BitHope initiative and the start-up set up by the Swedish Bitcoin company BTCX in collaboration with its parent company GooBit AB. The former is basically a project brought about by a Bulgarian Foundation that in 2015 created a charity crowdfunding website where NGOs can pay to upload their campaigns and raise funds through bitcoins<sup>(422)</sup>. The latter, instead,

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<sup>421</sup> For some exemplificative reference see, for example, *Help NGO Doctors Without Borders to Fight Ebola Using Bitcoin*, in CCN.LA (22 Oct. 2014), available online at <<https://www.cryptocoinsnews.com/help-ngo-doctors-without-borders-fight-ebola-using-bitcoin/>>;

<[www.bitcoingarden.tk/forum/index.php?topic=4762.msg100172](http://www.bitcoingarden.tk/forum/index.php?topic=4762.msg100172)>; <<https://bitcoingarden.tk/forum/index.php?topic=4766.0>>; <[www.bund-berlin.de/bund\\_berlinde/spended/bitcoin\\_spended/bitcoin\\_english.html](http://www.bund-berlin.de/bund_berlinde/spended/bitcoin_spended/bitcoin_english.html)>.

<sup>422</sup> General information on the project can be found online at <<https://cryptocointalk.com/topic/41879-introducing-bithopeorg-bitcoin-charity-crowdfunding-for-ngos/>>. see also FAGGART, *BitHope Speaks: Scalability and the Future of NGOs*, in Bitcoinist.net (8 Mar. 2016), available online at <[www.bitcoinist.net/bithope-speaks-scalability-ngo/](http://www.bitcoinist.net/bithope-speaks-scalability-ngo/)>.

features the said company running fundraising campaigns for two specific NGOs through the establishment of dedicated bitcoin wallets and donation links on its BTCX donations page. The NGOs that are being supported through this means are currently WaterAid Sweden and the Adult Learning and Empowerment Fund (ALEF), although the company is also sustaining other charitable causes whose raised funds will be donated to selected non-profit and charitable institutions in Sweden<sup>(423)</sup>. Another initiative has been launched also by the European bitcoin exchange platform Safello, which set up a series of bitcoin donation pages where charities can run their fundraising campaigns freely, letting the whole amount of donations flow directly to their projects<sup>(424)</sup>.

This phenomenon of Bitcoin charities, as well as the general issue of bitcoin fundraising, although still lacking the spotlight of other higher-profile topics, seems to be bound to experience a great expansion in the future years, given the clear practical advantages that bitcoin technology can offer for such type of activities. Our brief research has therefore demonstrated that there actually is some high degree of involvement of NGOs worldwide in the bitcoin sector; however, as we have shown, this interest is generally directed towards exploitation of the means itself for the benefits offered, rather than on fostering support for campaigns calling for greater coordination on bitcoin regulation. In other words, NGOs are using bitcoins for their own benefits without discussing their possible downsides. Calls for improvements in the Bitcoin regulative system by NGOs seem therefore far from appearing, at least for the time being.

As for international courts, the situation is currently very similar. Although an increasing number of courts is facing bitcoin-related proceedings at domestic level, mainly due to conflict-of-law and interpretative issues, at the international level proceedings and judgements on the status and necessity for greater regulation are still somewhat lacking. Last year, the European Court of Justice, under request for a preliminary ruling by the Supreme Administrative Court of Sweden for a case concerning the interpretation of some

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<sup>423</sup> See *Swedish Bitcoin Startup Partners with NGO to Boost Clean Water Access*, in NewsBTC (1 June 2016), available online at <[www.newsbtc.com/2016/06/01/btcx-donations-supports-wateraid-part-initiative/](http://www.newsbtc.com/2016/06/01/btcx-donations-supports-wateraid-part-initiative/)>.

<sup>424</sup> On this see HICKS, *Safello Enables Charitable Donations With Bitcoins*, in Forbes (17 Aug. 2014), available at <[www.forbes.com/sites/jenniferhicks/2014/08/17/safello-enables-charitable-donations-with-bitcoins/#34d6eabc3751](http://www.forbes.com/sites/jenniferhicks/2014/08/17/safello-enables-charitable-donations-with-bitcoins/#34d6eabc3751)>.

articles of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (commonly known as the “VAT Directive”), ruled that bitcoin transactions involving the exchange of traditional currencies for bitcoin units of virtual currency are exempt from VAT within the meaning of the directive, since they fall under the VAT-exempt category of transactions relating to “currency, banknotes and coins used as legal tender”<sup>(425)</sup>.

Within the chaotic scenario that is currently seeing a general struggle over both the establishment of the nature of Bitcoin as money or commodity and consequently how to treat it when it comes to taxation, this decision stands as an important threshold in the gradual process of legal framing of the Bitcoin, at least within the European context. However, as far as our topic of analysis is concerned (that is, bitcoin regulation policy), no sufficient information is currently offered by the IC aggregate that would allow us to locate this compound with some degree of certainty in the compass within a specific perceptive and behavioural area.

For these reasons, both the IC and the NGO aggregates will momentarily be left out from our compass model analysis, meaning that no perspective on bitcoin regulation policy will be positioned along their aggregate lines in the scheme.

### *Constructing the compass*

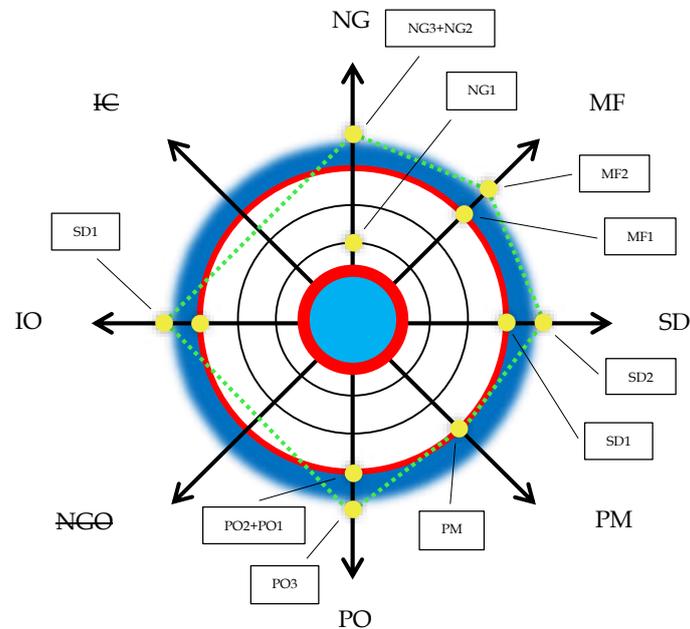
After this broad overview, we will now proceed to construct the compass with the information that we gathered so far through our analysis. The policy under analysis will be Bitcoin cooperative regulation, under the world level context. Placing the aggregate points that we indicated in the end of each paragraph in the respective locations within the compass areas, the visual model that can be obtained is the following.

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<sup>425</sup> The full-text of the final judgment can be found online at <<http://curia.europa.eu/juris/document/document.jsf?docid=170305&mode=req&pageIndex=1&dir=&occ=first&part=1&text=&doclang=EN&cid=901657>>. See also Court of Justice of the European Union, *The exchange of traditional currencies for units of the “bitcoin” virtual currency is exempt from VAT*, Press Release No. 128/15, Luxembourg, 22 Oct. 2015, available online at <<http://curia.europa.eu/jcms/upload/docs/application/pdf/2015-10/cp150128en.pdf>>.

Bitcoin cooperative regulation policy

Context of analysis: WORLD LEVEL



*Figure VIII:*

Human security compass on world perspective towards bitcoin cooperative regulation policy

What does the compass tell us? The first thing that can be noticed is a general preponderance of NE and NC positions throughout the different aggregate lines, a phenomenon which brings the path of the human security route to stretch way too far from the central zone of human security. Indeed, no point has been placed under governmentality, and enforcement only sees one aggregate under its banner, namely NG1 (the compound of national governments that are already enforcing some form of bitcoin regulation at domestic level).

For practical purposes, we will briefly summarize down below the different positions that have been transposed into the compass, going through each of the aggregate lines represented (except for IC and NGO).

*National governments (NG)*

NG3: bitcoin banners

NG2: non-regulating governments

NG1: governments already enforcing regulation

*International organizations (IO)*

IO: compound of IOs calling for greater international cooperation for bitcoin regulation

*Public opinion (PO)*

PO3: people still ignoring bitcoins and related regulative issues

PO2: bitcoin-aware users asking for greater regulation and transaction security

PO1: academic researchers and commentary supporting the need to foster international cooperation for bitcoin regulation without hindering the possibilities for blockchain innovation

*Press & media (PM)*

PM: compound in line with PO2's call for better insurance and management of Bitcoin

*State diplomacy (SD)*

SD2: compound characterized by lingering general indifference towards the issue of bitcoin cooperative regulation

SD1: embryonic forms of international cooperative commitment for joint regulative and investigative projects

*Multilateral fora (MF)*

MF2: compound representing the general lack of interest towards bitcoin regulation

MF1: newly-arisen instances of commitment towards the establishment of initiatives to foster cooperation between governments, businesses and other bitcoin-related agents and facilitate regulation and "good" innovation

As we have seen while outlining the basic functioning of both human security board and compass, perceptions and behaviours that cause actors to be placed under the non-contemplation zone imply a general detachment for such actors from the issue under analysis. This because indifference towards a norm or policy, or, in alternative, the lack of awareness about the possible implications that refusal of the said policy can have on the life of both the non-contemplative actor and those who surround him, isolate the said actor from perceptions of fear that instead strike the others. As we argued in our previous discussion of the implication of non-contemplative behaviour on the rest of behavioural levels of the compass, it is sufficient that within a compass (that is, within a same social context that is chosen to be analysed), it is sufficient that only one actor skips to NC to produce insecurity

perceptions among the others, irrespective of their being placed under governmentality or under other areas.

In this case, therefore, although more or less half of the sub-aggregates that we identified are placed under NC and thus do not in themselves experience fear of violation of a policy that they do not even recognize or aim at supporting, the human security route that is constructed by unifying the peripheral points of the scheme actually crosses the internal area of the compass in the zones that we identified as the “human security gap”, thus indicating the existence of insecurity perceptions (i.e., the E-NA-NE compound area). This means that, despite half of the sub-aggregates apparently being not threatened with experiencing insecurity related to the lack of bitcoin regulation, their more or less conscious unwillingness to cooperate and work to foster norm-creation is inevitably bound to fuel insecurity in those who, instead, are striving to achieve some degree of international cooperation for the settlement of the policy.

At the same time, however, although NC aggregate represent almost a half of those contained in the compass, it is also true that the other half is more or less instead made of NE compounds. This means that, proportionally, the drive for bitcoin regulation due to these perceptions of necessity is actually as much relevant, internationally speaking. However, their “good intentions” are somehow unfortunately affected by the corresponding lack of willingness showed by NC actors.

Moreover, as previously said, the governmentality area is left completely untouched, meaning that none of the actors seems to be currently behaving as if having internalized bitcoin-related regulation policies. And, even if there were some, their security would inevitably be compromised by all the rest of non-governmentalized behaviours and perceptions that drive the human security route away from the frontier, to embrace multiple insecurity zones. Also the NG1 sub-aggregate, which actually is the closest one to the governmentality/human security haven, is in itself hindered in its functioning, as we suggested in the related section above, by the fact that no uniform policy seems to have yet emerged at domestic level on how to cope with bitcoin regulation issues. Each government acts its own way, and this unfortunately stands as a concrete obstacle to the transnational

unification of policies, which, as we have shown, is what bitcoin regulation should aim at realizing. As Sonderegger recognises, “Bitcoin is a truly global phenomena”, so that “[i]ts development and regulation will not take place domestically but will be fully realized only when the world comes together to define its status”<sup>(426)</sup>.

Since according to our model the final aim of each policy and norm should be that of achieving a governmentalized status, the evolutionary path of bitcoin regulation should evidently aim at dragging NC perceptions inwards, in order to take advantage of the will of NE perceptions to slowly make the human security route approach the perimeter of the frontier, given that, at the current state of things, the compass shows how the issue clearly appears human-insecurity biased. This, obviously, can only be achieved through international cooperation (operating somehow also through some degree of “persuasion”, as Finnemore and Sikkink would probably suggest). However, these processes can prove quite hard to unfold, given the wide range of difficulties that are inherent in trying to merge together broad compound of different point of views as the one that is presented by this compass.

Fortunately, some practical solutions could already be under way, solutions that would probably quicken up the whole process and help states and other international actors exit the standstill that is currently blocking the achievement of significant results. One we already identified in the aforementioned project involving the newly-established Global Blockchain Forum. However, despite the potential that this body has in its own, only time will show if it will actually bring some effective contribution to the struggle for unifying policies and elaborating common standards on bitcoin regulation.

On the other hand, an international treaty in itself does not seem the most practical, nor efficient, path to follow, given that it would probably improve the functioning of regulation domestically but not internationally, with the possibility of lingering problems concerning the exercise of jurisdiction.

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<sup>426</sup> SONDEREGGER, *op.cit.*, 216.

On the contrary, there is a way more reliable institution that could actually make some significant difference in this virtual game, if adequately sustained in its task. This is, clearly, the FATF. On this possibility, one author actually commented that

[i]n its recent report, the FATF demonstrated to have the skills to deal with such new challenge. It could prepare reports or amend its recommendation in order to include among the “obliged entities” the “exchangers”, defined as “a person or entity engaged as a business in the exchange of virtual currency for real currency, funds, or other forms of virtual currency and also precious metals, and vice versa, for a fee (commission)”. Furthermore, the FATF could identify the most vulnerable jurisdictions where servers are most likely to be found. Operational cooperation would also be necessary, in order to arrest persons using Bitcoins for the purposes of helping criminals to launder their ill-gotten gains. *It is in such challenging sectors that network regulation comes into play to propose quick responses and to address the behaviour (and the legislation) of States and regional organizations in the future*<sup>(427)</sup>.

In conclusion, drawing upon our original metaphor of security as a yet-to-be-solved puzzle, we could totally consider the bitcoin issue as one of the many pieces that are bound to be placed within the broad puzzle of security, one that still has to find its proper collocation, due to obstacles that prevent us – who are the makers of our own security – to correctly understand how to handle it. We could perhaps think of bitcoins as one of those pieces of the puzzle that have no clear definition, whose imagine is too blurred or vague to offer hints as to where it should be placed *vis-à-vis* adjacent pieces.

In these cases, the only thing that can be done is trying to construct a more understandable environment for the ambiguous piece, so that, in the long run, more clues will be set up to help us place it correctly within the puzzle. In real life, as far as bitcoins are concerned, this actually translates into an increasing necessity of doing our best in cooperating on the elaboration a regulative framework that is as much exhaustive as possible. This, in the end,

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<sup>427</sup> DE VIDO, *Network Regulation of Cross-Border Economic Crime*, in 48 *Kobe University Law Review* (2014), 83-97 (emphasis added).

would indeed bring all the actors involved in the process to reach the coveted tipping point of internalization, where human security is embraced in its better manifestation, and the wandering piece is finally settled in its destined place within the puzzle.

*Narrative of a Puzzling Security:  
Discussing the Meaning of Security Under International Law*

## CONCLUSION

### Can We Solve the Puzzle of Our Making?

In this work, we began our journey through the puzzle of security by drawing a timeline of the vast array of conceptions that have appeared in the international scenario throughout the epochs, in a continuous challenge for supremacy in both academic and policymaking discourse. We thus witnessed the traditional conception of security establish itself in the diplomatic maze that accompanied the progressive emergence of modern states all over Europe, with narratives of state survival and self-interest generally dominating foreign policy conducts of the new-born nation states. At the same time, however, we uncovered the truth lying behind this apparent unchallenged dominance of state-centric perspectives on security; that is, we demonstrated how, in reality, claims surrounding the importance of recognising the legitimacy of people's, and, in this sense, of individuals' security had existed since the very beginning and actually never completely vanished.

As we have seen, the early Enlightenment theories on security portrayed the individual as the subject of security, or, in other words, the entity to be made secure by the state. Therefore, originally, the relationship between state and individuals was meant to be the exact opposite of what it would later become in the post-Napoleonic period. This very idea of a greater role to be ascribed to people's security is the one that advocates arguing for a more human-centred approach to security drew on, starting from the late 1980s and then during the "golden era" of humanitarian activism in the 1990s, to support their claims for an extension of the classical security framework. The new human security trend that resulted soon started to spread at all levels of policymaking and academic research, engulfing the debate over security to the point that, despite the "new" concept being the same, everyone seemed to reach a different conclusion on its true nature.

As we showed, this resulted in a plethora of contrasting theoretic approaches and misguided attempts at implementation that eventually ended up limiting the potential for

human security to become a really changing factor, at least practically speaking, in security discourse. Despite the controversies, since its first official appearance in the 1994 UNDP Report that we have analysed, this more human-oriented approach to security has put concerns for people's security and development, as well as for human rights in general, more under the international spotlight. At the same time, however, the uncertainty about how to best implement this unclear set of guidelines has, as already said, prevented human security from fully functioning in many social, political, economic and environmental contexts. In other words, it seems that the corresponding pieces still have to be settled correctly within the framework of our global puzzle of security.

We demonstrated that a huge component to this incapability of men to reach to a common understanding of human security - and thus, in turn, of security in general - seems to be intrinsic to the nature itself of security as the objective realization of an idea, or a need, which actually bears nothing objective in itself. In this sense, security appears to be entirely a product of men, originating from their different, context-biased perceptions over their own security. It is actually for these reasons that we theorised human security as being a matter of perception of the gap between necessity of policy and governmentality<sup>(428)</sup>.

The basic contradiction that causes security to be that much problematic - not only in its definition, but also in its practical realization - is thus presented by the fact that throughout the epochs we progressively constructed a normative framework aimed at controlling, regulating, preserving and protecting a security which, at the same time, is nonetheless intrinsically connected to a social, political and psychological dimension of the life of individuals. In other words, the norms that we manage to officially create and settle in specific contexts can eventually be made respected by actors that oversee their enforcement.

On the contrary, when it comes in particular to human beings perceiving still non-existent norms as necessary to be created, in their minds the protection of their own security will be perceived as compromised at least until the said norms will be created. Indeed, only fully codified and existing norms can be considered justiciable by law systems, whereas security claims of people, when merely linked to perceptions of need and advocacy of desired rights,

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<sup>428</sup> See Chapter 3, paras 4-5.

being linked to security as some kind of social, political and psychological variables, cannot possibly be enforced. Still, they greatly influence security outcomes in real life, given that security is created by men for men, and therefore understanding how people think and judge their security conditions in the context in which they live is necessary to get a complete picture of the right path to be taken to improve them. A mechanism that we deemed particularly essential in this type of process is that of fear, a pervasive social phenomenon that, despite being intrinsically impossible to codify due to its very ambiguity and elusiveness, still influences the way people think about and perceive their own security.

This is actually what we attempted to demonstrate through our board and compass models for the assessment of human security. In fact, although measuring human security is as hard a task as defining or implementing it (for the exact same reasons), it is at the same time true that the observation of behaviours of social actors within specific environments can tell quite a lot about the way people implement and react to certain sets of human-related norms within the social context in which they live, eventually generating their own security or insecurity through the interaction between each other.

It goes without saying that this reconstruction of the mechanics that lie beneath the functioning of security only helps uncover the veil over the wrongfully-placed pieces of the puzzle, so as to help actors understand what is being done wrong and where, and help them relocate the normative pieces correctly within the whole framework. However, the basic question still remains to be settled. Indeed, after all we have been discussing, after all the academic debates and the colliding policies advanced by states throughout the epochs, after all this, *what is, therefore, in the end, security?*

If we learned something from this long journey through the attempts at definitions, specifications, extensions and dilemmas over security, is that we are probably bound to never be met with a definitive answer. The security puzzle is vast indeed, to the extent that coverage of all of its possible implications through the establishment of new pieces of norms could really prove to be quite a never-ending task.

In fact, despite our having constructed a system of security-related norms that, particularly since the end of World War II, has started to branch in an outstanding number

of directions, from coverage of the safeguard of traditional state systems to the protection of an increasing number of human and civil rights and freedoms in many jurisdictions, there still remains much work to be done. The road so far has been perilous and studded with obstacles, and the end – if there can be one – still seems to remain out of reach, at least for the time being.

In an ever-changing world, advancing human security indeed seems to become more and more complicated as time passes. With brand-new threats arising to challenge the order so difficultly achieved in our gradual construction of the puzzle, the implementation of security at all levels is currently being compromised. Just think of how states and other international actors are failing in coping with issues such as the new threat posed by Islamic Fundamentalism in the form of the IS terrorism, migrant crises destabilizing social and political equilibrium in several areas of the world<sup>(429)</sup>, the growing regulative chasm produced by the persisting lack of a clear normative framework for cyber structures (that we partially addressed in our *Case Study* above), and so on. We clearly seem to have become trapped in a standstill where, in the absence of clues on how to handle the new pieces, everyone acts for himself, trying to go on with the puzzle on his own.

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<sup>429</sup> The migrant crisis that is currently striking the Mediterranean area in itself could be described – using the language of our human security compass – as a case of “false” or “apparent” governmentality. In fact, although it would have been obvious to expect European countries implement refugee-related norms as governmentalized within their integrated system of human rights and freedoms, the recent signing of the debated agreement between Turkey and the European Union for the management of migrant flows has proved this assumption wrong. In other words, it seems that the light of the European beacon of liberty was in part unconsciously shining only for itself. It would indeed have been logic to think of the international norms governing the safeguard of refugees (contained, primarily, in the 1951 UN Convention Relating to the Status of Refugees, and related Protocol, complemented by transversal norms on asylum right, non-refoulement, extradition, etc.) as being completely internalized by the champion of human rights that the EU has tried to be in the last decades since its constitution. On the contrary, the recently made agreement entrusted another country – one that, paradoxically, the Union has been rejecting for years due to its non-compliance with European human rights-related standards – with the responsibility to enforce actions that the EU itself should have naturally undertaken in order to keep faith to its commitment to the safeguard of human rights. What is clear, therefore, is that this alleged “champion” seems to be currently experiencing a crisis on its own, as far as the protection of refugee rights is concerned. For the time being, relatively to this very issue, it indeed seems that the Union has chosen the path of partially dismissing to another country the responsibility of enforcing both its own security and the security of the unfortunate masses of refugees that are flooding its borders in search of an alleged “light” that, unfortunately, seems now to be dormant.

However, will it be really possible to solve the puzzle this way? Is it possible for just one of the players alone to get to look at the final picture and grasp the phenomenon in its totality?

Probably not. What we should do instead is accepting the fact that – as we have shown through our analysis – social contexts render people so interrelated that their security everywhere is connected in a way that makes it difficult – as well as counterproductive – to think of security merely from a self-interested perspective. Security is shared; it is a collective phenomenon that bounds together the whole of our life experiences. For this reason, it needs to be addressed in a way that takes into account not the “selfish”, but instead the “human” side of it, that is, the recognition that insecurity for one person, in one part of the world, is insecurity for *all*. The puzzle is indeed unique, and it is high time us players acknowledged not only in theory – but also in practice – that the normative pieces that we put in it bind us all. Cooperation, therefore, should be the way to be followed.

We will probably never get to agree on a unique understanding of security that is universally recognised as the one and only to be implemented as a guide by each of the actors of the international community. This, as we have discussed in our work, is actually inhibited by the fact that everyone perceives, and thus also conceives and enacts security from his own different point of view. However, being our different “securities” interconnected and interdependent, wouldn’t it be better to at least try transcending our instinctive egotism and welcome the “other” in the construction of a puzzle that, in the end, is common to all of us?

What should therefore be kept in mind is that security is not some unknown, wild beast to be feared and kept under control or hunted; it is a creation of our own, and it should be treated as such. Irrespective of the possibility of achieving one day the construction of a normative framework that would finally incorporate any possible security-related issue, we should therefore keep on our journey without forgetting that it is us who decide which norms are to be created, and which pieces should be added to the puzzle. Therefore, minding our own normative choices will be of extreme importance in the future to construct

the puzzle in a way that can effectively enhance the security of human beings everywhere in this world of our making.

*Narrative of a Puzzling Security:  
Discussing the Meaning of Security Under International Law*

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