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Broadening the mandate of the Security Council

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HIV/AIDS as a threat to international peace
and security

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Summary

The question of international peace and security today includes far more than merely weapons and balance of power. The cold war conception of state security with primary focus on external aggression failed to offer adequate protection against the everyday threats facing the people of the world – threats that often are more tangible than a looming threat of war. Entrusted with the responsibility for the maintenance of international peace and security, the United Nations Security Council recognized this shortcoming in a series of actions in the early 1990's. Unleashed from the political constraints caused by the conditions of the cold war, the Security Council effectively broadened the concept of peace and security by determining situations of internal conflict and grave violations of human rights as threats to international peace and security. The first step towards a more inclusive security concept was thus taken.

With foundation in the classic concepts of *freedom from fear* and *freedom from want*, the United Nations is constructed around two pillars of security – state and human security. The issue of state security is since long fully incorporated in the work of the UN and the Security Council. However, to achieve the underlying vision of the UN, both pillar need to be incorporated into the work of the organization. Based on the understanding that nothing could be written into the United Nations charter that would enable the Security Council to make the world secure from war if men and women were not secure in their lives, homes and jobs, the concept of *human security* evolved. Human security relates to the second pillar of security and serves as an essential complement to state security. Human security means protecting those freedoms that are the essence of life and it is not limited to the mere absence of armed conflict. It is defined by human rights norms and includes a multitude of components such as good governance and the rule of law. An inclusive concept of human security could give the Security Council the tool to fulfill its responsibilities in achieving the vision of the charter. Furthermore, a broadened security concept would provide the council with the means to achieve the desirable objective of becoming a more prevention-oriented body.

The HIV/AIDS epidemic serves as an alarming example of the need of a broadened security concept. Still in the early stages, the epidemic has been the cause of immense suffering and death, effectively destroying entire communities, wiping out decades of development gains and representing a grave threat to entire continents. The HIV/AIDS epidemic threatens the human rights of millions of people worldwide and poses as a threat to individual, economic, communal, national and international security in the worst affected countries. The destabilizing effects of the epidemic can result in grave consequences for the international community. Through a broadened security concept, the Security Council could engage in the battle against the epidemic, a battle that urgently needs to be fought on all levels.

The intentions of the drafters of the UN charter were to create a living document, adaptable to the constantly changing conditions in our world. As new and diverse threats to international peace and security surfaces, this intention must be reflected in the mandate of the Security Council. The crosscutting characteristics of the HIV/AIDS epidemic call for a multisectoral approach embodying not only the traditional health perspective, but also human rights and security perspectives, in order to reverse the epidemic. Not until the security mandate of the Security Council is made more inclusive can pervasive threats as the HIV/AIDS epidemic be successfully countered.

Preface

The war in Botswana rages unabated. While the origins of the conflict remain murky, the appalling devastation is painfully clear. Estimates vary, but more than 100,000 have died as a result of the fighting, and that figure continues to escalate by the day. One in three adults in Botswana have been wounded, and if fighting continues at this pace, it is estimated that life expectancy could fall to an almost medieval age 29. At Gaborone's main hospital, up to 80 per cent of the beds in the male ward are filled with wounded who are not expected to survive, and more than a third of those in the children's ward are also victims of the conflict. The war has already created more than 28,000 orphans. Grimly, Botswana's morgues complain that they have no space for the incoming bodies, and the situation is now so bad that corpses sometimes are laid on the floor at the country's largest medical facility, Princess Marina Hospital. Private funeral homes are turning bodies away.

The toll on the beleaguered Botswanan military continues to be alarmingly high, with more than one-third of the forces suffering casualties, the majority of which have proven fatal. Such attrition causes loss of continuity at command level and within the ranks, increases costs for the recruitment and training of replacements, and reduces military preparedness, internal stability and external security. This situation has led the CIA to suggest that Botswana (and some of its neighbours) "face a demographic catastrophe" that will "further impoverish the poor, and often the middle class, and produce a huge and impoverished orphan cohort unable to cope and vulnerable to exploitation and radicalisation."

The conflict represents a painful reversal for one of Africa's brightest success stories. At independence, Botswana was one of the least developed countries in Africa. Thanks to a flourishing diamond industry and a stable, forward-looking government, it grew into one of the continent's wealthiest. Mineral resources are abundant, including diamonds, copper, nickel and coal. Much of the 1980s and 1990s saw impressive gains in education, health and other social indicators.

The war has changed all that. For sixteen years Botswana had a budget surplus; in 2001, the once economically successful country will record its second deficit in a row. The government finds that it must devote more and more of its budget to hospitals, medicines and other costs associated with the war. In a recent report, the Botswana Institute for Development Policy Analysis predicted that the war will reduce government revenue by 7 per cent at the same time as expenditure on the conflict increases by 15 per cent. Government spending on the war may reach 20 per cent of the total government budget by the end of the decade. Botswana's economy may shrink by as much as 30 per cent as a result of the conflict, and foreign investment will likely continue to be constrained. Agriculture has also been

hard hit, with more than one in seven farm workers killed and labour shortages expected to be increasingly acute.

Unfortunately, Botswana's educated and young labour force – particularly civil servants – have been a frequent target of this violence – sapping the country of some of its most valued leadership and ensuring that the country will have fewer and fewer qualified managers as the conflict wears on. Indeed, 50 per cent of the students at the University of Botswana – the only university in the country – have already been wounded or killed. Botswanan President Festus Mogae declared to Reuters that his country faces a fundamental national crisis. "We are threatened with extinction... People are dying in chillingly high numbers."

But there is no war in Botswana, simply a disease. The war raging in Botswana is AIDS. All the statistics are true, but not a single shot has been fired. However, AIDS is taking a toll as profound as any military confrontation around the globe, and it is a security threat to countries it assaults as well as their neighbours, partners and allies.

- The preface is taken from the prologue of the International Crisis Group report *HIV/AIDS as a Security Issue* of June 19, 2001.

Abbreviations

AIDS	Acquired Immunodeficiency Syndrome
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CRC	Convention on the Rights of the Child
DPKO	Department of Peacekeeping Operations
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
HDR	Human Development Report
HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IESCR	International Covenant on Economic, Social and Cultural Rights
MWC	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
NGO	Non-Governmental Organization
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
UNGASS	United Nations General Assembly Special Session
VCLT	Vienna Convention on the Law of Treaties

1 Introduction

1.1 Subject and aim of the thesis

HIV/AIDS strikes without discrimination. It is indifferent to race, color, descent, national or ethnic origin, sex, age, wealth, social status, religion and any other factor differentiating people. It affects the individual, economic and communal security of individuals, families and communities, it affects the national security of militaries and police forces and it affects the international security of peacekeeping forces and post-conflict resolution. It affects every country in the world, large or small, rich or poor. In conclusion, the HIV/AIDS epidemic has such a potentially destabilizing effect on any country in the world that the consequences can be rigorously felt by the outside world.

The aim of this thesis is to examine and analyze the HIV/AIDS epidemic from a human rights and a security perspective. After the end of the cold war, a revived Security Council quickly responded to the challenging threats facing the world in the form of internal conflicts and grave violations of human rights. The primary threat to the world was no longer external aggression, but internal perils threatening the everyday lives of ordinary people. It had long been understood that no provision could be written into the charter of the United Nations that would enable the Security Council to make the world secure from war if men and women were not secure in their lives, homes and jobs. Nonetheless, the still today dominating security concept accentuates the primacy of state security and leave little room for the anxieties of human beings. This narrow security concept grew strong in the political climate of the cold war period.

The charter of the United Nations already from the outset encouraged a broader, more inclusive, security concept with a foundation in human rights. The narrow security concept, with basis in the experiences of the ruined state structures of World War II, reflects the political climate of the cold war more than the long-term intentions of the drafters of the UN charter. It was the intentions of the drafters to keep the charter a living document, adaptable to changing conditions in the world. Limited by a narrow security concept the Security Council would today be ill equipped to deal with the threats facing the people of the world. Already by their practice in the 1990's, the Security Council took the first steps towards a more encompassing security concept by including human rights violations and internal conflicts as threats to international peace and security.

Human rights and security are interrelated issues. An inclusive concept of *human security* based on human rights can be the way forwards toward a dynamic and more prevention-oriented Security Council equipped to counter the threats facing the world of today. The effects of the HIV/AIDS

epidemic manifestly illustrate the need for a broadened security approach, brought together under the concept of human security.

1.2 Delimitations and terminology

The aim of this thesis is to highlight the legal justifications for a broadened mandate of the Security Council, exemplified by the detrimental effects of the HIV/AIDS epidemic. For this purpose I will rely primarily on the UN charter and the major international human rights instruments. I will to the furthest extent possible focus solely on the legal aspects of the issue in question, although it is practically impossible to eradicate all political aspects since – after all – the Security Council is a political organ. Additional and more detailed delimitations are presented in the introductory remarks to each chapter.

In literature on HIV/AIDS three terms are frequently used, namely *endemic*, *epidemic* and *pandemic*. These terms are used to indicate the level of intensity the spread of a particular disease had reached and are sometimes erroneously used interchangeably. *Endemic* indicate a continuous presence of a disease in a population, community or geographical location. *Epidemic* indicate an excessive occurrence of a disease within a population. *Pandemic* implies a widespread epidemic affecting the population of an extensive area of the world. Globally, the HIV/AIDS crisis undoubtedly has reached pandemic levels. However, since I throughout this thesis often will refer to regions and sub-regions and to facilitate the reading of this work, I will consistently use the term *epidemic*.¹

1.3 Method and materials

This thesis is structured as a combined descriptive and analytical study on mandate of the Security Council and the HIV/AIDS epidemic. I have attempted to identify the relevant legal issues and discussed the significance of relevant norms in international human rights law in this context. The sources used have mainly been the UN charter and other international instruments, UN documentation, doctrinal texts, and Internet web pages.

1.4 Disposition

The aim of the thesis is threefold. First I examine the handling of human rights issues under the peace and security mandate of the Security Council and present a legal foundation for the inclusion of this issue into the mandate of the council. Second, I suggest a further broadened and inclusive security concept based on the theory of *human security*. Thirdly I examine

¹ Explanations of the terms can be found in the glossary available at Aegis Website <<http://aegis.com/ni/topics/glossary>>, last visited May 7 2003.

and analyze the HIV/AIDS epidemic from a non-traditional perspective, namely that of human rights and international peace and security. In the final analysis I tie these issues together and argue for an extended security concept under the mandate of the Security Council, based on international human rights law, using the HIV/AIDS epidemic as an illustrative example of the need for a broadened and deepened understanding of security.

2 Threats to the peace under the United Nations charter

2.1 Introductory remarks

The charter of the United Nations, primarily through article 2(4), stipulates an extensive prohibition on the use of force in international relations and provides for the maintenance of international peace and security by means of the collective security system. Chapter VII of the charter embodies the collective security system of the United Nations together with article 24, which confers the primary responsibility for the maintenance of international peace and security upon the Security Council. Article 39 is the central provision of the collective security system and the notion of a *threat to the peace* the most crucial threshold.

The aim of this chapter is to clarify the mandate of the Security Council regarding the possibility of determining a situation as constituting a threat to international peace and security. For this purpose, focus is primarily on chapter VII of the UN charter. Within the mandate of the Security Council and closely related to chapter VII is chapter VI, which deals with preventive diplomacy and peaceful settlement of disputes. Although the chapters are related, they are governed by different legal regimes. Chapter VI is governed by general international law while chapter VII is governed by the principles and purposes of the charter.² As the scope of this thesis is solely on threats to peace and security, chapter VI will be left aside. In addition, the mandate of the Security Council also covers chapter VIII concerning regional arrangements, chapter XII regarding an international trusteeship system and article 51 concerning self-defense. None of these chapters are of interest for this thesis and will accordingly be left aside.

At the outset of this chapter I will clarify the legal mandate of the Security Council under the UN charter. Subsequently, an examination of article 39 with focus on the developments regarding the interpretation of the article will follow. I then turn to the practice of the Security Council in order to ascertain whether or not the developments in the interpretation of article 39 have additional support in the actions of the council. Finally, an analysis of the aspects put forward will be presented to serve as a base for the rest of the thesis.

² Gill, T.D., "Legal and some political limitations on the power of the UN Security Council to exercise its enforcement powers under chapter VII of the charter", in *Netherlands Yearbook of International Law*, Vol.26 (1995), p.38 note 7. According to Gill they are also related to different purposes, chapter VI relates to the second purpose of article 1(1), namely peaceful adjustment and settlement and chapter VII to the first purpose of article 1(1), namely the maintenance of international peace and security.

2.2 The mandate of the Security Council

2.2.1 The framework

The mandate of the Security Council is derived from article 24 of the UN charter. Article 24 states:

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.
2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.
3. [...]

Consequently, the Security Council has the primary responsibility for the maintenance of international peace and security. It is important to keep in mind that the charter does not entrust the Security Council with *exclusive* responsibility, but merely the *primary* responsibility. Other bodies, such as the General Assembly and the ICJ have to a certain extent subsidiary competences in this regard.³ The primary responsibility has been conferred upon the Security Council by the member states of the United Nations and while performing its duties the council acts on their behalf. The only expressed limitation imposed upon the actions of the Security Council is that of article 24(2). The Security Council shall, while performing its duties, act in accordance with the purposes and principles of the United Nations. The charter remains silent regarding any further limitations beyond article 24(2). The purposes of the United Nations are spelled out in article 1 of the charter:

The purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

³ See *Uniting for peace* resolution, A/RES/377 (V), 3 November 1950; Schweigman, David, *The Authority of the Security Council under Chapter VII of the UN Charter: Legal Limits and the Role of the International Court of Justice*, Studies and Materials on the Settlement of International Disputes, Vol. 8, 2001, Kluwer Law International, The Hague. p.28; Malanczuk, Peter, *Akehurst's Modern Introduction to International Law*, 7 ed., 1997, Routledge, New York, p.388; Gill, p.68. The subsidiary competence of, *inter alia*, the General Assembly does not include the possibility to impose enforcement measures under chapter VII. This competence lies exclusively with the Security Council.

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

In short, the purposes concern the maintenance of international peace and security and peaceful settlements of disputes, the right to self-determination, and the respect for human rights and fundamental freedoms. The purposes listed in article 1 are all very broad in scope and, importantly, they serve dual functions. They simultaneously grant the Security Council powers and at the same time establish limitations on the actions of the council.⁴ The empowering function of the purposes will be elaborated on below. In the context of limitations, the right to self-determination precludes the possibility of the Security Council to impose a UN rule or a particular political system on the population of a member state, similar to the prohibition of one state to impose a colonial-type rule over another state under contemporary international law.⁵ The duty of the Security Council to respect human rights and fundamental freedoms in their actions has been emphasized unambiguously. It can be derived from several charter provisions, UN practice, the developments in human rights law and the practice of the International Court of Justice.

To list specifically which human rights and to which extent they must be respected is more difficult. At any rate, it seems obvious that as a minimum threshold, the Security Council must be bound by the rules of human rights enshrined in the International Bill of Rights⁶ from which no derogations can be made even in time of emergency or armed conflict.⁷ These provisions include, *inter alia*, the right to life and the prohibition of torture, genocide and discrimination and must be respected in all actions by the Security Council at all times. In addition to this, the extent and nature of the existing situation and the type of enforcement measure the Security Council makes use of may warrant a more extensive human rights approach. It seems to be accepted that the purpose of protecting human rights and fundamental freedoms also applies to the rules of humanitarian law – the laws of war – contained in the Geneva Conventions and its two additional protocols.⁸

⁴ Schweigman, p.166.

⁵ Gill, p.75. Certain forms of transitional administrations can be allowed, although only on a strictly temporary basis.

⁶ The International Bill of Rights is made up of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and its two optional protocols.

⁷ Gill, p.79.

⁸ Schweigman, p.179.

The principles of the United Nations can be found in article 2. It provides that the organization, including the Security Council, in pursuit of the purposes in article 1 must act in accordance with certain principles. Of main importance is the prohibition of the use of force and the principle of non-intervention, both well-established provisions that often are afforded a *jus cogens* status.⁹ Closely related to article 2(7) is the principle of territorial integrity in article 2(1). According to article 2(4) all member states shall refrain from the threat or use of force in their international relations and according to article 2(7) the United Nations shall not intervene in matters that are essentially within the domestic jurisdiction of any member states. However, explicitly mentioned in article 2(7) and implicit in article 2(4), none of the provisions shall prejudice the application of enforcement measures under chapter VII of the charter. The non-intervention principle in 2(7) is thus set-aside in chapter VII-cases and domestic sovereignty is removed as a legal obstacle.¹⁰ The same applies to the prohibition of the use of force, of which the only exceptions are chapter VII measures and self-defense under article 51. Hence, if the Security Council determines the existence of a threat to the peace and decides on enforcement measures, the principles in article 2 do not prevent the use of force, even regarding matters that primarily fall within the domestic jurisdiction of a state.¹¹

In addition to the presented charter-based limitations, one may ponder whether or not the Security Council must not also follow principles of justice and international law while making use of the collective security system. The answer to this seems to be in the negative, and the rationale can be found in article 1(1).¹² Article 1 makes a distinction between collective security measures for the maintenance of international peace and security and the peaceful settlement of disputes. It is only in regard to the peaceful settlement of disputes that article 1 stipulates an adherence to the principles of justice and international law. Not connecting this provision also to the maintenance of international peace and security was intentional in the drafting of the charter. The major powers felt that such a limitation would impair the possibilities of the Security Council to act rapidly.¹³ Consequently, the Security Council is not bound by the principles of justice and international law when making use of the collective security system.

Another important aspect of the mandate of the Security Council is article 25 and the binding character of council decisions. It is uncontested that decisions relating to measures taken under chapter VII by the Security Council are legally binding on the member states. The binding effect

⁹ Simma, Bruno, "NATO, the UN and the Use of Force: Legal Aspects", in *European Journal of International Law*, Vol. 10, No.4 (1999), p.3.

¹⁰ Bring, Ove, *FN-stadgan och världspolitiken: Om folkrättens roll i en föränderlig värld*, 4 ed., 2002, Norstedts Juridik AB, Stockholm, p.306.

¹¹ Simma, p.4.

¹² Gill, p.67.

¹³ For a more extensive background to the reasoning see Schweigman, p.29 and Gill, p.67.

regarding decisions outside the framework of chapter VII – although of lesser importance in this regard – is heavily debated.¹⁴

In summary, article 24 in connection with articles 1 and 2 provide the framework for the Security Council in the maintenance of international peace and security. The Security Council has the primary responsibility for this task and the only expressed limitations on their actions are articles 1 and 2 of the charter. The machinery available to perform these duties is provided for in chapter VII of the UN charter – article 39 opens the door.

2.2.2 Article 39

2.2.2.1 The elements in article 39

Article 39 of the UN charter is arguably the most important provision of the mandate of the Security Council. It is the key to the collective security system and the machinery of enforcement measures – the most powerful instrument invested in the charter. Some has even gone so far as labeling article 39 the single most important provision of the charter.¹⁵ Its importance, none the least for this thesis, merits its reproduction:

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

The article gives the Security Council the possibility to determine either a *threat to the peace*, a *breach of the peace* or an *act of aggression*. As the scope of this thesis only covers threats to the peace, I will not venture into a discussion on the other terms in article 39. Although not explicitly mentioned, it is undisputed that the word *peace* was intended to refer to nothing else but *international* peace. Had this not been the case, there had never been any discussion regarding internal armed conflicts as threats to the peace under article 39 as they would clearly constitute a threat to, or breach of, the very least national peace. Furthermore, the word *shall* do not oblige the Security Council to make a determination, it merely empowers it.¹⁶ A determination of the existence of either one of the criteria opens the door to the collective security system with the purpose of restoring international peace and security. Without an article 39 determination, enforcement measures can never be undertaken.¹⁷ The broadest and most

¹⁴ Schweigman, p.32.

¹⁵ Reference to US Secretary of State, *Report to the President on the Result of the San Francisco Conference (1945)* in Frowien, Jochen, Kirsch, Nico, “Article 39”, in Simma, Bruno (ed.), *The Charter of the United Nations: a commentary*, 2 ed., 2002, Oxford University Press, Oxford, p.718.

¹⁶ See, *inter alia*, Kelsen, Hans, *The Law of the United Nations: A critical Analysis of Its Fundamental Problems*, 2000 [1950], Union, N.J, The Lawbook Exchange Ltd., p. 733, 737; Frowein/Jochen, p.719; Gill, p.40.

¹⁷ Gill, p.39; Schweigman, p.184.

imprecise term in article 39 is that of a *threat to the peace*. This is by far the most frequently used term in article 39 in the practice of the Security Council. In determining a threat to the peace, the Security Council enjoys a considerable discretion and is not bound by any formulas or definitions of what constitutes such a threat. This view is practically undisputed in the prominent literature on this subject.¹⁸ Authoritative authors have even gone so far as stating that “a threat to the peace is whatever the Security Council says is a threat to the peace” and along the same lines that such a determination is “completely within the discretion of the Security Council”.¹⁹ In addition, the Security Council is not bound by the views of the UN member states or any other UN organ and the charter itself does not provide any definitions of the terms in article 39.²⁰ The drafting history of the charter reveals that this was done intentionally. Attempts to define the criteria in article 39 were made, but they never gained any success.²¹ Instead, with reference to the incompatibility of a precise definition with the need for an effective council, the Security Council was entrusted with a very wide discretion. Albeit the wide discretion, there is one charter based legal limitation. As described above the Security Council must, according to article 24(2), act in accordance with the purposes and principles of the charter, also when they are making determinations under article 39.

In the traditional view, a typical case of a threat to the peace would be an imminent armed conflict between two states. However, as will be shown below, the interpretation of what constitutes a threat to the peace goes today far beyond the traditional view.

2.2.2.2 Developments in the interpretation of article 39

By the time of the drafting of the UN charter, the general understanding of the notion *threat to the peace* was military threats to international peace.²² This interpretation of the notion contains two important elements. First, the word *international* was clearly meant to indicate an interstate, not intrastate, relation. Second, the actual threat was not to be understood in any other form than a military threat.²³ Over the years, these conceptions have significantly changed. Since the end of World War II, the most common form of armed conflict has unquestionably been internal and not international.²⁴ The reasons behind the internal conflicts have very often been issues concerning human rights. As will be shown below, this

¹⁸ Frowein/Jochen, p.719; Gill, p.40. See also the listing of authors subscribing to this view in Schweigman p.186, note 821.

¹⁹ Malanczuk, p.426; Kelsen, p.727.

²⁰ Gill, p.45.

²¹ Frowein/Jochen, p.719; Schweigman, p.34, 186.

²² Kelsen, p.930.

²³ Although already at the San Francisco Conference voices were raised that human rights could constitute a threat to international peace and security, see Frowein/Jochen, p.724.

²⁴ According to the *SIRPI Yearbook 2002: Armaments, Disarmament and International Security*, 2002, Oxford University Press, Oxford, in the post cold war period of 1990-2001, there have been 57 major conflicts in the world. 54 of those were internal.

development has been recognized by the Security Council and integrated in its interpretation of article 39. The council has at several occasions labeled internal situations as threats to international peace and security. Interstate has become also intrastate. The evolving trend in the council of interpreting internal situations as international threats correspond with a similar trend in international law.²⁵ Initially regulating only interstate relations, international law today also considers the relationship between individuals and the state. This development occurred through the advancement of international human rights law. The starting point was the adoption of the Universal Declaration of Human Rights (UDHR) in 1948. The UDHR is today considered to be in many parts legally binding as international custom.²⁶ Furthermore, since the end of World War II a considerable quantity of human rights standards has been adopted, in international, regional and national conventions and declarations, by state practice, by the United Nations, the ICJ and a multitude of NGO:s. Most important and most illustrative of the internationalization of human rights are the significant number of legally binding human rights conventions which have gained extensive adherence in the international community.

The seven major international human rights conventions – The Convention on the Rights of the Child (CRC, 191 ratifications), the Convention on the Elimination of all forms of Discrimination against Women (CEDAW, 170 ratifications), The Convention on the Elimination of all forms of Racial Discrimination (CERD, 165 ratifications), the International Covenant on Civil and Political Rights (ICCPR, 149 ratifications), the International Covenant on Economic, Social and Cultural Right (ICESCR, 146 ratifications), the Convention against Torture (CAT, 132 ratifications) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC, 21 ratification, the MWC will enter into force on July 1, 2003) – all have gained large, sometimes almost universal, approval.²⁷ The rationale of the conventions is to confer rights upon individuals, and sometimes groups, in regard to the relation between the individual and the state. In addition to the mentioned conventions, several regional human rights instruments, such as the European Convention for the protection of Human Rights and Fundamental Freedoms (ECHR), the American Convention on Human Rights and the African Charter on Human and Peoples' Rights, has become significant factors in elevating human rights to the international arena. Another

²⁵ Österdahl, Inger, *Threat to the Peace: The Interpretation by the Security Council of Article 39 of the UN Charter*, Studies in International Law, Vol. 13, 1998, Iustus Förlag, Uppsala, p.20; Frowein/Jochen, p.721.

²⁶ Alfredsson, Gudmundur, Eide, Asbjörn (eds.), *The Universal Declaration of Human Rights: Common Standard of Achievement*, 1999, Martinus Nijhoff Publishers, The Hague, p.xxxi; Reisman, Michael W., "Sovereignty and Human Rights and Contemporary International Law", Editorial comments in *American Journal of International Law*, Vol. 84, No. 4 (1990), p. 867.

²⁷ All ratification are as of 9 December 2002, see OHCHR, Status of Ratifications of the Principal International Human Rights Treaties as of 02 May 2003, available at <<http://www.unhchr.ch/pdf/report.pdf>>, last visited February 10, 2003.

imperative factor are the individual complaints mechanisms that exist under some conventions. Most important are the complaints procedures under the ICCPR and the ECHR, although similar procedures exist also under CAT, CERD and CEDAW. By accepting individual complaints mechanisms, states agree to have their compliance with the convention tried by an independent treaty body or, in the case of the ECHR, a court. In other words, states agree to international scrutiny regarding issues previously considered an exclusively domestic concern. Although the approval of the individual complaints mechanisms has not been as great as that of the conventions themselves, it is nevertheless an important indication that states no longer consider human rights issues to fall exclusively under their domestic jurisdiction. The 1993 Vienna Declaration and Programme of Action summarizes the developments in international law very well by stating that: “the promotion and protection of all human rights is a legitimate concern of the international community”.²⁸ The internationalization of human rights has reached so far that the respect for human rights often is considered an erga omnes obligation.²⁹ The consequence of this is that any state has the right to intervene in the affairs of another state in order to ensure this respect, although not by military means due to the prohibition of force in article 2(4) of the UN charter. However, illustrative for the high status of human rights today, it is by some argued that under certain circumstances, states may even resort to the use of force to ensure the respect for human rights.³⁰

To sum up, the extensive adherence to international human rights instruments, in combination with the continuous acceptance of individual complaints mechanisms indicates that not only prominent international law authors, but perhaps more importantly, also states recognize that human rights issues have been elevated to the international arena. In conclusion, it is therefore safe to say that human rights are no longer an issue of domestic jurisdiction, but undoubtedly a matter of international concern.³¹ Internal situation of grave violations of human rights would thus be within the reach of article 39.

Furthermore, the notion of what may constitute a threat under article 39 has followed the same developments over the years and today there is a general consensus that more than just military threats can constitute threats to international peace and security.³² Most observers today view human rights

²⁸ Vienna Declaration and Programme of Action, A/CONF.157/23, 12 July 1993, §4.

²⁹ Simma, p.2; Cassese, Antonio, “Ex iniuria ius oritur: Are We Moving Towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?”, in *European Journal of International Law*, Vol. 10, No.4 (1999), p.26.

³⁰ Cassese, p.27.

³¹ See, *inter alia*, Bring, p.116; Simma, p.1; Reisman, p.869; Cassese, p.26; Österdahl, *Threat to the Peace*, p.85-86; Malanczuk, p.220; Österdahl, Inger, “By All Means, Intervene! The Security Council and the Use of Force under Chapter VII of the UN Charter in Iraq (to protect the Kurds), in Bosnia, Somalia, Rwanda and Haiti”, in *Nordic Journal of International Law*, Vol. 66, Issue 2/3 (1997), p.241.

³² Frowein/Jochen, p.724.

as an integral part of peace and security.³³ It has long been clear that the term *peace* in article 39 includes the absence of interstate use of force, so called *negative peace*.³⁴ The described developments indicate that also *positive* aspects of peace, such as the respect for human rights, can be encompassed under article 39. This view was substantiated by a passage in a presidential statement from a Security Council meeting in 1992 at Heads of State and Government level:

The absence of war and military conflicts among states does not in itself ensure international peace and security. The non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security [...].³⁵

The two developments accounted for are clearly intertwined as non-military threats – such as grave violations of human rights – most often occur without any cross-border implications. Internal situations can of course also involve military threats, for instance a looming civil war. But non-military threats are most often matters that used to – but no longer – fall within the domestic jurisdiction of a state. The issue of non-military threats to security will be further discussed below in chapter 3.

Is it then possible to fit these developments also into the UN charter? For starters, the charter itself grants support to the respect for human rights and fundamental freedoms in several provisions, most importantly in article 1, but also in articles 13 and 55.³⁶ As mentioned above, the purposes of the United Nations serve dual functions. Not only do they establish limitations but they also empower the Security Council. Thus it would seem evident that the purpose of encouraging human rights and fundamental freedoms in article 1(3) would authorize the Security Council to incorporate this issue also as a positive aspect in their actions. Consequently, the empowering effect of article 1(3) would authorize the Security Council to act under article 39 for the purpose of protecting human rights. Simultaneously, the same article establishes a limitation upon the council to the effect that they must respect human rights in their actions in response to the violation of human rights. This might sound overly theoretical, but illustrates the dual functions of the purposes of the United Nations very well. Evidently, it seems obvious that the purpose of encouraging the respect for human rights and fundamental freedoms grants the Security Council authority to incorporate this issue also into the maintenance of international peace and security. Thus, I would argue that it is not necessary to desecrate the charter in order to fit the developments in international law within the scope of article 39.

³³ Österdahl, “By All Means, Intervene!”, p.241.

³⁴ Schweigman, p.35.

³⁵ Statement by the President of the Security Council, S/23500, 31 January 1992.

³⁶ Article 55 states, inter alia, that the UN shall promote universal respect for, and observance of human rights and fundamental freedoms on a non-discriminatory basis.

Nevertheless, it is still by some argued that a correct interpretation of article 39 supports the view that the article refers only to interstate relations. It is argued that the article should be interpreted against the backdrop of the primary purpose of the charter, namely the collective security system (article 1(1)) and the responsibility for the maintenance of international peace and security (article 24). Both provisions are restricted to *international* peace and security, something that logically imply that the task of the Security Council is to prevent interstate war. This would eliminate the possibility of the Security Council to intervene in response to internal human rights matters. Additional support for this view is that the general prohibition of force in article 2(4), although not always binding for the Security Council, prohibits the use of force between states, not within states.³⁷ I argue that this line of reasoning is flawed. To begin with, it relies on and heavily emphasizes one word – *international* – in two charter provisions. Illustrative of lack of support for an extensive reliance on the exact wording of the charter is the omission of the very same word – *international* – in connection to the word *peace* in article 39, although it is in fact *international peace* the article refers to. Furthermore, and more importantly, this reasoning presupposes a hierarchy among the purposes in article 1 of the charter, with the purpose of maintaining international peace and security superior to any other purpose. There is nothing in the charter that indicates such a hierarchy, or more specifically the superiority of any of the listed purposes. Although, it is generally accepted that at the time of the drafting of the charter the purpose of maintaining international peace and security was superior to any other purposes enumerated in article 1.³⁸ However, the post World War II developments in international law and state practice as regards human rights has had an impact also on this. The purpose of encouraging the respect for human rights and fundamental freedoms, supported by several other charter provisions, developments in international law and state practice has today gained so much importance that it cannot be considered to be inferior to any of the other purposes listed in article 1.³⁹

It is sometimes argued that if the purpose of encouraging human rights and fundamental freedoms is given a higher status, so could logically also any other purpose enumerated in article 1. Although, on backdrop of the development in the human rights field in the past 50 years one can easily argue that human rights has rightfully gained a higher status than other purposes in the charter.⁴⁰ Unquestionably it is at least not inferior to any other purpose. It would seem peculiar that the hierarchy – if there actually were one – of purposes in the charter would go unaffected by half a century of developments in international law. This would without a doubt be contrary to the intentions of the drafters to keep the charter a living document. By reading the charter in an orderly fashion and on the backdrop of the developments in international law and state practice, it becomes

³⁷ Frowein/Jochen, p.720.

³⁸ Malanczuk, p.220.

³⁹ Österdahl, *Threat to the Peace*, p.26.

⁴⁰ *Ibid.*, p.27.

evident that there is support for the internationalization of human rights, also in respect to the applicability of article 39.

In summary, the developments in international law and state practice has caused an elevation of human rights from the exclusive domestic jurisdiction of the states to become a matter of international concern. In addition there is today a general consensus that non-military threats can be potential threats to international peace and security. Thus, the developments in international law and in the interpretation of article 39 leads to the conclusion that grave violation of human rights today can trigger the applicability of article 39 and pose as a potential threat to international peace and security.

2.2.3 Articles 41 and 42

Any discussions regarding the collective security system require at least a short introduction of articles 41 and 42. In order to deal with a threat to the peace under article 39 the Security Council can either impose non-military measures under article 41 or impose military enforcement action under article 42.

Article 41 reads:

The Security Council may decide what measures not involving the use of armed forces are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42 reads:

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea or land forces of Members of the United Nations.

Enforcement measures under article 41 most often take the form of economic sanctions, which are binding on the member state called upon.⁴¹ If the Security Council decides that measures under article 41 will not, or have proven not to, serve the intended purpose, they can impose military enforcement action. Since the United Nations does not have a standing military force of its own, it is depended upon member states to either conclude special arrangements according to article 43 (which has never happened) or provide forces on an ad hoc basis at the disposal of the

⁴¹ Malanczuk, p.389.

Security Council.⁴² The Security Council can also authorize a member state to use force. Such an authorization is not binding upon the authorized state, but it is binding upon the target state to the effect that they cannot invoke the right to self-defense under article 51 of the charter.⁴³

As will be shown below, the Security Council has used its power to undertake enforcement measures under articles 41 and 42 in a broad and inventive manner to respond to various threats to international peace and security.

2.3 The practise of the Security Council regarding article 39

2.3.1 A selection of cases

Since 1945 the Security Council has made use of article 39 in response to a wide variety of situations. Due to the power of the veto the Security Council was deadlocked during the better part of the cold war. However, in its post cold war practice the Security Council has used its wide discretion under article 39 to interpret the notion of a *threat to the peace* in a way that goes far beyond the traditional conception. I will give an account for a number of cases where the Security Council has set precedents regarding the interpretation of article 39 and also in regard to the type of enforcement measures imposed. Since all of the cases are well known and documented, I will not provide a full-scale background to the cases, but merely give a short presentation with the purpose of highlighting the most important aspects relating to article 39 and chapter VII. Furthermore, the question of whether or not the cases did in fact threaten international peace and security will be left aside. This is almost impossible to assess and it is the interpretation of the Security Council as such that is of interest.

Notwithstanding the power of the veto, the Security Council was able to set precedents regarding article 39 even during the cold war, mainly because the cases did not fall within the interests of any of the major powers. In the 1960s and 70s the council determined the civil war in Congo⁴⁴ (later Zaire, and today the Democratic Republic of the Congo), the racist white minority regime in Southern Rhodesia⁴⁵ (today Zimbabwe) and the system of apartheid in South Africa⁴⁶ as threats to the peace. The relevance of these early cases is limited mainly since the cold war situation made it difficult to afford any precedential value to the actions of the Security Council, and also

⁴² It was originally the intention to provide the Security Council with a standing military force, something that never materialized.

⁴³ Malanczuk, p.390.

⁴⁴ S/RES/161 (1961), 21 February 1961.

⁴⁵ S/RES/217 (1965), 20 November 1965; S/RES/221 (1966); 9 April 1966, S/RES/232 (1966), 16 December 1966.

⁴⁶ S/RES/417 (1977), 31 October 1977; S/RES/418 (1977), 4 November 1977.

due to the fact that the council involvement was undertaken in the context of decolonization.⁴⁷

The first resolution adopted by the Security Council after the end of the cold war containing a determination under article 39 was Resolution 688 on the Kurds and Shiites in Iraq.⁴⁸ The situation concerned the repression of the civilian population in Iraq, which according to the Security Council constituted a threat to international peace and security in the region. After combating allied forces in Operation Desert Storm, Iraqi troops cracked down on the rebellion uprisings of Kurds in the north and Shiites in the south. The rebel forces were defeated and as a consequence large flows of refugees crossed the borders into Iran and Turkey. It is not clear from Resolution 688 whether it was the repression of the civilian population as such or the combination with the flow of refugees across international borders that constituted the threat. However, as the resolution emphasizes the repression of the civilian population – without connection to the flow of refugees – to a large extent, it can easily be argued that the repression as such constituted the threat.⁴⁹ At any rate, it is clear that the repression of the civilian population, undoubtedly an internal situation of grave human rights violations, was a significant part in the threat to international peace and security. Resolution 688 thereby set a precedent and was the start of a series of resolutions determining internal situation or grave violations of human rights as external threats.

Regarding the situation in former Yugoslavia in 1991 and 1992 the Security Council determined several situations as constituting threats to the peace.⁵⁰ In 1991 the civil war between Croatia and the Serb dominated Yugoslavian authority was considered a threat to international peace and security.⁵¹ In response the Security Council issued a complete arms embargo covering the whole territory of the former Yugoslavia.⁵² In 1992 Bosnia and Herzegovina had become independent when fights broke out between Bosnians, Croats and Serbs. The situation was considered a threat to international peace and security and an embargo was imposed on the interfering Yugoslavian authority.⁵³ Since the situation in Bosnia and Herzegovina involved outside military interference it is more along the traditional lines of an interstate threat to the peace.⁵⁴ Later the same year the Security Council once again determined the situation in Bosnia and Herzegovina as constituting a threat to international peace and security and called upon the use of all measures

⁴⁷ Österdahl, *Threat to the Peace*, p.44.

⁴⁸ S/RES/688 (1991), 5 April 1991. For a complete overview of the Iraqi situation, see United Nations Department of Public Information, Blue Book Series, *The United Nations and the Iraq-Kuwait Conflict 1990-1996*, Vol. 9, 1996.

⁴⁹ Österdahl, *Threat to the Peace*, p.45-46.

⁵⁰ For a complete overview, see United Nations Department of Public Information, *The United Nations and the situation in the former Yugoslavia*, Rev.4, Reference paper, 1995.

⁵¹ S/RES/713 (1991), 25 September 1991.

⁵² S/RES/727 (1992), 8 January 1992.

⁵³ S/RES/757 (1992), May 30 1992.

⁵⁴ Österdahl, *Threat to the Peace*, p.48.

necessary – including military intervention – to facilitate the delivery of humanitarian assistance to the region.⁵⁵ In 1993, the Security Council determined that crimes against humanitarian law constituted a threat to international peace and security.⁵⁶ The council expressed its grave alarm at:

[...] reports of mass killing, massive, organized and systematic detention and rape of women and the continuance of the practice of ‘ethnic cleansing’ [...].⁵⁷

On basis of the threat, the council took the unprecedented decision to create, under chapter VII, the International Tribunal for the Former Yugoslavia (ICTY) with:

[...] the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia [...].

The explicit determination of crimes against humanitarian law as a threat to international peace and security once again meant an extension of the interpretation of the notion of a threat to the peace and set another important precedent. It was now clear that the Security Council did consider humanitarian and human rights matters to be within its mandate under chapter VII.⁵⁸ In addition, it became apparent that the Security Council did consider human rights matters as potential threats to international peace and security. The creation of an ad hoc tribunal illustrated the intention of the council to make use of the collective security system in an inventive manner to suit the needs of a particular situation.

The situation in Somalia by 1992 has often been described as that of a *failed state*.⁵⁹ Several militias, with foundation in clan allegiances, had to a large extent destabilized the country and put both governmental and physical infrastructure out of order.⁶⁰ In December 1992 the council determined

[...] that the magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance [...]

constituted a threat to international peace and security.⁶¹ The situation in Somalia was unmistakably an internal conflict and no international implications were referred to in the resolution. The Security Council thus

⁵⁵ S/RES/770 (1992), August 13 1992

⁵⁶ S/RES/808 (1993), 22 February 1993; S/RES/827 (1993), 25 May 1993.

⁵⁷ S/RES/827 (1993), 25 May 1993, preamble §3.

⁵⁸ Österdahl, *Threat to the Peace*, p.51.

⁵⁹ Schweigman, p.117.

⁶⁰ For a complete overview of the Somalia situation, see United Nations Department of Public Information, Blue Book Series, *The United Nations and Somalia 1992-1996*, Vol. 8, 1996.

⁶¹ S/RES/794 (1992), 3 December 1992. It is by some argued that the determination of the threat to international peace and security was made already in S/RES/733 (1992), 32 January 1992, but this debate is of minor interest and will be left aside.

solely regarded the conflict and its humanitarian consequences as a threat to international peace and security.⁶² The measures imposed by the council ranged from arms embargo to peacekeeping and later peace enforcing missions, although none of them were particularly successful. Another inventive enforcement measure by the Security Council was the authority given to the Secretary-General to secure the apprehension of Somali warlords.⁶³ This once again indicated that the council was ready to interpret not only article 39, but also the use of enforcement measures broadly.⁶⁴ In Somalia, the Security Council once again determined an internal situation of grave violations of human rights as constituting a threat to international peace and security. The Somalia case has often been described as the first clear-cut humanitarian intervention undertaken by the United Nations, being an act that reached far into the internal affairs of Somalia.

In 1990 a civil war broke out in Rwanda between two ethnic groups, the Hutu and the Tutsi. Temporary peace was achieved until an airplane carrying the presidents of Rwanda and Burundi was shot down in April of 1994. After the event the conflict resumed and within three months as many as one million Tutsi and some moderate Hutu were brutally killed in an obscure act of genocide.⁶⁵ The reaction of the international community was slow and it took until June of 1994 before the Security Council determined “the magnitude of the humanitarian crisis in Rwanda [...]” as constituting a threat to peace and security in the region.⁶⁶ The council also expressed its concern of the continuation of systematic and widespread killing of the civilian population. Once again the council did not explicitly specify which aspects of the crisis that constituted the threat. In the Rwanda case there were regional linkages to primarily Zaire (today DRC) and Burundi, although the resolution suggests that humanitarian crisis as such constituted the threat. The genocidal aspects of the situation and the fact that the crime of genocide is punishable under international law were expressly recognized in several Security Council resolutions.⁶⁷ The council imposed an arms embargo and authorized first two peace keeping missions and later a multilateral intervention force. In the end, similar to the Yugoslavia case, the Security Council response to the genocide was the establishment, under chapter VII, of an ad hoc tribunal for crimes against international humanitarian law, the International Tribunal for Rwanda (ICTR).⁶⁸ Unlike the Yugoslavia case, the ICTR was created first after the killings had ended. Although the precedent set by the creation of the ICTY, the establishment of the ICTR is yet again the result of a broad interpretation by the Security

⁶² Österdahl, *Threat to the Peace*, p.52.

⁶³ S/RES/837 (1993), 6 June 1993. The purpose of this was primarily to apprehend General Ayyid, against whom the efforts at that time were aimed at.

⁶⁴ Österdahl, *Threat to the Peace*, p.55.

⁶⁵ For a full account of the Rwanda conflict see United Nations Department of Public Information, Blue Book Series, *The United Nations and Rwanda 1993-1996*, Vol. 10, 1996.

⁶⁶ S/RES/929 (1994), 22 June 1994.

⁶⁷ See, *inter alia*, S/RES/925 (1994), 8 June 1994.

⁶⁸ S/RES/955 (1994), 8 November 1994.

Council of its mandate. The conclusion to be drawn from the Rwanda case is that the genocidal aspect of the situation seems to have been enough for the Security Council to determine a threat to the peace, although there were regional linkages. Thus, the Security Council yet again regarded an internal situation of grave human rights violations as a threat to international peace and security. Furthermore, it is interesting that the council was of the view that the threat to the peace would continue until the perpetrators had been brought to justice, even if the civil war and the killings had already ended.⁶⁹ The situation in Burundi a couple of year later is similar to that of Rwanda, with ethnic clashes between the Hutu and the Tutsi. Yet again the Security Council determined the situation as constituting a threat to the peace and security of the Great Lakes Region, without referring to any international implications.⁷⁰

In 1991 the Haitian army staged a coup d'état and overthrew the democratically elected president Aristdie. The new repressive military regime committed grave violations of human rights, causing large flows of refugees to leave the country. The Security Council determined that the situation constituted a threat to international peace and security in the region and imposed an arms embargo.⁷¹ Albeit the international implications caused by the flow of refugees, the Security Council considered the illegal regime and the lack of respect for the democratic rule as such as threats to international peace and security in the region.⁷² The refugee situation was a direct effect of disrespect for the democratic election and the council merely stated that the refugee situation was "becoming or aggravating threats to international peace and security".⁷³ Efforts of the UN and the OAS led to an agreement that would reinstate democratic rule in Haiti and facilitate the return of the exile president to power.⁷⁴ The agreement was never respected by the military regime. On the backdrop of this the Security Council stated in a resolution that the goal of the international community was to restore democracy in Haiti and reinstate the elected president, once again without addressing any international implications.⁷⁵ This adds support to the argument that the council was in fact considering the illegal regime as constituting the threat, not the flow of refugees.⁷⁶ The council authorized a peacekeeping mission and re-imposed the economic sanctions, which had been lifted when the agreement was reached. Later, the council authorized an international intervention, which came to be led by the United States.⁷⁷ The intervention force managed to take control of the country peacefully after negotiating with the military regime, and in October of 1994 the exile

⁶⁹ Österdahl, *Threat to the Peace*, p.65

⁷⁰ S/RES/1072 (1996), 30 August 1996.

⁷¹ S/RES/841 (1993), 16 June 1993.

⁷² Österdahl, *Threat to the Peace*, p.66.

⁷³ S/RES/841 (1993), 16 June 1993, §9.

⁷⁴ The so-called Governors Islands Agreement of 1993, and later the New York Pact of the same year.

⁷⁵ S/RES/917 (1994), 6 May 1994.

⁷⁶ Österdahl, *Threat to the Peace*, p.67.

⁷⁷ S/RES/940 (1994), 31 July 1994.

president was able to return to Haiti. In summary, the rationale behind the involvement of the Security Council in Haiti was to secure the authority of the democratically elected president. This is no doubt an internal matter, although its consequences in this case lead to international implications in form of refugee flows. The Security Council thus set a precedent with the result that lack of respect for democracy may constitute a threat to international peace and security. Some has seen the Haiti case as a precedent for an emerging right of people to democracy.⁷⁸

The case of Libya differs from the other cases, as it does not concern a humanitarian situation, the lack of respect for human rights or democracy or the repression of a civilian population. But it is still illustrative when it comes to the wide discretion of the Security Council under article 39 and its inventiveness regarding enforcement measures. After the Lockerbie incident in 1988 the Security Council made the uncontroversial determination that international terrorism constituted a threat to international peace and security.⁷⁹ Although, in connection to this the council requested Libya to extradite the suspected terrorists. The request led Libya to complain to the ICJ regarding the incompatibility of the council's decision with the Montreal Convention on the safety of civil aviation of 1971. The refusal of Libya to comply with the resolution led the council to determine that the continued failure to comply constituted a threat to international peace and security, and imposed economic sanctions in order to persuade Libya to compliance and ultimately to extradite the suspected terrorists. The council also decided that Libya should cease all terrorist activities and their support to terrorist groups.⁸⁰ In 1998, after several years of negotiations, an agreement was reached with the result that the suspects would be tried in the Netherlands under Scottish criminal law.⁸¹ Although there is much more to the Lockerbie case than presented here, it is clear that the Security Council yet again used the notion of a threat to the peace in a broad and unprecedented manner. Also the request of extradition and the suspension of terrorist activities and support to terrorist groups was an unprecedented and broad interpretation of the Security Council's enforcement powers. The Security Council used similar methods in regard to Sudan in 1995.⁸²

⁷⁸ See the listing in Schweigman, p.140, and the listing in Falk, Richard, "The Haiti Intervention: A Dangerous World Order Precedent for the United Nations", in *Harvard International Law Journal*, Vol.36, No.2 (1995), p.343 note 8. Falk presents scepticism regarding the Haiti intervention, but primarily against the US involvement.

⁷⁹ S/RES/731 (1992), 21 January 1992.

⁸⁰ S/RES/748 (1992), 31 March 1992.

⁸¹ Schweigman, p.66.

⁸² Other cases where the Security Council has determined internal situation as constituting a threat to international peace and security is Liberia (S/RES/788 (1992), 19 November 1992); Angola (S/RES/864 (1993), 15 September 1993); Albania (S/RES/1101 (1997), 28 March 1997); Sierra Leone (S/RES/1132 (1997), 8 October 1997); Kosovo (S/RES/1244 (1999), 10 June 1999); East Timor (S/RES/1264 (1999), 15 September 1999; S/RES/1272 (1999), 25 October 1999).

2.3.2 Conclusions to be drawn from the cases

The cases above illustrate a development along the lines of that of international law and state practice presented above. The Security Council has over the years, using its wide discretion, broadened the scope of the notion of a threat to the peace under article 39. None of the cases above involved an interstate threat or attack, thus falling outside the traditional conception of a threat to the peace. On the contrary, they were all internal conflicts, involving repression of the civilian population, ethnic cleansing, crimes against humanitarian law, lack of respect for democracy and other forms of grave violations of human rights. The developments have been continuous and in several cases the Security Council has tried to find linkages that would add an international dimension to the situation, even if it in fact was the internal situation that triggered the action.⁸³ Consequently, the Security Council has in its cold war practice consistently determined internal conflicts of grave human rights violations – not necessarily threatening the peace and security of any other country but the one in which the violations are undertaken – as threats to international peace and security.

The first conclusion based on the practice of the Security Council would thus be that it lends support to the developments in international law and state practice in regard to the internationalization of human rights. In addition, it also recognizes that grave violations of human rights not only are a matter of international concern, but also a potential threat to international peace and security. It is clear from the practice that the Security Council – just as most observers – considers human rights as an integral part of peace and security and as a consequence a matter that falls within the scope of article 39. Hence, if the developments in international law and state practice led to the internationalization of human rights, the practice of the Security Council not only support this development, but also adds the important conclusion that grave violations of human rights can pose a potential threat to international peace and security.

The second conclusion to be drawn from the practice of the Security Council is the inventiveness regarding enforcement measures. The traditional enforcement measures – economic sanctions and military intervention – have been used on several occasions. However, the Security Council has expanded also the scope of enforcement measures to include two criminal tribunals to deal with crimes against international humanitarian law, it has authorized the apprehension of warlords, authorized intervention to secure the respect for a democratically elected government and requested the extradition of suspected terrorists. In conclusion, the Security Council not only interprets the notion of a threat to the peace in a broad manner, but also its powers to undertake enforcement measures. Thus, the developments in international law and state practice correspond with the practice of the Security Council.

⁸³ Schweigman, p.152, Österdahl, “By All Means, Intervene!”, p.242.

2.4 Summary and analysis of chapter 2

The first conclusion to be drawn from the above mentioned concern the internationalization of human rights. There can no longer be any doubts that human rights are no longer exclusively within the *domain réservé* of a state and therefore outside the reach of international scrutiny. This is accentuated not only by the developments in international law and state practice in regard to international human rights instruments, but also by the practice of the Security Council. These developments has had an obvious effect on the charter of the United Nations and one of the main purposes of the organization, namely the maintenance of international peace and security. The Security Council has been given a wide, almost unlimited, discretion when it comes to determining threats to international peace and security under article 39. Still, the Security Council has to keep within the limits drawn up by the charter. The Security Council has used its wide discretion to make room for the developments in international law and state practice also within the charter. Through its practice, the Security Council has broadened the scope of article 39 from an “inter-state-military” provision to also an “intra-state-non-military” provision, encompassing also grave violations of human rights. This has had extensive implications of the notion of state sovereignty, which has been the main reason for criticism against the decisions of the Security Council, especially in the 1990’s. On the backdrop of the World War II experience of ruined state structures by Hitler and Mussolini, it is not hard to understand the emphasis some afforded state sovereignty. However, the charter laid the base for a future development regarding the protection of human rights. Over the past 50 years there has been a system change in the international community, where focus has switched from protecting the sovereigns to protecting the people. It would be unsatisfactory if the charter of the United Nations would not be adaptable to these changes. I argue that it is. There has always been an intention to keep the UN charter a living document, adaptable to the changing conditions in the world.

Regarding the maintenance of international peace and security, the Security Council is responsible not only for the execution, but also for the development of the interpretation of the charter. As soon as the cold war had ended and the Security Council was set free, it started the process of developing a new interpretation of threats to international peace and security. This was done mainly through the practice in the 1990’s. The Security Council followed the developments in international law and state practice and it is today clear that the Security Council has broadened the scope of article 39 significantly and considers grave violations of human rights not only to be a matter of international concern, but also as a potential threat to international peace and security in accordance with article 39. As a direct effect, the collective security system of the United Nations can be used in situations of grave violations of human rights with the purpose of restoring international peace and security.

In summary, article 39 today encompasses not only internal situations, but also non-military threats to international peace and security, such as grave violations of human rights. In my view, this development goes hand in hand with the purpose of the drafters of keeping the UN charter a living document.

It is in my view clear that the Security Council will make use of and develop its own practice and it is highly likely that new situation of grave violations of human rights will be funneled into this practice. It is perhaps already clear that new interpretations of the charter with vast approval among the member states, or which afterwards gains general acceptance, does not bring about any legal problems.⁸⁴ But is it in fact possible to afford any legal bearing to the practice of the Security Council? Is there any formal value of the precedents, more explicitly – is it possible to afford the practice of the Security Council any legal significance as a valid interpretation of the charter, and particularly of article 39? This would obviously be a strong indicator that the developments in international law and state practice, regarding the internationalization of human rights, has formally been incorporated in the interpretation of the charter.

According to article 5 of the Vienna Convention on the Law of the Treaties (VCLT), the interpretation mechanism in VCLT can be applied on the UN charter, as it is a constituent instrument of an international organization. This must be without prejudice to any relevant rules of the organization. Since there are no provisions in the charter regarding interpretation, the rules in VCLT are thus applicable. The relevant provision of VCLT in this regard is article 31(3)(b). The article belongs to the general rules of interpretation and states that: “any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation” shall be taken into account in the interpretation of, in this case, the UN charter. However, before turning to article 31(3)(b) it must be ascertained that the charter has been interpreted in good faith in the light of the object and purposes of the charter. I believe this can be answered in the affirmative as the Security Council are attempting to maintain international peace and security by protecting human rights, i.e. attempting to fulfill both the purpose in article 1(1) and 1(3). There are four criteria that must be fulfilled in order for article 31(3)(b) to be applicable:⁸⁵

1. it must be a matter that can be categorized as “practice”,
2. it must be a matter of practice “in the application of the treaty”,
3. the practice must be subsequent,
4. the practice must “establish the agreement of the parties regarding the interpretation”.

The first three criteria are not problematic. The practice of the Security Council is a practice which is the product of the application of the charter

⁸⁴ Bring, p.309.

⁸⁵ Linderfalk, Ulf, *Om tolkningen av traktater*, 2001, Lunds Universitet, Lund, p.185.

(criteria 1), it is used in the application of the treaty (criteria 2), and it is subsequent (criteria 3). Criteria four is more problematic. Does the practice of the council actually establish the agreement of the parties regarding the interpretation of the charter? There are three aspects to this question. First, the Security Council is not made up of all member states of the United Nations. Second, decisions can be taken without consensus among the council members, and third, even if there is consensus in the council, other member states might object to the interpretation. I will attempt to address these three issues subsequently.

The first issue does not cause a problem. Although it is necessary that it can be assumed that all parties accept the interpretation, it is not necessary for the agreement that all parties actually have taken part in the decision.⁸⁶ The situation regarding objections within the Security Council is more difficult. It could easily be argued that objections within the council would eliminate the applicability of article 31(3)(b). In order to evaluate this concern a study of the voting records must be undertaken. Regarding the close to 30 resolutions referred to above, only a total of four negative votes were cast. Do these four negative votes automatically eliminate the applicability of article 31(3)(b)? I would argue not. It is in this case essential to differentiate between legal and political objections to a resolution. If it can be ascertained that a negative vote is cast purely out of political reasons, it would not have an impact on the legal bearing of the resolution as a precedent under article 31(3)(b). Although the interplay between legal and political reasoning is ever present in the Security Council it is important to separate the two, as one may have legal implications and the other does not. In the present case one of the negative votes were cast in resolution 955 regarding the establishment of the ICTR. At this time, Rwanda happened to be a member of the Security Council and, hardly surprisingly, they cast the negative vote. The previous actions by Rwanda highlight the political character of this vote. Rwanda had previously cast positive votes regarding the same situation. However, when it came to a criminal tribunal for the prosecution of Rwandans, they had a change of heart. I would argue that this is a clear case of a political vote that will not have any legal consequences on the bearing of the resolution as a precedent under VCLT article 31(3)(b). The other three negative votes were cast regarding resolution 688 on Iraq. Cuba, Yemen and Zimbabwe cast negative votes. Although, not as obvious as the Rwanda vote, I find it hard to believe that these negative votes would rule out the applicability of article 31(3)(b).

To sum up, out of more than 350 votes cast, only 4 were negative. There were some abstentions, but according to a fully accepted interpretation of the charter provision regarding the voting procedure in the Security Council, abstentions amount to concurring votes.⁸⁷ In summary, I would argue that 4 negative votes, most likely caused by political reasoning, is not enough to eliminate the agreement between the parties in the Security Council

⁸⁶ Linderfalk, p.189.

⁸⁷ Schweigman, p.48.

regarding the interpretation of article 39, and does not eliminate the applicability of VCLT article 31(3)(b).

Possible objections outside the Security Council could also have an effect. Once again, it has to be a matter of legal objections, and even then it cannot be afforded the same dignity as an objection of a Security Council member. By joining the United Nations each member state has agreed to confer the primary responsibility of the maintenance of international peace and security upon the Security Council, and also agreed to be legally bound by the decisions of the council. It is easy to argue that they thereby have surrendered their right to legally oppose the actions of the council. It has by some been argued that a decision of the Security Council will have precedential value under article 31 (3)(b) even if there are dissenting parties outside, and even inside, the Security Council, due to the binding effect of the decision.⁸⁸

I would argue that the practice of the Security Council when it comes to grave violations of human rights as a threat to international peace and security under article 39 actually establishes an agreement among the member states of the United Nation. Thus, article 31(3)(b) of the VCLT would be applicable and the presented interpretation would constitute a legally valid interpretation of article 39 of the United Nations charter.

As a final conclusion I think it is safe to say that human rights are a matter of international concern and that they can pose as a threat to international peace and security. Finally, the Security Council made a legally valid interpretation of article 39 when broadening the scope to cover also these issues.

⁸⁸ Österdahl, *Threat to the Peace*, p. 91.

3 Broadening the scope – *human security*

3.1 Introductory remarks

As explained in chapter 2, the notion of what may constitute a threat to peace and security under article 39 has developed over the years and today it is considered that more than just military threats can constitute threats to international peace and security. This was substantiated in a passage in a presidential statement from a Security Council, opening the door for a discussion on the concept of *human security*:

The absence of war and military conflicts among states does not in itself ensure international peace and security. The non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security [...].⁸⁹

The traditional cold war state security doctrine had its roots in the philosophies of the 17th century. Today, in the post-cold war period, the challenge to security is much more complex than merely external threats to state security. In this chapter I will provide the foundation for a more all-encompassing approach to security, further broadening the security concept already made more inclusive by the practice of the Security Council.

3.2 From state security to human security

*Security – the condition of being secure;
protection from or not exposed to danger.*
- Oxford English Dictionary

In the early 1990's voices started to be heard regarding a re-evaluation of the security debate. It was widely felt that the traditional conception of security – that of security of territory from external aggression – was old-fashioned, ill equipped to deal with the realities of the 21st century and in need of reassessment. During the cold war, political security was placed in the forefront, while other aspects of security were basically forgotten. In the post-cold war period the factual situation in the world changed significantly. The call for new security debate was warranted as threats to state security to a large extent was replaced by new and other forms of threats, primarily towards people, not governments or territories. At the eve of this development, the concept of *human security* was evolved and has ever since been high on the agenda. It has its base in the insecurity of people, which most often comes from everyday worries, such as the fear of not having

⁸⁹ Statement by the President of the Security Council, S/23500, 31 January 1992.

enough to eat, to be tortured by a repressive state or fear of being exposed to a deadly disease.

3.2.1 Defining Human Security

The first substantive attempt to define the concept of human security was undertaken in the 1994 Human Development Report (HDR) produced by the United Nations Development Program (UNDP).⁹⁰ The underlying rationale of the report was that the concept of security for a long time had been interpreted too narrowly and with focus only on nation-states and not on people – thus leaving no room for the most common security threats that people around the world seek protection from in their everyday lives. The human security concept laid down in the HDR is not related to weapons, but to human life and dignity. The authors of the HDR afforded the concept of human security four characteristics:

- it is a universal concern,
- its components are interrelated,
- it is easier to ensure through prevention than intervention,
- it is people-centered.

The authors acknowledged the difficulty in defining human security, an issue I will return to later on, but still identified two main aspects of the concept, namely:

- safety from such chronic threats as hunger, disease and repression, and,
- protection from sudden and hurtful disruptions in the pattern of daily life.

Furthermore, *freedom from fear* and *freedom from want* were presented as the two main components of human security. These concepts are well known and can be traced back prior to the drafting of the UN charter. In the United States President Franklin D. Roosevelt's famous "four freedoms"-speech from 1941, Roosevelt emphasized freedom from fear and want as two of the unprecedented threats to the freedom of the Americans.⁹¹ This view was further accentuated in the report of the US Secretary of State after the United Nations Conference on International Organization in San Francisco in 1945, the conference where the UN charter was drafted:

The battle of 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 [...] No provision

⁹⁰ All references to the 1994 HDR are from United Nations Development Programme, *Human Development Report 1994: New dimensions of human security*, 1994, Oxford University Press, New York, p.22-46.

⁹¹ The other two freedoms were freedom of speech and expression, and freedom to worship God in your own way.

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 jobs.⁹²

Since 1945 this view has been reiterated at several occasions, none the least by the UN Secretary-General Mr. Kofi Annan at the Millennium Summit. The Secretary-General not only said that people should enjoy freedom from fear and freedom from want, but that these should be the primary objectives of the United Nations in the years to come.⁹³

Under the two components, the authors listed seven main categories that form human security:

- economic security (a guaranteed basic income),
- food security (physical and economic access to food),
- health security (particularly from diseases),
- environmental security (e.g. access to clean drinking water),
- personal security (particularly from physical violence),
- community security (security in membership in a group),
- political security (security in basic civil and political human rights).

Several of these categories are interrelated, e.g. economic security is often a prerequisite for food security. More importantly, many of these categories are often the underlying reason for political and ethnic tensions within a country, and thus tangent more traditional security views. There are clear cross-border implications of many of the human security threats, as ethnic conflicts, air pollution, terrorism and the spread of deadly diseases as HIV/AIDS are not possible to confine within any national borders.

The conclusion to be drawn from the HDR is that it is time to make the shift from a narrow concept of state security to a more comprehensive concept of human security. At the end of the day, the world will not be secure from threats to the peace unless the people are secure in their everyday life.

3.2.2 Attempting a working definition

Almost a decade later, the 1994 HDR still today remains the most authoritative source for defining human security. Numerous attempts have been undertaken, both in academic work and by state initiatives to advance research and to provide a functional working definition of human security. Some of the state initiatives include the establishment of the Commission on Human Security in 2001 by initiative of the government of Japan and in collaboration with the UN Secretary-General. The purpose of the

⁹² US Secretary of State quoted in Mahbub ul-Haq, "Global Governance for Human Security", in Tehranian, Majid (ed.), *Worlds Apart: Human Security and Global Governance*, 1999, I.B. Tauris Publishers, New York, p.88.

⁹³ Documents from the Millennium Summit can be found at <http://www.un.org/millennium/summit.htm>.

Commission is to promote public understanding, create concrete programs of action and develop the concept of human security. The commission is co-chaired by former UN High Commissioner for Refugees, Mrs. Sadako Ogata and Nobel laureate Professor Amartya Sen.⁹⁴ Norway and Canada, both strong advocates of the concept of human security, established together with a group of other countries the Human Security Network in 1999.⁹⁵ The government of Canada also has an extensive human security program under its department of foreign affairs.⁹⁶

Most of the academic work so far has been focused on either providing a new definition of human security or critically assess the functionality of existing definitions. Much work basically consists of revisions of the HDR-definition or long listings of possible threats to human security. As most of the work has been done outside the legal field and often within a political framework, most of the definitions I have come across lack the essential legal characteristics, in effect making them inadequate for my intention of using to concept of human security within the framework of the UN charter. However, the usefulness of much of the existing work lies in the common feature that most of them highlight the shortcomings of the existing definitions.

Thus, on the basis of the 1994 HDR and with the deficiencies of the existing definitions in mind I will attempt to provide a working definition of my own, instead of assessing and modifying already existing definition. This definition will be intended for the purpose of this thesis and will probably differ more than marginally from the existing definitions. However, as I seek to find a legal foundation for broadening the scope of article 39 of the UN charter, I need a legally credible definition. I do not aim to provide a human security concept that would replace the traditional concept of security, instead I aim to add another dimension. There is a genuine need of state security, however, a problem occur when there is a disturbing imbalance between state security and human security.⁹⁷ Human security complements state security by being people-centered and addressing those insecurities that are not considered as state threats. In the words of Sadako Ogata:

I wish to emphasize that the task of the challenge to focus on the security of people [human security] is not to replace state security. Security of the state has to be reinforced. Both are needed and they compliment each other.⁹⁸

⁹⁴ Information about the CHS can be found at <<http://www.humansecurity-chs.org>>.

⁹⁵ Information about the HSN can be found at <<http://www.humansecuritynetwork.org>>.

⁹⁶ Information about the Canadian human security program can be found at <<http://www.humansecurity.gc.ca>>.

⁹⁷ Mahbub ul-Haq, p.80.

⁹⁸ Ogata, Sadako, "From State Security to Human Security", Brown university Ogden Lecture, 26 May, 2002, available at <http://www.humansecurity-chs.org/activities/outreach/ogata_ogden.html>, last visited on May 15, 2003.

I find the concept of human security appealing as the underlying rationale of the concept correlates to my intentions with this thesis. Although the concept has not yet received an acceptable legal definition, using this concept as such as a point of entry seems reasonable. I believe that the *raison d'être* of the concept of human security is that the traditional cold-war conception of security is too narrow and in great need of a re-evaluation. The reasons for this is the emergence of new threats, primarily targeting people and not states, and the fact that the world will not be secure from the threats of war when people are not secure in their everyday lives. This approach is highly relevant also in regard to the Security Council, which was as mentioned earlier understood already back in 1945:

[...] No provision 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 jobs.⁹⁹

As the security challenges have changed towards human-centered threats, the response must correspond adequately. The UN charter is undoubtedly open for such change:

Indeed, the Charter of the United Nations sees international peace and security being built on the foundations of economic and social justice, respect for human rights and fundamental freedoms, respect for the rules of international law, the peaceful settlement of disputes and collective security. This is the peace and security concept over which the Security Council presides.¹⁰⁰

In the works available on human security, there are primarily three shortcomings that are frequently highlighted.¹⁰¹ The most important is that the existing definitions are too vague and imprecise to be of use in either academic research or policymaking. These definitions, colored by constructive ambiguity, are often primarily intended as effective political slogans underlining the necessity of a re-evaluation of the security concept in world politics, and not as actual working definitions of the concept. A related aspect is the “all-inclusive” character of the definitions. Many definitions are so ambitious in their protection of people that it is difficult to grasp exactly what is *not* included as a possible threat to human security. The last shortcoming of the existing definitions is the omission of magnitude. It is often not possible to understand which magnitude – if any – the threats have to amount to in order to constitute a threat to human security. In the presentation of my working definition, I will attempt to mend these three shortcomings.

⁹⁹ See note 92 at p.33.

¹⁰⁰ Ramcharan, Bertrand G., *The Security Council and the Protection of Human Rights*, International Studies in Human Rights, Vol.75, 2002, Martinus Nijhoff Publishers, The Hague, p.18.

¹⁰¹ An outline of the most referred to definitions of human security and a helpful summary of the problems in defining the concept can be found in Paris, Roland, “Human Security: Paradigm Shift or Hot Air?”, in *International Security*, Vol. 26, No.2 (2001), p.87-102.

The essential basis of my understanding of human security is that human rights define human security.¹⁰² The underlying rationale of international human rights instruments is to make people feel secure in freedom and respect for their human rights. Accordingly, such rights must be respected and protected in order for people to be secure. Without the protection of human rights, the vision of the UN charter cannot be accomplished and the mission of the Security Council cannot be achieved.¹⁰³ In addition, conflicts cannot be prevented and peace cannot be maintained when grave violations of human rights continue to occur.¹⁰⁴ Using the practice of the Security Council regarding human rights and peace and security on the backdrop of the Vienna Declaration and the passage “all human rights are universal, indivisible and interdependent and interrelated”, it seems that there is room for discussing all types of human rights in relation to security.

The point of entry for my understanding of that human rights define human security is article 28 of the UDHR, which reads:

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 28 does not belong to the catalogue of rights in the UDHR, but serves as the ultimate vision of the declaration.¹⁰⁵ It provides for a structural adjustment of the social and international order with the goal of ensuring human rights for everyone. Article 28 corresponds to the underlying vision of the United Nations explained by FD Roosevelt in his famous “four freedoms”-speech. It has also been argued that the concept of human security has support in articles 55 and 56 of the UN charter – which spells out the thrust of UDHR article 28.

If human rights define human security, the body of human rights norms contained in the seven major international human rights instruments is the components. Thus, the international community has already in the legally binding international human rights instruments defined the components of human security.¹⁰⁶ I find no reason shifting focus away from this. I thus argue that the essence of human security is the protection of the human rights norms created by the international community, enshrined in ICCPR, IESCR, CEDAW, CERD, CAT, CRC, MWC, and also the UDHR as part of customary international law. The categories of human security often emphasized, e.g. in the HDR, all relate to different human rights contained in these documents.

By limiting my definition to only those human rights norms enshrined in the seven major instruments I end up with a more distinct, yet inclusive enough,

¹⁰² Ramcharan, Bertrand G., *Human Rights and Human Security*, International Studies in Human Rights, Vol.70, 2002, Martinus Nijhoff Publishers, The Hague, p.9.

¹⁰³ Ramcharan, *The Security Council and the Protection of Human Rights*, p. 14.

¹⁰⁴ Ramcharan, *Human Rights and Human Security*, p.232,

¹⁰⁵ Alfredsson/Eide, p.597.

¹⁰⁶ Ramcharan, *Human Rights and Human Security*, p.14.

list of components of human security, eradicating some of the vagueness and “all-inclusiveness” of the existing definitions. However, also this list will undoubtedly raise concerns regarding the “all-inclusiveness”. If human security means almost everything, it will effectively mean nothing.¹⁰⁷ Therefore, to further eradicate these shortcomings I will argue for adding two more elements, namely *magnitude* and *direct detrimental effect*. One person suffering from HIV/AIDS does hardly constitute such a threat to human security warranting the involvement of the Security Council. 40 million people infected with HIV/AIDS, on the other hand, can very well do. Adding an element of magnitude is by no means an overly limiting restriction. Relying again on the practice of the Security Council in regard to human rights violations, it is fully accepted that the Security Council should not intervene in matters not amounting to a certain magnitude. In the case of human rights violations, one or a combination of the notions “grave”, “serious” or “widespread” often describes magnitude. Sometimes this is already implied in the understanding of the violation, such as in the case of genocide. When that is not the case, there has to be a certain magnitude to warrant Security Council involvement. This must be the case also in respect to human security.

I also argue that in addition to the element of magnitude the threat must have a detrimental effect on the victims. Violation of the right to life has *per se* a direct effect on the victim, still a certain magnitude must be added before it can constitute a threat to international peace and security. While the direct effect of threats to such human rights as the right of life and the prohibition of torture is obvious, that is not always the case regarding other human rights, such as some of the economic, social and cultural rights. For instance, poverty or health as such cannot be considered a security threat, but the detrimental effects – not necessarily immediate – of poverty and health arguably can. Thus, due to the detrimental effects, an issue like poverty or health can constitute a threat to human security. Finally, the threat to human security must have either direct or indirect international implications. Indirect international implications – such as that of internal conflicts – has been confirmed by the practice of the Security Council to sometimes also constitute a threat to international peace and security.

Today, some of the greatest threats to human security are the ones emanating from the spread of diseases such as HIV/AIDS, illegal drug trade, global pollution and international terrorism.¹⁰⁸

I have argued that human rights define human security. Individual, national and international security are undoubtedly interrelated as the world cannot be secure from the threat of war unless people are secure in their lives, homes and jobs. National and international security can thus never be achieved without respect for individual security in the form of respect for

¹⁰⁷ Paris, p.93.

¹⁰⁸ Mahbub ul-Haq, p.91.

human rights.¹⁰⁹ Individual security is embedded in the concept of human security.

All of this may seem like an unnecessary detour to merely proposing what the Security Council already has established by their practice, with the addition of including the larger body of human rights. In consequence, that is basically what I am proposing. The elements of magnitude and detrimental effect and either direct or indirect international implications are already implied in the practice of the Security Council. However, since I am proposing an unprecedented move, including e.g. the inclusion of economic, social and cultural rights into the security mandate of the Security Council, it is of utmost importance to not rely on implied precedential prerequisites, but to provide a clear and distinct definition spelling out all relevant elements. Without such a definition, the concept of human security will probably not be granted the importance and credibility it deserves. My working definition of human security could accordingly be described as follows:

A threat to human security is a threat to any human right contained in the larger body of international human rights law made up of the UDHR, ICCPR, IESCR, CEDAW, CERD, CRC, and the MWC, that amounts to a certain magnitude, has a detrimental effect on the victims, and have direct or indirect international implications.

¹⁰⁹ Ramcharan, *Human Rights and Human Security*, p.11.

4 HIV/AIDS – apocalypse now?

4.1 Introductory remarks

Destructive and ferocious plagues have troubled the world throughout history. The most recent, and arguably the most devastating, is the HIV/AIDS epidemic. In only two decades it has been the cause of immense suffering and death, effectively destroying entire communities, wiping out decades of development gains and representing a grave threat to entire continents. Even so, the epidemic is still in its early stages. The response to the growing threat of the epidemic was for many years carried out only from a health perspective with seemingly poor results as the epidemic kept, and still today keep, worsening. As it became obvious that the HIV/AIDS epidemic could not be reversed solely by traditional health strategies, the crosscutting characteristic of the epidemic started to attract attention from other disciplines. Today it is generally accepted that a successful response to the HIV/AIDS epidemic must be multisectoral. Still, in order to fully grasp the extent and impact of the HIV/AIDS epidemic, I believe it is necessary to address the situation out of the broadest perspective possible.

In this chapter I will show that HIV/AIDS is more than just a health issue with extensive human rights implications as well as serious effects on individual, economic, communal, national and international security. Accordingly, the issue merits the consideration in a much broader context – one that goes far beyond that of any ordinary health issue.

4.2 HIV/AIDS – a problem without passport

The seriousness of the HIV/AIDS epidemic has been duly recognized at the highest levels, leaving no doubt of the concerns of the international community. In 2001, the Secretary-General of the UN, Mr. Kofi Annan, highlighted the struggle against HIV/AIDS, together with the eradication of extreme poverty, prevention of deadly conflict and tackling the root causes of political violence, as the four burning issues to be dealt with by the UN. The Secretary-General further stated that the connection between these issues is the need to respect fundamental human rights and also that Africa is the region providing the greatest challenge.¹¹⁰

Backtracking roughly twenty years to 1981, the first reports regarding a disease that later would be known as Acquired Immunodeficiency Syndrome or AIDS were issued by US scientists. The following year AIDS

¹¹⁰ Statement by the Secretary-General H.E. Mr. Kofi Annan to the General Assembly, New York, 10 November 2001, available at <http://www.un.org/webcast/ga/56/statements/011110sgE.htm>, last visited on May 03, 2003.

was defined for the first time and in 1983 the Human Immunodeficiency Virus, HIV, was identified as the cause of AIDS.¹¹¹ Already at this stage, a heterosexual epidemic in Africa was revealed. At the end of 2002, just twenty years after the discovery of the disease, 42 million people worldwide are living with HIV/AIDS and over 3 millions people died of the disease last year.¹¹² In total, over 60 millions have become infected with HIV and more than 20 million people have died of AIDS since the discovery in 1981.¹¹³

At the early stages of the epidemic it was widely believed that HIV/AIDS would only affect high-risk groups such as homosexuals, sex workers and injecting drug users. This has been proven to be far from the truth. In Sub-Saharan Africa, the worst affected region in the world, most HIV transmission occurs through heterosexual intercourse. Unsafe injections only amount to a small portion of the total figure. In addition, as mentioned above, already in the early 1980's a heterosexual epidemic existed in Africa. Although high-risk behavior increases the possibility of becoming infected and already vulnerable people suffer disproportionately, HIV/AIDS strikes at everyone.

The magnitude of the HIV/AIDS epidemic is today far worse than the worst-case scenarios projected a decade ago. The sheer magnitude of the HIV/AIDS crisis becomes evident by examining the staggering statistics of the epidemic.

Sub-Saharan Africa is by far the worst affected region in the world. Close to 30 million people are living with HIV/AIDS. That is in the excess of 70% of the total figure of people infected worldwide. Last year 3.5 million people were newly infected with HIV and 2.4 million died of AIDS. Altogether, around 11 million children have become orphaned due to the epidemic and as few as 30 000 people were benefiting from antiretroviral drugs in 2001. Contrary to the hopes and expectations of many, the HIV/AIDS prevalence rate has not yet stabilized at some natural limit. On the contrary, it is steadily increasing. These are startling figures and it is beyond any reasonable doubt that no matter what developments in prevention, treatment and care, the human and socio-economic effects on the region will be significant in years to come. However, there have been countries succeeding in turning the tide. Uganda has managed to bring the epidemic under control, and Zambia is well on their way.

¹¹¹ UNAIDS, Fact Sheet, *Twenty Years of HIV/AIDS*, May 2001, available at <http://www.unaids.org/fact_sheets/files/AIDStwenty_en.html>, last visited on April 17, 2003.

¹¹² UNAIDS/World Health Organization, AIDS epidemic update December 2002, December 2002, available at <http://www.unaids.org/worldaidsday/2002/press/update/epiupdate_en.pdf>, last visited on February 3, 2003.

¹¹³ UNAIDS, *Report on the Global HIV/AIDS epidemic 2002*, July 2002, p.23.

For a long time Asia and the Pacific believed it was immune from the HIV/AIDS epidemic. Countries like Indonesia had for a long time almost a non-existent HIV/AIDS prevalence rate. Today, they have a growing epidemic. Over 7 million people are infected with HIV/AIDS in the region making it second in prevalence only to Sub-Saharan Africa. Over 1 million were newly infected in 2002 and there were some 500 000 deaths due to HIV/AIDS. Although Sub-Saharan still is by far the worst affected region, it might not be for long with the rapidly increasing numbers in the Asia Pacific. In China the number of people living with HIV/AIDS increased with almost 70% in the first six months of 2001. Although India's prevalence rate is under 1%, due to its huge population the country is second only to South Africa in the number of people living with HIV/AIDS. It is superfluous to mention what just a small increase in percentage of HIV/AIDS prevalence would mean in the vastly populated countries of China and India. Also in Asia and the Pacific there are countries – e.g. Thailand and Cambodia – that have managed to reverse to crisis.

Eastern Europe and Central Asia are experiencing the fastest growing epidemic in the world. Although Ukraine remains the country in the region with the highest prevalence, Russia is experiencing a more negative development. Approximately 1.2 million people are living with HIV/AIDS in the region, 250 000 were newly infected last year and 25 000 died due to infections.

In Latin America and the Caribbean close to 2 million people are infected. Due to the absence of effective responses, the risk of increasing infection rates is significant. In several countries forming the Caribbean Basin prevalence is only worse in Sub-Saharan Africa. Brazil is in the forefront in the world when it comes to providing free antiretroviral drugs to HIV/AIDS infected and has managed to keep the epidemic under control. Last year over 200 000 people were newly infected and around 100 000 died from HIV/AIDS in the region.

Prevalence rates are still low in the Middle East and North Africa although there are signs of increasing infection rates. Approximately half a million people are living with HIV/AIDS in the region, over 80 000 were newly infected last year and close to 40 000 died of the disease.

In high-income countries 1.5 million people are infected with HIV/AIDS. The major difference from other regions is that in high-income countries one third of all infected receive antiretroviral treatment. Less than 90 000 were newly infected last year and more than 20 000 died from infections.¹¹⁴

¹¹⁴ The estimates regarding the HIV/AIDS crisis referred to in this chapter are all taken from the UNAIDS *Report on the global HIV/AIDS epidemic 2002* and the UNAIDS/WHO *AIDS epidemic update: December 2002*.

4.3 HIV/AIDS and human rights

HIV/AIDS was the first global epidemic to arrive on the scene in the modern age of human rights. As of today there is no study of the complete impact of human rights in relation to HIV/AIDS. Still, it is safe to say that HIV/AIDS is a human rights issue. It has been shown that the promotion and protection of human rights is a significant element in preventing transmissions of HIV and reducing the impact of the epidemic.¹¹⁵ Although HIV/AIDS is not explicitly mentioned or protected in any of the major international human rights instruments, it relates to several of the human rights norms – both of civil and political and economic, social and cultural character – that can be found in the seven major international human rights instruments. The OHCHR/UNAIDS international guidelines on HIV/AIDS and human rights lists the following human rights as being *some* of the norms relevant to HIV/AIDS:

- the right to life;
- the right to non-discrimination, equal protection and equality before the law;
- the right to the highest attainable standard of physical and mental health;
- the right to liberty and security of person;
- the right to freedom of movement;
- the right to seek and enjoy asylum;
- the right to privacy;
- the right to freedom of opinion and expression and the right to freely receive and impart information;
- the right to freedom of association;
- the right to work;
- the right to marry and to found a family;
- the right to equal access to education;
- the right to an adequate standard of living;
- the right to social security, assistance and welfare;
- the right to share in scientific advancement and its benefits;
- the right to participate in public and cultural life;
- the right to be free from torture and cruel, inhuman or degrading treatment or punishment.¹¹⁶

By this listing it becomes evident that international human rights obligations are most relevant to HIV/AIDS. I will expand on a few of the rights listed above and explain how they relate to the disease.

The rights to liberty and security of person, freedom of privacy and freedom from cruel and degrading treatment are some of the civil and political rights frequently violated in regard to HIV/AIDS infected. Violations of the right

¹¹⁵ OHCHR/UNAIDS, *HIV/AIDS and Human Rights: International Guidelines*, 1998, United Nations, New York, p.39.

¹¹⁶ *Ibid.*, p.41.

to liberty and security of person, contained in ICCPR article 9, occur when governments try to control the epidemic by isolating, placing in quarantine or confining people already infected with the disease.¹¹⁷ Another right affected by such action is the right to non-discrimination. This right is the perhaps most violated human rights regarding HIV/AIDS. Control measures as mentioned above are often targeted at groups traditionally believed to be in the HIV/AIDS risk-zone, such as homosexuals, sex workers and injecting drug users. However, as shown in the previous sub-chapter, the HIV/AIDS epidemic affects everyone, not just the high-risk groups. Thus, it not only discriminatory to target certain groups, but probably also a less successful response strategy. Furthermore, it has been confirmed by the Commission on Human Rights that the clause “other status” often connected to non-discrimination provisions should be interpreted to include health status, including HIV/AIDS.¹¹⁸ The right to privacy is protected in article 17 of the ICCPR, article 37 of the CRC and article 12 of the UDHR. In relation to HIV/AIDS, this right ensures that counseling and testing should be voluntary and the results kept confidential.¹¹⁹ The Human Rights Committee has found this right to be violated in regard to laws criminalizing private homosexual acts with aim of preventing the spread of HIV/AIDS.¹²⁰ Furthermore, it is no uncommon that the right to freedom from cruel and degrading treatment is violated, primarily against HIV/AIDS positive prison inmates.¹²¹

Public health concerns are often used as a reason for human rights restrictions of the kind mentioned above. The so-called “derogable” civil and political rights can be restricted due to public health reasons.¹²² However, such restrictions must be for a compelling public health interest, they must be proscribed by law and be proportionate to the interest. While public health interest is the underlying rationale of most HIV/AIDS related human rights restrictions, it has been shown that coercive and punitive measures to combat HIV/AIDS in fact only has a detrimental effect on the public health situation.¹²³ Non-voluntary measures often cause people living with HIV/AIDS to effectively avoiding treatment, counseling and support and thus worsening the public health situation.¹²⁴ There is thus no conflict between HIV/AIDS and public health interests and that reason can very seldom constitute a legitimate basis for restricting HIV/AIDS related human rights.¹²⁵

¹¹⁷ Fidler, David P., *International Law and Infectious Diseases*, 1999, Oxford University Press, Oxford, p.202.

¹¹⁸ Commission on Human Rights, resolutions 1995/44 (E/CN.4/RES/1995/44); 1996/43 (E/CN.4/RES/1996/43).

¹¹⁹ UNAIDS, *Report on the Global HIV/AIDS epidemic 2002*, p.63.

¹²⁰ Human Rights Committee, *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

¹²¹ OHCHR/UNAIDS, *International Guidelines*, p.57.

¹²² See e.g. ICCPR article 12 regarding the liberty of movement.

¹²³ OHCHR/UNAIDS, *International Guidelines*, p.39.

¹²⁴ Fidler, p.203.

¹²⁵ OHCHR/UNAIDS, *International Guidelines*, p.43.

One issue that was recently brought into attention concerns the right to seek and enjoy asylum, provided for in UDHR article 14. Great Britain proposed to introduce mandatory HIV/AIDS testing on all asylum seekers before permitting entry into the country. Although there is no human right providing for entry into a foreign country, entry restrictions on the grounds of HIV/AIDS would be discriminatory and violate the right to equality before the law.¹²⁶

Perhaps the most obvious human right related to HIV/AIDS is the right to the highest attainable standard of physical and mental health – a fundamental human right, crucial for the enjoyment of other human rights.¹²⁷ In addition to article 25 of the UDHR, the right to health can be found in three of the seven major international human rights instruments, namely article 12 of CEDAW, article 24 and 25 of CRC and perhaps most importantly, article 12 of ICESCR. The right to health is most often formulated in a rights-based language and often includes corresponding duties upon states in the field of health. The right to health can be said to encompass two categories:¹²⁸

- elements related to health care, including both curative and preventive health care and,
- underlying preconditions for health, including e.g. health related information.

Some of the elements related to health care directly relevant to HIV/AIDS are appropriate treatment of the disease, the guarantees of necessary health infrastructure and personnel, and access to essential drugs and antiretrovirals.¹²⁹ Regarding underlying preconditions for health, health education and information on methods of prevention and control is of utmost relevance in regard to HIV/AIDS. The right to health is also related to several other human rights, such as the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, freedoms of association, assembly and movement.¹³⁰ Regarding HIV/AIDS this overlap is evident e.g. regarding education and information, which is protected both by the right to health and by the rights to education and information provided for in the UDHR, the ICCPR and the ICESCR.

In general terms, a violation of the right to health occurs if a state does not make the necessary efforts to supply the population with the health services

¹²⁶ Ibid. p.51.

¹²⁷ Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000), The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/2000/4, §1.

¹²⁸ Toebes, Brigit, "The Right to Health", in Eide et al (eds.) *Economic, Social and Cultural Rights: A Textbook*, 2 ed., 2001, Martinus Nijhoff Publishers, The Hague, p.173.

¹²⁹ UNAIDS, *Report on the Global HIV/AIDS epidemic 2002*, p.63.

¹³⁰ CESCR General Comment 14, §3.

required.¹³¹ By the low figures provided above regarding access to antiretroviral drugs, it seems that this kind of violation occur frequently. However, it is important to distinguish between inability and unwillingness to comply with the obligations connected to the right to health.¹³² Often it is more likely that the problem originates in the small budgets and the difficult economic conditions that developing countries are struggling with, than an actually unwillingness to fulfill their obligations. In addition, the right to health provided for in the IESCR is subject to progressive realization within the individual states available resources. However, this does not deprive states of responsibilities in this regard, on the contrary, it calls for continuous work towards the full realization of the right to health.¹³³

The relationship between HIV/AIDS and human rights was also recognized by the United Nations General Assembly Special Session on HIV/AIDS (UNGASS) in 2001, where Heads of State and Representatives of Governments adopted the Declaration of Commitment on HIV/AIDS.¹³⁴ It declares that the HIV/AIDS epidemic constitutes a global emergency, which undermines social and political development and affects all levels of society – national, community, family and individual. Although the declaration is not a legally binding document, it provides a political platform for a more coherent approach towards the HIV/AIDS epidemic. Among other matters, the declaration calls for legislation, regulations and other measures to stop discrimination against people living with HIV/AIDS and to ensure all their human rights, in particular, their access to education, inheritance, employment, health care, social services, prevention, support, treatment, information, legal protection, privacy and confidentiality. Furthermore it calls for the development of strategies to combat stigma and social exclusion and to promote the advancement of women and their full enjoyment of human rights in regard to HIV/AIDS.¹³⁵

Even by this short presentation it becomes evident that HIV/AIDS unquestionably is a human rights issue. Although not explicitly mentioned in any of the major international human rights instruments it relates to and has an effect on a multitude of rights enshrined in the international human rights regime. It intersects both civil and political rights and economic, social and cultural rights, serving as a good example of the indivisibility of human rights. The realization of both sets of rights is necessary for an effective response and continued violations of HIV/AIDS related human rights would add fuel to the already scorching epidemic.

¹³¹ Toebes, p.181.

¹³² CESCR General Comment 14, §47.

¹³³ Ibid. §31.

¹³⁴ General Assembly resolution A/RES/S-26/2 (2001), 2 August 2001, containing the Declaration of Commitment on HIV/AIDS.

¹³⁵ Ibid. §58-61.

4.4 HIV/AIDS and security

Conflict and HIV are entangled as evil twins.
- Dr Peter Piot, Executive Director, UNAIDS

HIV/AIDS is not only a health, development and human rights issue, it also has vast security implications on all sectors of security in the worst affected countries. HIV/AIDS and international insecurity coexists in a vicious circle, where HIV/AIDS is both the cause and effect and initiator and beneficiary of instability and ultimately conflict.¹³⁶ Due to the appalling outcomes, a parallel is often drawn between the effects of the HIV/AIDS epidemic and the effects of war. However, by the numbers, the HIV/AIDS epidemic remain unchallenged:

[AIDS] has already killed more people than all soldiers killed in the major wars of the twentieth century, and equals the toll taken by the bubonic plague in 1347.¹³⁷

In many countries in Africa the governments are highly dependent on an effective security sector to meet their obligations to both its own people and the international community.¹³⁸ Failure to do so often result in instability and conflict.

By addressing the effects of the HIV/AIDS epidemic out of an individual, economic, communal, national and international security perspective, I will show that the HIV/AIDS epidemic can pose as a real threat to the security of any state. The underlying rationale for this is the profoundly destabilizing effect that HIV/AIDS can, and has proven to, have in the most affected countries. For this purpose I will focus primarily on Sub-Saharan Africa as this is the worst affected region in the world and thus serves as the best, or more accurately the worst, example. However, as shown above, the conditions described below are relevant also to many other regions in the world.

¹³⁶ UNAIDS, Fact Sheet, *HIV/AIDS and security*, July 2002, available at <<http://www.unaids.org/security/Information/Factsheets/FS1security.html>>, last visited on March 2, 2003.

¹³⁷ David Gordon, US National Intelligence Council, quoted International Crisis Group, *HIV/AIDS as a Security Issue*, 19 June 2001, available at <http://www.intl-crisis-group.org/projects/issues/hiv_aids/reports/A400321_19062001.pdf>, last visited on May 3, 2003, p.8.

¹³⁸ Canadian Security Intelligence Service, *HIV-AIDS and the Security Sector in Africa: A Threat to Canada*, September 26, 2001, available at <http://www.csis-scrs.gc.ca/eng/comment/com80_e.html>, last visited on May 7, 2003, p.3

4.4.1 HIV/AIDS – a threat to individual, economic and communal security

Perhaps the most obvious effect of the HIV/AIDS epidemic is that of life expectancy. In some countries the life expectancy of the population have dropped by over thirty years due to the epidemic, reversing decades of development gains. In countries with a HIV/AIDS prevalence rate of over 15 percent, as South Africa and a few other Sub-Saharan countries, it can be expected that up to half of all boys currently aged fifteen will die from the disease.¹³⁹ The epidemic also strikes hard at children, causing infant mortality rates to rocket. Reports on the study of causes of state instability indicates that infant mortality levels corresponds to a large extent with political instability, thus being one of the best indicators for predicting state failure.¹⁴⁰ In Botswana, mentioned in the prologue, the infant mortality rate has increased with over 120 percent solely due to HIV/AIDS.¹⁴¹

The effects are also great on families with HIV/AIDS infected members. Household incomes can decrease by as much as 60 percent if a family member gets infected, with malnutrition often as a direct consequence. The reasons for this are several. Family income decreases when income-earners are infected and family members have to give up their jobs to care for the sick at the same time as medical costs increases. If a parent dies family units often dissolve.¹⁴² HIV/AIDS thus effectively impoverish the already poor. The effects on young people are also enormous. As many as 14 million children worldwide – 11 million in Sub-Saharan Africa alone – have become orphaned because of HIV/AIDS.¹⁴³ In Sierra Leone during eight years of conflict, 12000 children were separated from their families, while HIV/AIDS was the cause of almost five times as many orphans.¹⁴⁴ Children have to drop out of school to help care for the sick and to decrease school costs, thus giving up their much needed education. All of this are security implications as such, but the mentioned effects of decreased incomes, loss of families and education places young people in the high-risk zone of being targeted by local militias, which could provide the family bonds taken away by the HIV/AIDS epidemic – “the uneducated, malnourished and purposeless mass of children represents a potential army in search of a leader”.¹⁴⁵

¹³⁹ UNAIDS, AIDS epidemic update report June 2000, June 2000, available at <http://www.unaids.org/epidemic_update/report/Epi_report.htm>, last visited on February 15, 2003.

¹⁴⁰ Central Intelligence Agency, DCI & CIA Special Report, *National Intelligence Estimate: The Global Infectious Disease Threat and Its Implications for the United States*, (NIE 99-17D), January 2000, available at <<http://www.cia.gov/cia/reports/nie/report/nie99-17d.html>>, last visited on March 2, 2003, p.5, 29.

¹⁴¹ International Crisis Group, *HIV/AIDS as a security issue*, p.5.

¹⁴² UNAIDS, *Report on the Global HIV/AIDS Epidemic 2002*, p.47.

¹⁴³ *Ibid.* p.133.

¹⁴⁴ International Crisis Group, *HIV/AIDS as a security issue*, p.7.

¹⁴⁵ Randy B. Cheek quoted in International Crisis Group, *HIV/AIDS as a security issue*, p.7.

In the worst affected countries HIV/AIDS is responsible for the loss of up to 2 percent of annual economic growth.¹⁴⁶ The disease strikes hard on the workforce. As most people in Africa are infected as teenagers, HIV/AIDS has a disproportionate effect on people in their most productive years between 15 and 49. In 2020, also the target year for the Millennium Declaration, the labor force is expected to be between 10 to 22 percent smaller than it would have been without HIV/AIDS, resulting in almost 12 million less workers available.¹⁴⁷ Furthermore, it is often important sectors for the national economy that are most affected, such as mining, agriculture and transport. The HIV/AIDS epidemic has been called the single greatest threat to economic development in Africa.¹⁴⁸ The macroeconomic costs of the HIV/AIDS epidemic are very burdensome on the worst affected countries. At the same time, the unchecked epidemic will take a great toll on productivity, profitability and foreign direct investments.¹⁴⁹ The consequences of this cannot be overlooked, as economic crisis is often a major factor in political tensions and internal conflicts.

Individual and economic security aspects are also communal security aspects. However, one of the most important communal security aspects is that of policing. There are indications that police forces in several African countries are suffering severely from HIV/AIDS, in Kenya AIDS accounted for 75 percent of all deaths in the police force over a two-year period.¹⁵⁰ Communal security can also be said to be a function of good governance. Functional state structures and a healthy civil society are two key actors in the struggle against HIV/AIDS. However, in many countries, these actors are gravely impaired due to the epidemic and the absence of functional state structures will not only lead to a worsened crisis, but ultimately also to insecurity and violence.¹⁵¹ HIV/AIDS is striking hard on governments and civil servants in Africa. Civil servants are a high-risk group as they travel frequently, are posted far from home and have high incomes, making them a target for the unsafe commercial sex industry.

One of the most evident effects of the HIV/AIDS epidemic on the education sector is the decline in school enrolment.¹⁵² As teachers are becoming infected the quality of education will drop. This will be challenging to reverse, as it is expensive and difficult to replace well-educated people like teachers. The health sector is also seriously affected. HIV/AIDS treatment in the worst affected countries will burden already strained health budgets and lead to increased hospitalization in hospitals already operating above their capacity.¹⁵³ In addition, as healthcare workers are in the high-risk zone of getting infected the negative effects on the HIV/AIDS epidemic by means

¹⁴⁶ CSIS, *HIV-AIDS and the security sector in Africa: A threat to Canada*, p.2.

¹⁴⁷ International Crisis Group, *HIV/AIDS as a security issue*, p.9.

¹⁴⁸ A senior World Bank official, quoted in CIA, *The Global Infectious Disease Threat*.

¹⁴⁹ CIA, *The Global Infectious Disease Threat*, p.26.

¹⁵⁰ International Crisis Group, *HIV/AIDS as a security issue*, p.15.

¹⁵¹ International Crisis Group, loc.cit.

¹⁵² UNAIDS, *Report on the Global HIV/AIDS Epidemic 2002*, p.52.

¹⁵³ Ibid. p.51.

of fewer health workers is obvious. The effect of decreased communal security with deteriorating state structures can easily lead to increased criminality and violent attempts to control power.

The effect on the rule of law is equally alarming. Judges, prosecutors and lawyers as well as other institutions upholding law and order are suffering from the epidemic to the same extent as many other sectors.¹⁵⁴ This will place the entire judicial system – another important guarantor of security – into a disquieting state of uncertainty.

4.4.2 HIV/AIDS – a threat to national and international security

Armed forces constitute the formal structure of state security in many countries. Inconveniently, military personnel are a group highly vulnerable to HIV/AIDS. The prevalence rate of HIV/AIDS in many militaries far exceeds that of the civilian population. In peacetime the rate is generally two to five times higher, in conflicts as much as 50 times higher.¹⁵⁵ The reasons for the high prevalence rate among military personnel are several: they are in the age group of the greatest risk for infection, the sexually active 15 to 24-year group; they are posted far away from home long periods at the time; they are often exposed to violent and risky behavior; they have many opportunities for casual sexual relations; and they often use sexual activity to relieve stress and loneliness.¹⁵⁶ The effects on national security of high prevalence rates among armed forces are obvious – a weakened and unhealthy military results in a weakened national defense. The HIV/AIDS prevalence in African militaries is alarmingly high. Angola's and the DRC militaries have a prevalence rate reaching up to 60 percent, whereas in several other countries prevalence rates varies from 10 to 60 percent.

The actual impact on the affected militaries is great. They have to allocate resources from small budgets to recruit and replace those that have died from HIV/AIDS and provide health care for those still alive. From a shrinking recruitment base they have to find personnel to take the places of high-ranking officers and specialized soldiers that cannot easily be replaced.¹⁵⁷ More importantly, it will prevent the soldiers from carrying out their duties and cause a significant decrease on the operational efficiency of the militaries.¹⁵⁸ Weakened militaries are *per se* a security threat as they are in many countries the formal structure of security. Moreover, as weakened

¹⁵⁴ UNAIDS, *Report on the Global HIV/AIDS Epidemic 2002*, p.58.

¹⁵⁵ UNAIDS, *AIDS in the military: UNAIDS point of view*, May 1998, available at <http://www.unaids.org/publications/documents/sectors/military/militarypve.pdf>, last visited on May 18, 2003.

¹⁵⁶ Elbe, Stefan, "HIV/AIDS and the Changing Landscape of War in Africa", in *International Security*, Vol. 22, No.2 (2002), p.160.

¹⁵⁷ CIA, *The Global Infectious Disease Threat*, p.31.

¹⁵⁸ Elbe, p.161.

militaries lead to decreased national security, the likelihood of military coups and the overthrow of authorities increase.¹⁵⁹ A diminished readiness of national defense forces is a grave concern to any state, and it can be considered a threat to international peace and security.

If national militaries are the formal structure of national peace and security, international peacekeeping operations are the formal structure of international peace and security. International peacekeepers are as vulnerable to HIV/AIDS infections as national military personnel as they fit the same profile – being of a young age, posted far away from home, used to violent and risky behavior etc. In addition, peacekeepers are often well paid and have better financial resources than the local population, providing the financial means to purchase sex. As a result of the demand, commercial sex industries often rapidly grow around military bases, effectively increasing the accessibility. International peacekeepers are also regularly exposed to dangerous conditions such as post-conflict areas and refugee populations. Refugees are a group highly vulnerable to HIV/AIDS and when militaries are involved with refugees the risks of infections are high, either through forced or consensual sex. The threat from HIV/AIDS to international peacekeepers is by no means speculative or fabricated. A study of Dutch sailors and marines on a peacekeeping mission in Cambodia revealed that close to 50 percent had sexual contact – often without using protection – with either commercial sex workers or local people during a five-month stationing.¹⁶⁰ Several other studies show similar findings and the high prevalence rates among militaries speak for itself. Similar to national militaries, international peacekeepers are not only vulnerable to infections, they are also a potential cause of the spread of the disease. Besides the threat to local populations, the virus uses returning soldiers as “Trojan horses” to enter the often low-prevalence areas that are the soldiers home environments. Peacekeeping personnel could be a force for HIV/AIDS prevention, instead they have become a force for HIV/AIDS infection.¹⁶¹ Considering the high vulnerability of international peacekeepers and the fact that about one third of all peacekeepers are stationed in the high prevalence areas in Africa, the threat to international peacekeeping is undoubtedly real.¹⁶²

It has already been shown that the high HIV/AIDS prevalence in many African militaries has extensive implications on their respective armed forces and on national security. Additionally, this has a substantial effect on international peacekeeping. It is a well-known strategy in international peacekeeping to acquire the services of nationals from near the conflict area. Often, a large part of the contingent is made up of forces from neighboring or closely situated countries. On the basis of the high HIV/AIDS prevalence in African militaries, it has even been said that if the spread of the disease

¹⁵⁹ CIA, *The Global Infectious Disease Threat*, p.31.

¹⁶⁰ UNAIDS, *AIDS and the military*, p.3.

¹⁶¹ CSIS, *HIV-AIDS and the security sector in Africa: A threat to Canada*, p.7.

¹⁶² Elbe, p.161.

continues to increase, they will soon be unable to participate in peacekeeping operations.¹⁶³ Related to this problem is the fact that many western countries are more and more reluctant to send troops into areas with high HIV/AIDS prevalence of fear for the health of their troops, thus relying heavily on the forces of poorer countries that are more likely to already suffer extensively from HIV/AIDS.¹⁶⁴ Accordingly, if western countries are disinclined to send forces to high-risk areas and African countries are unable to contribute due to debilitated troops, the result will be a devastating blow to international peacekeeping operations and subsequently to international peace and security.

4.4.3 Summary

In this chapter I have shown that HIV/AIDS affects all levels of security – individual, economic, communal, national and international security. Drawing conclusions from the above, I argue that the worst affected countries will continue to suffer demographic catastrophes due to HIV/AIDS. It will continue to impoverish the poor, create scores of orphans, ruin nuclear and extended families, and weaken civil society and important state structures all with severe social and political consequences such as political instability and slow democratic development. The economic security threat to the most affected countries is ever present. These countries most often already struggle financially with overwhelming development challenges, debt burdens and poor trade conditions. The HIV/AIDS epidemic adds further pressure on already strained national budgets and state structures, making it difficult, if not impossible, for the state to perform its primary duty of protecting the population from suffering. With further aggravation of this situation, the result of complete economic breakdown is not an unrealistic scenario. As economic crisis is a major factor for political instability, the security implications are there for anyone to see. The enormous social and economic impacts of HIV/AIDS will intensify the struggle for political power to control the deteriorating state resources. In return, all possibilities of a response to the epidemic are wiped out.

Concluding, I believe it has been shown that in regions such as Sub-Saharan Africa, “[...] where HIV/AIDS has reached epidemic proportions, it destroys the very fabric of what constitutes a state: individuals, families, communities, economic and socio-political institutions, and the military and police forces which guarantee the protection of state institutions”.¹⁶⁵

The individual, economic, communal and national security implications of the HIV/AIDS epidemic will result in weakened states with the ultimate effect being internal conflicts. But weakened states are not only temping

¹⁶³ International Crisis Group, *HIV/AIDS as a security issue*, p.22.

¹⁶⁴ CSIS, *HIV-AIDS and the security sector in Africa: A threat to Canada*, p.5.

¹⁶⁵ UNAIDS Fact sheet: *HIV/AIDS and security*.

targets for internal power thirsty groups but also for outside actors. When larger countries are experiencing destabilizing effects, the risk for outside interference is perhaps smaller, but internal turbulence and conflicts have an impact also on the international arena. Countries like China, India and Russia – with high HIV/AIDS prevalence rates – or a large region like Sub-Saharan Africa are unquestionably matter of international concern. Internal conflicts also often have international implications, such as refugee flows and cross-border hostility.

Besides the significant international security threats of destabilizing states, the most serious and devastating international security threat of the HIV/AIDS epidemic is that to international peacekeeping. The uniformed services are of utmost importance regarding HIV/AIDS and security. National defense forces have a prominent role as guarantors of security, without which, society is threatened. Reduced operational efficiency of national defense forces is an imperative threat to any state, and can be seen as a threat to international peace and security. Correspondingly, international peacekeepers are the guarantors of international peace and security. The threat of HIV/AIDS is as real to peacekeepers as it is to national militaries, and the effects of the epidemic is equally hampering on their capabilities to perform their duties and uphold international peace and security.

5 The practise of the Security Council regarding HIV/AIDS

5.1 Introductory remarks

Before venturing into the final analysis regarding HIV/AIDS as a threat to international peace and security under article 39 of the UN charter, I will in this chapter address the efforts already undertaken by the Security Council to put the issue of HIV/AIDS on the security agenda.

The issue of HIV/AIDS as a threat to international peace and security has as of today been on the agenda of the Security Council at four occasions, in 2000 and in 2001. Although the primary focus of the meetings has varied somewhat, the essence has been the same – the HIV/AIDS epidemic is a potential threat to international peace and security. The most substantial outcome of the meetings was the adoption of resolution 1308, the first ever Security Council resolution concerning a health issue.

Due to the unique character of the meetings, I will below I will give an account for the highlights of these the four Security Council meetings on HIV/AIDS and peace and security.

5.2 Security Council meeting 4087

On January 10th, 2000, the Security Council held its 4087th meeting. This was the first time in over half a century the council debated a health issue as a security threat, namely the impact of AIDS on peace and security in Africa.¹⁶⁶ The historic meeting was presided by Al Gore, the vice-president of the United States of America and the importance of the meeting was underlined by the participation of central actors on the highest level. United Nations Secretary-General, Kofi Annan, the President of the World Bank, James Wolfensohn, the Administrator of UNDP, Mark Malloch Brown and the Executive Director of UNAIDS, Peter Piot, all addressed the council. Moreover, more than 40 countries participated in the debate. Three countries – Zimbabwe, Uganda and Namibia – were represented on ministerial level.

There was an almost unanimous welcome of the decision to put the issue before the council and the general consensus was that HIV/AIDS could and should no longer be considered only a health- or a development issue.¹⁶⁷

¹⁶⁶ Security Council meeting records S/PV.4087, 10 January, 2000; S/PV.4087 (Resumption 1), 10 January, 2000.

¹⁶⁷ Brazil was the only country that expressed the view that HIV/AIDS was not an issue to be dealt with by the Security Council.

Furthermore, it was argued that the crosscutting characteristic of HIV/AIDS and the devastating effects on all levels of society merits its consideration in a broader security context. Many spoke on the similarities with the effects of armed conflict, something that was underlined by the Secretary-General:

The impact of AIDS in that region is no less destructive than that of warfare itself. Indeed, by some measures, it is far worse. Last year, AIDS killed about 10 times more people in Africa than did armed conflict.

In addition, a call for an extended security doctrine that goes beyond the traditional views of resisting aggression and preventing armed conflict was proposed. The new doctrine would take new threats into account, such as the one posed by HIV/AIDS. Capturing this view, Al Gore said:

We must understand that the old conception of global security – with its focus almost exclusively on armies, ideologies and geopolitics – has to be enlarged.

The Executive Director of UNAIDS, Peter Piot, brought the concept of *human security*, as discussed in chapter 3, into the debate:

AIDS is not a health or development problem like any other. As we have heard, it has become, in Africa at least, an issue of human security in all senses of the word.

From a political perspective it is interesting to note that neither Russia nor China took part in the debate, although they did not use their veto to hinder the issue from reaching the agenda. This was a clear indication that the political willingness to expand the scope of the council's interpretation of threats to international peace and security at the time of the meeting was perhaps not fully supported by all of the five permanent members of the council.

The meeting did not render any action in form of a resolution or decision, but the meeting set a precedent and marked a turn towards a new direction in the interpretation of the concept of security. Moreover, the meeting attracted a lot of attention from both media and the general public and laid the base for further discussions within the Security Council as well as in other parts of the UN system.

5.3 Security Council meeting 4172 and Resolution 1308

Just more than six months after the historic 4087th meeting, on July 17th, the Security Council met again to discuss the issue of HIV/AIDS as a threat to international peace and security, this time with focus on peacekeeping operations.¹⁶⁸ Although no resolution had been adopted at the January meeting, the Secretary-General and the UNAIDS had taken concrete steps as follow-up to the January meeting to improve the situation in Africa.¹⁶⁹

The debate at the July meeting continued along the lines of the preceding meeting. On the basis of a draft resolution from the United States, focus was primarily on HIV/AIDS as a security issue within the context of peacekeeping operations. Although a slightly more narrow focus, it was again stressed that HIV/AIDS, also in a general sense, could constitute a threat to international peace and security and that the discussion of this issue fell within the council's responsibility for maintaining international peace and security. Once again the concept of *human security* was highlighted as integral part of the debate on HIV/AIDS and security.

Similar to the January meeting, meeting 4172 became historic as resolution 1308, entitled "The responsibility of the Security Council in the maintenance of international peace and security: HIV/AIDS and international peacekeeping operations" was adopted unanimously.¹⁷⁰ The resolution is not only the first ever Security Council resolution that addressed a health issue, it also specifically links the spread of HIV/AIDS to the maintenance of international peace and security.

In resolution 1308 the Security Council highlighted the potential threat the HIV/AIDS epidemic poses for international security, particularly in conflict and peacekeeping settings. The council recognized that the spread of HIV/AIDS can have a uniquely devastating impact on all sectors and levels of society and that the epidemic is aggravated by conditions of violence and instability. The Security Council further stressed that:

[...] the HIV/AIDS pandemic, if unchecked, may pose a risk to stability and security.¹⁷¹

While bearing in mind its primary responsibility of maintaining international peace and security, the Security Council also expressed concern at the potentially damaging impact of HIV/AIDS on the health of international peacekeeping personnel.

¹⁶⁸ Security Council meeting record S/PV.4172, 17 July, 2000

¹⁶⁹ Letter dated 5 July 2000 from the Secretary-General addressed to the President of the Security Council, S/2000/657, 6 July, 2000.

¹⁷⁰ S/RES/1308 (2000), 17 July 2000

¹⁷¹ Ibid., preamble §11.

5.4 Security Council meetings 4259 and 4339

In January of 2001 the council met again to discuss HIV/AIDS and international peacekeeping operations.¹⁷² The Under-Secretary-General for peacekeeping operations announced a cooperation agreement between the Department for Peacekeeping Operations, DPKO, and UNAIDS. The cooperation agreement focuses on collaboration with regards to HIV/AIDS prevention and care within peacekeeping operations, and in response to Resolution 1308 seeks to react to the growing epidemic and to mitigate its impact on international peace and security.

During the meeting the Executive Director of UNAIDS, Peter Piot, once again took the opportunity to highlight the concept of *human security*:

Only when we understand AIDS as a fundamental issue of human security can we grasp the extent of destruction it has caused [...].

Richard Holbrooke, permanent representative of the United States and one of the initiators of the debate in the Security Council stated that:

[...] this council has participated in the broadening the definition of security.

The fourth meeting, and as of today the last, in the Security Council on this matter took place on June 28th, 2001, following the UNGASS on HIV/AIDS.¹⁷³ A presidential statement was delivered and it was once again emphasized that the HIV/AIDS epidemic may pose a risk to stability and security.¹⁷⁴

¹⁷² Security Council meeting records S/PV.4259, 19 January, 2001; S/PV.4259 (Resumption 1), 19 January, 2000.

¹⁷³ Security Council meeting record S/PV.4339, 28 June, 2001.

¹⁷⁴ Statement by the President of the Security Council, S/PRST/2001/16, June 28, 2001.

6 Concluding analysis – HIV/AIDS as a threat to international peace and security

The United Nations can no longer fight the battles of tomorrow with the weapons of yesterday.
- UN Secretary-General H.E. Mr. Kofi Annan

The United Nations was created in the aftermath of the most horrendous events in modern history. The intention of the architects was to create an organization tying the nations of the world together under a few common and fundamental values, with the purpose of sparing future generations from a repeat of history. The charter of the United Nations was not only drafted to be a constituent instrument, the intention was also to provide a document facilitating the work of the organization. It is my genuine conviction that intention of the drafters was to create a living document, adaptable to the constantly changing conditions in our complex world. This conviction has been both the point of departure and the destination for the presented work.

The United Nations is built around two pillars of security emanating from the freedom from fear and the freedom from want. Both pillars need to be secured in order for the vision of the United Nations to be accomplished. Although the two pillars – state and human security – was foreseen already at the dawn of the United Nations over half a century ago, the traditional and still today dominating notion of security was shaped in the political climate of the cold war period. This brought about an overemphasis on the state's abilities to answer external threats and an almost complete disregard of the menaces threatening people around the world in their everyday lives.

The UN charter entrusts the Security Council with the maintenance of international peace and security. Chapter VII of the charter provides the means and methods for the council to fulfill this role. Article 39 – arguably the most important provision in the charter – and the notion of a *threat to the peace* opens the door to the collective security system. I have shown that the interpretation of article 39 has undergone significant change over the years, following closely the developments in international law. Through the emergence of international human rights law it became evident that international law no longer only concerned interstate relations, but also the relationship between the state and individuals. These developments elevated human rights issues from the domestic jurisdiction of the individual state to the international arena. As a consequence it became apparent that threats to the peace under article 39 could no longer be narrowly defined as only military threats to international peace. The end of the cold war changed the direction of world politics noticeably. It unchained the previously deadlocked Security Council that quickly embarked on a mission to counter

the growing threats of the post-cold war world. The council took a leading role in the process of incorporating the developments in international law into the security debate by determining internal conflicts as threats to international peace and security. The lion's share of these conflicts had its foundation in human rights violations and the Security Council did not hesitate to consider such violations as threats to international peace and security. The council made use of its wide discretion under article 39 and it was not long before it had effectively expanded the security concept that at the time – although the presented developments – was firmly anchored in the cold war theory of the primacy of state security. The first step toward the inclusion of the second pillar of security was thus taken.

In my opinion, the Security Council had a legal foundation to commence this process of advancing the interpretation of the charter. The charter places the maintenance of international peace and security and the protection and promotion of human rights alongside each other. Although the advocates of the primacy of state security refer to the intention and wording of the UN charter as the foundation for their views, I argue that it was rather the political conditions in the cold war period that caused the overemphasize on state security, and not a predetermined and irreproachable interpretation of the UN charter. There is nothing in the charter indicating a hierarchy among the purposes and principles in articles 1 and 2. On the contrary, it is my opinion that the peace and security concept in the charter is built upon human rights, socio-economic justice, international law and the other purposes enumerated in the mentioned articles. The purposes of the charter thus complement, not contrast, each other. I would even go so far as saying that there is not only support in the UN charter for the inclusion of human rights issues in the maintenance of international peace and security – it is encouraged. Through its action in response to the situations in primarily Iraq, the former Yugoslavia, Somalia, Rwanda and Haiti, the Security Council effectively established a practice of treating internal situations with foundation in human rights violations as threats to international peace and security. I have further argued that these interpretations constitute a legally valid interpretation of article 39, basing my findings on article 31(3)(b) of the Vienna Convention on the law of Treaties.

Hence, the Security Council through its practice legitimately expanded the notion of peace and security under article 39 of the charter to include internal situations and human rights violations. It is thus clear that the security concept underwent both a broadening and a deepening. The broadening consists of the included consideration of non-military threats and the deepening consists of the inclusion of the security of individuals and groups. International security of today consequently includes more than weapons and balance of power. It is my belief that by these developments, the Security Council also took a first step towards becoming a more prevention-oriented body. If the practice of the council meant the first step on the way to the realization of both pillars of security, I have proposed a way forward towards the complete incorporation of the second pillar into the mandate of the Security Council. The essential need for this lies in the

rudimentary premise that the world will never be secure from the threat of war is people are not secure from everyday threats to their lives, health, homes, and jobs. In my view, the answer could be the concept of human security. Human Security essentially means protecting vital freedoms that are the essence of life. It is a concept encompassing far more than the absence of violent conflict. It includes human rights, good governance, and the rule of law to mention but a few elements. I believe that human security complements and reinforces state security – it does not replace it. State security is necessary, but not sufficient, for the security of the people. The protection from internal threats to human rights and socio-economic conditions must also be secured. The concept of human security marks the shift from the focus on external aggression to the protection of people from everyday peril.

I argue that human rights define human security. Human rights are the foundation of security, and the two issues are thus interrelated. My understanding of human security is based on the indivisibility and interdependency of human rights, with the norms contained in the seven major international human rights instruments as its components. This can be describes as follows: *A threat to human security is a threat to any human right contained in the larger body of international human rights law made up of the UDHR, ICCPR, IESCR, CEDAW, CERD, CRC, and the MWC, that amounts to a certain magnitude, has a detrimental effect on the victims, and have direct or indirect international implications.* In effect, this is an extension of the practice already established by the Security Council, with the addition of the larger body of human rights contained in the international human rights regime. It is not only the most fundamental human rights, such as the right to life and the prohibition of torture, which effectively can threaten international peace and security. The effects of serious violations of many other human rights can have the same impact. The inclusion of certain human rights violations in the peace and security mandate of the Security Council is today fully accepted. I argue that this should also be the case regarding several other human rights violations. Those could be brought together under an inclusive concept of human security that could legitimately be dealt with under mandate of the Security Council to maintain international peace and security. The rationale of this reasoning is perhaps best clarified through an example – I have used the HIV/AIDS epidemic for this purpose.

HIV/AIDS is a problem without a passport. It travels freely to any corner of the world, often without the carrier's knowledge of what his luggage contains. No national borders can confine this deadly infection that directly attacks the white blood cells, vital to directing the body's immune responses, leaving them incapable of controlling infections or preventing disease. The high rate of genetic mutation of the virus presents a significant problem in finding an effective vaccine that would prevent the epidemic from continuing to spread. The virus differs from many other infectious diseases as it is difficult to detect and can be carried unknowingly for several year, thus further contributing to the spread, both within and across

national borders. A startling fact is that in only two decades the HIV/AIDS epidemic has been the cause of immense suffering and death, effectively destroying entire communities, wiping out decades of development gains and representing a grave threat to entire continents. Bearing all of this in mind, it is important to remember that the epidemic is still in its early stages.

Due to its crosscutting characteristics it has over the years become evident that the issue of HIV/AIDS cannot only be considered a health issue. An inclusive multisectoral approach is a necessity in order to stand a chance of reversing the epidemic. Reiterating the introductory words of this thesis, HIV/AIDS strikes without discrimination. It is indifferent to race, color, descent, national or ethnic origin, sex, age, wealth, social status, religion and any other factor differentiating people. It affects the individual, economic and communal security of individuals, families and communities, it affects the national security of militaries and police forces and it affects the international security of peacekeeping forces and post-conflict resolution. It affects every country in the world, large or small, rich or poor.

The individual, economic and communal security threats posed by the HIV/AIDS epidemic effectively weaken state structures and causes social fragmentation, economic decay and political division, which in its turn hold back the progress against the epidemic. This is certain grounds for internal conflict, as peace can only be safeguarded when human rights are implemented for everybody. A parallel between conflict and the HIV/AIDS epidemic is often drawn. There is a strong linkage and a harmful interplay between insecurity and HIV/AIDS. One cannot rightfully be addressed without the other and the two issues coexist in a vicious circle. It is clear that conflict fuels the HIV/AIDS epidemic – I have shown that it works both ways, an assertion supported by the UN Secretary-General at the first Security Council meeting on HIV/AIDS: “In already unstable societies, this cocktail of disasters is a sure recipe for more conflict, and conflict in turn provides fertile ground for further infections”. The epidemic also strikes hard on the formal structure of national and international security. International and national uniformed services, including peacekeepers and peace observers, national defense and civil defense forces, generally rank among the groups most affected by HIV/AIDS. The negative effects the epidemic will have on the readiness of the armed forces are grave. In conclusion, the HIV/AIDS epidemic has such a potentially destabilizing effect on any country in the world that the consequences can be rigorously felt by the outside world. It is my opinion that the HIV/AIDS epidemic is a security threats in every aspect of the words. The HIV/AIDS epidemic fully fits the profile of my understanding of human security – I would even go as far as saying that it is an archetype of a threat to human security.

In 2000 and 2001 the Security Council dealt with the issue of HIV/AIDS and security, and also passed a resolution. However, since then the topic has not been reintroduced on the agenda. I believe it is time to do so. The fact that both Great Britain and the USA, both permanent members of the

Security Council, has considered HIV/AIDS as a threats to their national security is of utmost importance for the political platform. One may ask whether or not the Security Council is the right forum for this issue. I decidedly believe it is. The Security Council is the supreme body of the United Nations system and the only body with the mandate to pass legally binding resolutions. Merely the attention by the Security Council will create greater awareness among the general public, academics and experts. More importantly, I believe the Security Council could take an active role in the struggle against HIV/AIDS. In its practice in regard to human rights violations the Security Council has shown a great inventiveness regarding enforcement measures. Beyond the traditional measures of economic sanction and the deployment of armed forces, the Security Council has responded with the creation of two criminal tribunals and even the authority to apprehend warlords and the call for the extradition of suspected terrorist. The Security Council undoubtedly has a mandate to answer different threats with different means. I believe this mandate could be used resourcefully also in response to the HIV/AIDS epidemic. The handling of the issue in the Security Council has already lead to a small, yet important, step in the right direction. In response to resolution 1308 the USA now only votes for peacekeeping resolutions that include a requirement on DPKO to act to prevent the spread of HIV/AIDS among and as a consequence of peacekeepers. Although beyond the scope of this thesis, some other measures that could be undertaken by the council include the call for mandatory HIV/AIDS education in schools or action to support the development of a fair intellectual property rights regime, which balance incentives for research and development with the assurance of the access to affordable life-saving drugs. These are but a few areas where the Security Council could make a difference. This is food for thought, although this issue deserves a thesis of its own.

In my opinion, although the issues covered in this thesis not traditionally have been dealt with in the same context, they are clearly interrelated and an integrative approach toward human rights, security and HIV/AIDS is called for. Human rights are the roots and the foundation of security. It comprises the notion of individual security, which is the necessary foundation for both national and international security. The concept of human security bring together the threats to human rights than could threaten international peace and security, but has not been incorporated into the concept of state security. The two pillar of security – state security and human security – complements each other and provide a desirable all-inclusive security approach. If people are secure from threats in there everyday lives, than maybe the world can also be secure from the threats of war. The HIV/AIDS epidemic intersects all of these issues. It is a human rights issue in all aspects and it poses a threat to individual, economic, communal security as well as national and international security. HIV/AIDS is a potential threat to international peace and security. Until this nexus is recognized, we will not be able to counter the epidemic successfully. The slogan of the UNGASS on HIV/AIDS was “Global Crisis – Global Action”. It would be unappealing to not let the only global organ with a mandate to pass legally binding

resolutions take part in that global action. The Security Council should have a leading role in the peaceful war on HIV/AIDS. I believe that the Security Council should be used as a *preventive tool*, and not only as a repair- and intervention tool, called in to respond to threats that have already taken place. Undoubtedly, it is better to land preventive action today, than troops tomorrow. Giving the Security Council mandate, under its responsibility of maintaining international peace and security, to effectively deal with HIV/AIDS would make the council a desirable preventive tool, hopefully eradicating the need for future reparatory interventions. HIV/AIDS as almost all other issues are better dealt with through prevention than intervention. We all know there is no cure – the only protecting is to avoid infection.

In conclusion, the HIV/AIDS epidemic is a potential threat to international peace and security. Only when the mandate of the Security Council is broadened to include also threats to human security can pervasive threats as the HIV/AIDS epidemic be successfully countered.

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