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International Human Rights Law and  
Disarmament  
*Intersections and Possibilities for Mainstreaming*

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*Disarmament is pre-eminently a humanitarian endeavour for the protection of the human rights of people and their survival*

-Jayantha Dhanapala-

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## Summary

The aim of the thesis is to explore the connection between disarmament and International Human Rights Law (IHRL) and possibilities to use human rights mainstreaming as a tool for integrating human rights within the disarmament field. The first part of the study will focus on the connection between IHRL and disarmament, as well formally as conceptually. The second part of the thesis deals with the potential of applying human rights mainstreaming within the disarmament field.

A distinction can be made between the formal connection of IHRL and disarmament as recognised in United Nations (UN) documents and the relation between both fields as it can be derived from the richer academic debate.

There is a formal connection between disarmament and IHRL. This formal recognition is a thin one, but it does provide a basis for further exploring the link between the two fields and analysing the possibilities for human rights mainstreaming. The formal intersection has been established in different resolutions from the United Nations General Assembly and the United Nations Security Council and documents from bodies from both fields. Occasionally, there has been some intersection outside the bodies working in both fields in reports by the UN Secretary-General (SG) and in the work of the United Nations Educational, Scientific and Cultural Organisation (UNESCO). Furthermore, the International Court of Justice has established that IHRL cannot be disregarded in discussions concerning certain weapons.

However, the connection between disarmament and IHRL is much broader than formally recognised and other aspects of human rights are also of relevance for disarmament. By analysing the goals and principles underpinning both fields, it can be concluded that both fields have many traits in common. Moreover, both fields face similar challenges and are easily pushed to the background for financial and military reasons. Additionally, human rights and disarmament are connected through the impact of arms on the realisation of human rights. The rights most directly affected are the right to life, right to health, right to development and right to peace. However, arms have the potential to affect the whole spectrum of human rights. Another aspect of IHRL closely connected to disarmament questions is the attention paid to vulnerable groups. Arms disproportionately affect some groups, such as women, children and indigenous groups. Human rights could therefore be relevant to disarmament as it is a framework that acknowledges the specific needs of these groups.

As stated above, it is clear that the link between disarmament and IHRL goes beyond the formal intersection. This poses the question how this connection can be reflected in disarmament negotiations, policies and programmes. The concept of human rights mainstreaming might be the tool for realising this.

The SG of the UN has introduced the concept of human rights mainstreaming in 1997 and this concept has been reaffirmed in different UN documents. The thesis examines human rights mainstreaming based on examples of human rights mainstreaming in the field of development, within UNESCO and the United Nations Office of the High Commissioner for Refugees.

The concept of human rights mainstreaming has so far been ignored within the disarmament field. However, the shifting paradigm towards human security does open new windows for introducing this concept there.

From the outset, national security interests have dominated disarmament debates. Since a few decades, human security starts to play a role. This concept of security is less State-centred and more people-centred. Human security gained attention in the disarmament field as well and played an essential role in the call for and adoption of the Arms Trade Treaty. Furthermore, the concept sparked a debate on the Humanitarian Impacts of Nuclear Weapons. Human security and human rights are highly interrelated, as human rights form an essential part of human security. The ever-extending interest and focus on human security initiatives in the disarmament field make this the perfect time to discuss the potential of human rights mainstreaming.

Possibilities for human rights mainstreaming depend on the added value and drawbacks for the disarmament field.

There are moral and instrumental reasons for introducing a Human Rights Based Approach (HRBA). A HRBA is morally the right thing to do, because of its enormous consequences. It might furthermore strengthen the call for delegitimising nuclear weapons. Human rights mainstreaming contributes to more sustainable outcomes, will provide a benchmark for long-term consequences of weapons, and asks for an approach with specific attention to vulnerable groups. Human rights provide a solid legal framework that reaffirm States' duties. Moreover, a HRBA introduces principles such as participation and non-discrimination throughout the entire disarmament process. Once human rights will be mainstreamed, a further incentive for transparency will appear which in its turn might contribute to holding States accountable. However, human rights mainstreaming does have some drawbacks and limitations.

The HRBA has been criticised for changing the language without achieving any change in practice. Accountability is also difficult to establish, as human rights obligations are limited to the territory of the State. In addition, disarmament is a politically sensitive issue. It is questionable whether some States will ever agree to human rights mainstreaming in the disarmament field, because of their nuclear interests or their human rights records. Moreover, the required causality for establishing a violation will be difficult to prove, because often the effects of weapons become visible after a long period of time. The criticism on the lack of achievement might be outdated. Especially the last three years, practical tools have been created within the development

field to make a HRBA more workable. The fact that judicial accountability is difficult to establish, does not mean that the entire concept of human rights mainstreaming is not possible within the field of disarmament. Accountability can be sought through different means and other aspects of human rights mainstreaming will still be beneficial to the disarmament field. Although there are some drawbacks and limitations, human rights mainstreaming is a valuable tool to integrate human rights concerns within the disarmament debate. The following recommendations can be made for introducing this tool in the disarmament regime:

- A good way of starting a HRBA is to further explore and acknowledge the relationship between IHRL and disarmament;
  - The adoption of an action plan by the United Nations Office for Disarmament Affairs and a formal document on the co-operation between the fields concerned would be a positive second step;
  - This co-operation could start within existing forums and frameworks, such as the universal periodic review of the Human Rights Council and reporting duties to the treaty bodies;
  - The tools introduced in the disarmament field for gender mainstreaming can be used as a starting point for the integration of human rights;
  - All changes should start from within. In other words, the bodies working with disarmament issues should work on their internal capacity for mainstreaming human rights;
  - Human rights mainstreaming does not only require an outcome focused on human rights, but human rights standards and principles should be implemented throughout all disarmament negotiations, policies, programmes and processes;
  - An action plan should include a commitment to make practical tools after a review period. This way a HRBA will not only change language, but will also lead to changes in practice.
- Further research is needed to create a complete methodology for mainstreaming human rights in the disarmament field.

## Preface

This thesis marks the end of my Master in International Human Rights Law. Being a student at this programme for two years enriched me personally and academically and therefore, I have ambivalent feelings submitting this study.

The idea for my thesis can be found in a course on Human Rights and the Right to Development, taught by Professor Maria Green. She encouraged the participating students to research an aspect of the Right to Development that was of particular interest to them. Due to previous research and experiences, I decided to examine the reference to disarmament within the Declaration on the Right to Development. It was the first time I connected disarmament and human rights. The above course sparked my interest to further research the relationship between human rights and disarmament.

Maria Green did not only encourage me to undertake this research, she also proved to be an amazing supervisor throughout the whole process of writing my thesis. I cannot thank her enough for offering me constructive criticism, meeting me at impossible times, inspiring me to make brave choices and guiding me throughout the writing process. The thesis would not have been the same without all her help.

I am also grateful to Susi Snyder from PAX, who was so kind to meet me for an inspiring conversation on human rights and disarmament. I am extremely grateful for her expertise and encouragement in my research.

I would like to take this opportunity to thank Lenny Neale-Krommenhoek and Pam Philips for proofreading the thesis and providing me with suggestions for improvement.

Lastly, I would like to thank my family and friends for their support. My parents have always stimulated me to follow my dreams and they were there for me every step of the way. Big thanks to all my friends, from Lund and the Netherlands, for listening to all my concerns and lighten my mood during the writing process.

## Abbreviations

ATT	Arms Trade Treaty
BWC	Biological Weapons Convention
CCW	Convention on Certain Conventional Weapons
CEDAW	Convention on the Elimination of Discrimination Against Women
CEDAW	Committee on the Elimination of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CTBT	Comprehensive Nuclear-Test-Ban Treaty
CTBTO	Comprehensive Nuclear-Test-Ban Organisation
CWC	Chemical Weapons Convention
HINW	Humanitarian Impacts of Nuclear Weapons
HRBA	Human Rights Based Approach
HRBAD	Human Rights Based Approach to Development
HRC	Human Rights Committee
HURIST	Human Rights Strengthening Programme
ICAT	Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of all Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IHL	International Humanitarian Law
IHRL	International Human Rights Law
NGO	Non-Governmental Organisation
NPT	Nuclear Non-Proliferation Treaty
OHCHR	Office of the High Commissioner for Human Rights
RtD	Right to Development
SALW	Small Arms and Light Weapons
SG	Secretary-General
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDG	United Nations Development Group
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNGA	United Nations General Assembly
UNHCR	United Nations Office of the High Commissioner for Refugees
UNIDIR	United Nations Institute for Disarmament Research
UNSC	United Nations Security Council
UNODA	United Nations Office for Disarmament Affairs
WMD	Weapons of Mass Destruction

# 1 Introduction

## 1.1 Overview

1997 marked a landmark for human rights. In this year, the Secretary-General (SG) of the United Nations (UN), Kofi Annan, published a report on reforming the UN.<sup>1</sup> The suggested reforms did not include a separate executive committee for human rights issues, because human rights were labelled as a 'cross-cutting issue' affecting all branches of the UN.<sup>2,3</sup> Due to this "cross-cutting" nature of human rights, the SG called upon all UN agencies to mainstream human rights throughout all its activities.<sup>4</sup> Although some UN agencies and programmes followed this call and started to integrate human rights within their work, not all UN bodies embraced this idea of human rights mainstreaming.<sup>5</sup>

Arguably, the disarmament field continued to live within its own vacuum and has not shown any interest in fulfilling the SG's call for human rights mainstreaming. The disarmament field comprises of those agencies within the UN that work on disarmament issues and obligations that flow from disarmament law. National security interests such as military necessity and deterrence arguments have since the beginning dominated negotiations and debates in this field. This might be the reason that the "cross-cutting" nature of human rights does not seem obvious from a disarmament perspective. As a result, the link between both disarmament and human rights have rarely been explored and human rights do only exceptionally play a role in disarmament negotiations and processes.

However, certain developments in the disarmament field show a shifting paradigm. Where disarmament debates were mainly influenced by national security concerns, humanitarian concerns now play an increasing role as well. In other words, a shift from national security to human security takes place. Recent years, this shift has become even more visible with the adoption of the Arms Trade Treaty (ATT) and nuclear disarmament initiatives that focusses on the Humanitarian Impacts of Nuclear Weapons (HINW). These developments might open interesting windows for the integration of human rights within the disarmament field. This is therefore a good moment to further explore the link between human rights and disarmament and to consider possibilities for mainstreaming human rights.

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<sup>1</sup> UNGA, 'Renewing the United Nations: A Programme for Reform. Report of the United Nations Secretary-General' (14 July 1997) UN Doc A/51/1997.

<sup>2</sup> The branches are peace and security, economic and social affairs, humanitarian affairs and development cooperation.

<sup>3</sup> UNGA, , 'Renewing the United Nations: A Programme for Reform. Report of the United Nations Secretary-General' (n 1) para 28.

<sup>4</sup> Ibid para 79.

<sup>5</sup> Gerd Oberleitner, 'A Decade of Mainstreaming Human Rights in the UN: Achievements, Failures, Challenges', (2008) 26 Neth.Q. Hum. Rts. 359, 360.

## 1.2 Purpose and Research Question

The aim of this thesis is to examine the connection between human rights and disarmament and to explore possibilities for mainstreaming human rights within the disarmament field. The following questions will be answered:

- *What is the connection between disarmament and International Human Rights Law (IHRL)?*
- *What are the possibilities for mainstreaming human rights within the field of disarmament?*

Although the research mainly intends to guide and inform disarmament practitioners, it will also provide a useful study for human rights practitioners as the integration of human rights will require a dialogue between practitioners from both fields.

The thesis is divided in two parts. The first part explores the link between IHRL and disarmament and the second part concentrates on the possibilities for mainstreaming human rights.

The first part necessitates a clarification of both fields before examining the connection between IHRL and disarmament. It is also important to explore the current intersection within the UN between the two fields. After this, those aspects of human rights that have not been connected with the disarmament field yet, but might be of relevance, will be analysed. These are the sub-questions regarding the connection between human rights and disarmament:

- *What are the basics of IHRL and disarmament law?*
- *What is the formal connection between IHRL and disarmament law?*
- *What (additional) aspects of IHRL are relevant for disarmament?*

The possibilities for human rights mainstreaming within the disarmament field can only be analysed after exploring the concept of human rights mainstreaming. In addition, the concept of human security needs to be examined to verify its relevance for the integration of human rights. Finally, the advantages and disadvantages of human rights mainstreaming will be addressed, in order to make recommendations on the possibilities for human rights mainstreaming.

These are the sub-questions relating to possibilities for human rights mainstreaming:

- *What does the concept of human rights mainstreaming mean and how has this concept been applied in other UN fields?*
- *What is the relevance of the shifting paradigm from national security to human security for human rights?*
- *What are the possibilities for human rights mainstreaming based on its added value and its drawbacks?*

### **1.3 Delimitations**

This thesis comprises a study of disarmament law and IHRL. Other regimes of International Law will not be analysed. The influence of International Humanitarian Law (IHL) on disarmament is an interesting and related question, but due to time and scope constraints, this question will not be covered in this study. However, the issue of the applicability of IHRL in times of armed conflict will briefly be discussed, as this is an essential issue for the potential relevance of IHRL for the disarmament field.

Additionally, the broader topic of fragmentation of International Law will not be addressed in this research. The study might, however, be useful for future discussions on this topic as it provides an overview of the current disconnection between two branches of International Law and future possibilities of connecting these two regimes.

The thesis is primarily concerned with the implications of IHRL for States. The issue of implications for non-state actors is a different question that reaches beyond the focus of this research. Where relevant, brief reference will be made to possible suggestions or implications for non-state actors, but giving any conclusions on the implications for non-state actors is not the aim of this study.

The Human Rights Up Front initiative launched by SG Ban Ki-moon does not fall within the scope of this research.<sup>6</sup> The initiative aims to prevent human rights violations. As the meaning of this initiative for human rights mainstreaming is not clear at the moment, it is too early to consider its impact on the connection between disarmament and human rights.

In general, the issue of gender mainstreaming will not be addressed in the thesis. Despite its similarities, gender mainstreaming is different from human rights mainstreaming and has some specific characteristics. However, gender mainstreaming within the disarmament field should be discussed briefly in the light of its relevance for mainstreaming human rights.

### **1.4 Method and Theory**

The research for this thesis consists of a literature review combined with an analytical approach. Chapters 2, 3, 5 and 6 are mainly of a descriptive nature. Chapter 4 and 7 are of an analytical nature, as they identify the overlapping issues between the fields concerned and the possibilities for acting upon this connection.

Chapter 2 provides the reader with the basics of the two fields, because the study intends to guide and inform disarmament

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<sup>6</sup> Site UN Secretary-General Ban Ki-moon, Human Rights Up Front <<http://www.un.org/sg/rightsupfront/>> accessed 20 May 2015.

practitioners and human rights practitioners. This part necessitated a review of general studybooks on human rights and general study books on disarmament.

The literature review for chapter 3 focused on UN materials that explicitly deal with human rights and disarmament within the same document to establish the formal link between the two fields. Types of UN materials reviewed include resolutions of the UN Security Council (UNSC) and UN General Assembly (UNGA), documents from the Human Rights Council and its advisory body, documents from Human Rights Treaty Bodies, United Nations Office for Disarmament Affairs (UNODA) disarmament yearbooks, disarmament treaties, case law of the International Court of Justice (ICJ) and speeches. The intersection between disarmament and development has not been part of this review, as the relationship with the Right to Development (RtD) is described in another chapter.

In order to describe the relevant human rights aspects in chapter 4, I examined academic articles and presentations focussing on the overlapping features of IHRL and disarmament and the humanitarian consequences of weapons. As the RtD and its link to disarmament is included in the analysis of chapter 4, academic materials on the RtD and disarmament have been included in the review. Moreover, the determination of the human rights aspects relevant to disarmament, required an analysis of literature from Non-Governmental Organisations (NGO's). This literature mainly included reports and blogs on the consequences of weapons and its disproportionate consequences for specific groups. Finally, specific UN declarations and resolutions on the RtD, Right to Peace, rights of Indigenous Peoples and gender mainstreaming in security issues have been examined to identify which rights and groups are most important in discussing consequences of weapons. Based on a review and analysis of all these materials the chapter identifies those aspects that have a potential to connect the field of human rights and disarmament.

The review for chapter 5 has, besides some scholarly articles on human rights mainstreaming, been limited to UN documents. The SG reports that laid the foundation for human rights mainstreaming in general and the action programmes and working programmes of some specific UN fields had to be examined to provide the reader with an overview on human rights mainstreaming within the UN. A selection has been made to explore human rights mainstreaming within those UN agencies of which their activities are related to different human rights and that have most experience in integrating human rights. These are the development agencies, United Nations Educational, Scientific and Cultural Organisation (UNESCO) and the United Nations Office of the High Commissioner for Refugees (UNHCR). There are many UN documents on human rights mainstreaming and best practices. Chapter 5 therefore only highlights those documents that have been most frequently referred to as guidance on human rights mainstreaming. Materials on gender mainstreaming within

the UN have been excluded from this section, as gender mainstreaming with its own specific characteristics, does not fall within the scope of this research.

Chapter 6 introduces the concept of human security. The shift towards human security within the field of disarmament is discussed in the light of its relevance for mainstreaming human rights within the disarmament field. Chapter 6 is therefore divided in three sub-sections. Section 6.1 explains the concept of human security. This sub-section necessitated a review of academic materials on the concept of human security, as well as UN reports and the UNGA resolution recognising and defining this concept. Again, only those UN documents that have been identified in literature as leading for the emergence of human security have been described. Materials on the broader discussion on the relevance of human security and criticism on this concept has not been part of the survey. Section 6.2 describes two recent developments within the field of disarmament that show that human security has found its way into the disarmament field. These are the adoption of a treaty regulating arms trade, the ATT, and initiatives inside and outside the UN that focus on the humanitarian consequences of nuclear weapons (HINW). This description has firstly been based on academic materials examining the relevance of human security for the adoption of the ATT and the humanitarian consequences of nuclear weapons. In addition, UN materials such as UNGA reports and resolutions adopted in the process towards the ATT and UNGA resolutions and papers by the United Nations Institute for Disarmament Research stipulating the humanitarian consequences of nuclear weapons have been reviewed. To understand the relevance of human security for IHRL, section 6.3 has relied on scholarly materials, describing the relation between human security and IHRL.

Chapter 7 required a review of academic materials in order to identify the drawbacks and added value of human rights mainstreaming for the disarmament field. Because human rights mainstreaming to disarmament does currently not exist, the added value and drawbacks could only be based on academic literature and a report of the Office of the High Commissioner for Human Rights (OHCHR) reviewing human rights mainstreaming in other UN fields. Articles by scholars suggesting a Human Rights Based Approach (HRBA) to disarmament have also been part of this analysis. The chapter builds on the analyses throughout the research. Based on the advantages and disadvantages and the review of human rights mainstreaming in chapter 5, chapter 7 will end with conclusions and recommendations on mainstreaming human rights in the field of disarmament.

## 2 Defining the fields

Any discussion on the link between IHRL and its possible value for the disarmament field can only be understood when a brief introduction to the regimes on which both fields are built is given. This research does not aim to provide the reader with a detailed and complete understanding of both IHRL and disarmament law. This chapter rather focuses on the basics of both regimes to analyse the intersectionality between the fields and possibilities for human rights mainstreaming. Some of these basics will be discussed further throughout this study.

### 2.1 Human Rights Law

#### 2.1.1 General Remarks

Human rights can be defined as 'universal legal guarantees protecting individuals and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity'.<sup>7</sup> It has generally been accepted that international human rights norms emerged in the field of international law, as a response to the atrocities of the World War II. With a prominent place for the 'promotion and protection' of human rights within the UN Charter<sup>8</sup>, the establishment of the UN marked the beginning of the adoption of a wide range of binding and non-binding instruments concerning the protection of human rights.

The first document adopted was the non-binding Universal Declaration of Human Rights (UDHR)<sup>9</sup>. Many instruments followed including the International Covenant on Civil and Political Rights (ICCPR)<sup>10</sup>, the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>11</sup>, the Convention on the Elimination of all Forms of Racial Discrimination (ICERD)<sup>12</sup>, the Convention on the Elimination of Discrimination Against Women (CEDAW)<sup>13</sup>, the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>14</sup>, Convention on the

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<sup>7</sup> OHCHR 'Frequently asked questions on a human rights-based approach to development cooperation' (2006) UN Doc HR/PUB/06/8 (OHCHR FAQ) 1.

<sup>8</sup> Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS 16 (UN Charter).

<sup>9</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

<sup>10</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

<sup>11</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

<sup>12</sup> International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 (ICERD).

<sup>13</sup> Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW).

<sup>14</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (CAT).

Rights of the Child (CRC)<sup>15</sup> and the Convention on the Rights of Persons with Disabilities (CRPD)<sup>16</sup>. Some of those treaties are aimed at protecting specific groups. The treaties are in principle directed at States, which makes them the primary duty-bearers. Individuals or groups are the right-holders. Certain provisions of the treaties are part of customary norms, which means that States have the obligation to comply with those provisions even if they did not ratify the treaty, unless the State has objected to the customary norm.<sup>17</sup> Even human rights norms that are not legally binding on a State, will always have a moral and political value.<sup>18</sup>

Committees monitor the treaties and their implementation. These committees consist of technical experts. By supervising the compliance of Member States with the obligations flowing from the treaties and issuing further guidance on specific rights in the form of General Comments, the committees contribute to the interpretation of the human rights norms. The Human Rights Council is the main body within the UN with a designated mandate on human rights. This subsidiary body of the UNGA consists of 47 UN Member States from different regions. The Council works on strengthening human rights protection by giving recommendation on human rights issues. The Council is also responsible for a Universal Periodical Review on the overall human rights situation of all UN Member States. Furthermore, the Council has the authority to use special procedures to appoint Special Rapporteurs, Independent Experts and Working groups on specific themes or countries. The OHCHR, Office of the High Commissioner for Human Rights, is another body working specifically on human rights is. The OHCHR is directed by the Human Rights Council and it works on the implementation of decision by the Council and gives recommendations on human rights issues.<sup>19</sup>

Although not discussed in this research, it is noteworthy that parallel to these developments human rights initiatives, instruments and bodies have also been adopted at a regional level.

### **2.1.2 Two Sets of Rights, Two Sets of Obligations?**

With the adoption of two main treaties, a distinction has been made between on the one hand civil and political rights and on the other hand economic, social and cultural rights. Supplement A gives an overview of the different human rights within each set.

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<sup>15</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC).

<sup>16</sup> Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CRPD).

<sup>17</sup> Hurst Hannum, 'The Status of the Universal Declaration of Human Rights in National and International Law' (1995/96) 25 GA J. Int'L & Comp. L. 287.

<sup>18</sup> Richard B Bilder, 'An Overview of International Human Rights Law' in Hurst Hannum (ed), *Guide to International Human Rights Practice* (4<sup>th</sup> edn, Transnational Publishers, 2004).

<sup>19</sup> Philip Alston and Ryan Goodman, *International Human Rights. Text and Materials* (OUP 2013) 698.

Different reasons have been given for this initial distinction. The treaties were negotiated in the context of cold war tensions between East and West and the sets of rights have been labelled with different normative characteristics.<sup>20</sup> Civil and political rights have been labelled as 'negative' rights, requiring States to refrain from certain acts. Because of this character, they would be more precise and 'capable of immediate implementation'.<sup>21</sup> In contrast, economic, social and cultural rights have been portrayed in this view as 'positive rights', requiring positive action from the State to assure the enjoyment of these rights. Additionally, these rights would be vague and resource demanding which makes them subject to progressive realisation.<sup>22</sup>

Different developments within the UN show that this distinction is not accepted anymore.<sup>23</sup> Firstly, recent human rights treaties, such as the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD) consist of norms from both sets of rights. Secondly, it has been affirmed that all rights are 'universal, indivisible and interdependent and interrelated'.<sup>24</sup> Lastly, the tripartite typology has been established as an examination framework for both sets and it shows that both sets of rights encompass to a certain degree the same characteristics.<sup>25</sup> The following human rights obligations are set out in the tripartite typology:

**The obligation to respect** requires the State, and thereby all its organs and agents, to abstain from doing anything that violates the integrity of the individual or infringes on her or his freedom, including the freedom to use the material resources available to that individual in the way she or he finds to satisfy basic need.

**The obligation to protect** requires from the State and its agents the measures necessary to prevent other individuals or groups from violating the integrity, freedom of action or other human rights of the individual—including the prevention of infringements of his or her material resources.

**The obligation to fulfil** requires the State to take the measures necessary to ensure for each person within its jurisdiction opportunities to obtain satisfaction of those needs, recognized in the human rights instruments, which cannot be secured by personal efforts.<sup>26</sup>

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<sup>20</sup> Ida Koch, 'Dichotomies, Trichotomies or Waves of Duties?' (2005) 5 HRLR 81, 83.

<sup>21</sup> Ibid 82.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid 85; Site OHCHR

<<http://www.ohchr.org/EN/Issues/ESCR/Pages/AreESCRfundamentallydifferentfromcivilianpoliticalrights.aspx>> accessed 20 May 2015.

<sup>24</sup> UN General Assembly (UNGA), 'Vienna Declaration and Programme of Action' (12 July 1993) UN Doc A/CONF.157/23, available at:

<<http://www.refworld.org/docid/3ae6b39ec.html>> accessed 2 April 2015.

<sup>25</sup> Koch (n 20) 85.

<sup>26</sup> Asbjørn Eide, 'Realization of Social and Economic Rights and the Minimum Threshold Approach', (1989) 10 HRLJ 35. Cited in: Koch (n 20) 85.

As there is no hierarchy between both sets of rights, the duties of States are, based on the model above, the same. However, there is one important difference looking at the type of obligation for each set of rights. Civil and political rights require an immediate obligation, whereas economic, social and cultural rights are subject to 'progressive realisation'.<sup>27</sup> This notion acknowledges the (financial) difficulties countries may face in ensuring the full realisation of these rights, but does not exempt States from acting to achieve their realisation. Retrogressive measures are not permitted either, unless there are exceptional circumstances.<sup>28</sup> Regardless of the notion of 'progressive realisation', the Committee on Economic, Social and Cultural Rights (CESCR) has established 'a minimum core obligation' for economic, social and cultural rights<sup>29</sup> and States have an immediate obligation to take steps and to monitor progress regarding the realisation of these rights.<sup>30</sup> Additionally, the crosscutting principles non-discrimination, participation and accountability apply to all human rights and are not subject to progressive realisation.<sup>31</sup>

The obligations deriving from human rights treaties can be restricted. Treaties provide the possibility of interfering with some right in the light of a specific aim or derogating from some right in times of emergency. Furthermore, States are only bound by human rights norm in treaties if they have ratified the treaty and did not make a reservation to the norm in question. States are only bound by customary norms if they did not object to the norm.

### **2.1.3 Enforcement of Human Rights Law**

There are different ways to enforce human rights and not all of them concern judicial enforcement.

Firstly, human rights are mainly enforced at a national level. Depending on the system of a State, human rights treaties can be directly invoked, or have been implemented in national legislation. States are also required to submit reports to the UN Committees on their compliance with human rights obligations. Human rights obligations are mainly limited to the State's territory.

Secondly, some regional human rights treaties and international human rights treaties give the possibility to use a complaint procedure. Usually, this option is open to individuals and States, but inter-State procedures do not occur often due to their political sensitivity.

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<sup>27</sup> Article 2(1) ICESCR.

<sup>28</sup> CESCR 'General Comment 3' in 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies' (27 May 2008) UN Doc HRI/GEN/1/Rev.9 (Vol. I) 7, para 9.

<sup>29</sup> Ibid para 10.

<sup>30</sup> OHCHR FAQ (n 7) 3.

<sup>31</sup> Maria Green, 'What We Talk about When We Talk about Indicators: Current Approaches to Human Rights Measurement', (2001) 23 HRQ 1062, 1071.

Lastly, enforcement can be sought in a more diplomatic setting. This will mainly be at inter-State level or within an International forum, such as an International organisation. Different ways of diplomatic pressure are used to enforce compliance with human rights norms. Examples include economic sanctions, public criticism and denial of development aid.<sup>32</sup>

## **2.2 Disarmament Law**

### **2.2.1 General Remarks**

Within the UN, the concept of disarmament is used in a broader context than just withdrawing weapons or eliminating certain categories of weapons. The activities of UNODA, a body within the UN working on disarmament, also concern non-proliferation and the transfer of arms. The treaties in the field of disarmament have therefore been referred to as 'the law of arms control'.<sup>33</sup> This body of International law includes both instruments governing Weapons of Mass Destruction (WMD) and instruments regulating conventional weapons. WMD are nuclear, chemical and biological weapons. Conventional weapons are weapons that do not fall within the category of WMD. They are commonly referred to as 'devices capable of killing, incapacitating or injuring mainly (though not exclusively) through explosives, kinetic energy or incendiaries'.<sup>34</sup> Considering the above, the following definition of disarmament law will be used for the purpose of this research:

Those norms of International Law that place restrictions upon a State's behaviour regarding their national armaments and regulate the supervision on this behaviour by supervisory mechanisms.<sup>35</sup>

Although some disarmament efforts were started in the aftermath of the First World War due to the large number of casualties resulting from new weaponry<sup>36</sup>, all major treaties in the field of disarmament entered the stage of International law after the Second World War and the founding of the UN. These treaties include instruments which explicitly prohibit certain weapons, such as the Chemical Weapons Convention (CWC)<sup>37</sup>, the Biological

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<sup>32</sup> See for a more elaborate overview on enforcement; Bilder (n 18), 11-14.

<sup>33</sup> Guido den Dekker, *The Law of Arms Control. International Supervision and Enforcement* (Martinus Nijhoff Publishers 2001) 37.

<sup>34</sup> Melissa Gillis, UNODA, 'Disarmament. A Basic Guide' (New York, 2009) 51.

<sup>35</sup> Based on den Dekker (n 33) 37.

<sup>36</sup> Ibid 11.

<sup>37</sup> Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (adopted 3 September 1992, entered into force 29 April 1997) UNTS 1974 45 (CWC).

Weapons Convention (BWC)<sup>38</sup>, Ottawa Convention<sup>39</sup> and the Convention on Cluster Munition<sup>40</sup>. Other treaties aim to regulate the use or transfer of weapons such as the Nuclear Non-Proliferation Treaty (NPT)<sup>41</sup>, the Convention on Certain Conventional Weapons (CCW)<sup>42</sup> and the Arms Trade Treaty (ATT)<sup>43</sup>. Some of these treaties have their own supervisory mechanism. The Organisation for the Prohibition of Chemical Weapons supervises the CWC. The CTBT Organisation Preparatory Commission is the supervisory body for the Comprehensive Nuclear-Test-Ban Treaty (CTBT)<sup>44</sup>, which has not yet come into force. The work of the International Atomic Energy Agent is closely related to the NPT, because it is the promotor for peaceful nuclear technology and it has a specific role under the treaty.<sup>45</sup> Throughout this research reference will be made to the disarmament field. In general, this will refer to the UN bodies working with disarmament law, unless otherwise indicated. See supplement B for a clear overview of these UN bodies and organisations and their positions in relation to other UN bodies.

### 2.2.2 State Duties

As with other bodies of International Law, duties on a State's behaviour follow from the ratification of a treaty. The existence of obligations based on customary norms is doubtful.<sup>46</sup> Arguably, there exists a customary norm prohibiting the use of chemical and biological weapons<sup>47</sup>, but not all States agree on this.

Because the treaties all have very different obligations, it is not possible to give a complete overview of State's duties deriving from disarmament law. However, four different types of State obligations can be identified within this field.

Firstly, some treaties establish an obligation to disarm. Usually this includes a prohibition of the development, production, use, stockpiling and acquisition of a category of weapons.<sup>48</sup>

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<sup>38</sup> The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (adopted 10 April 1972, entered into force 25 March 1975) 1015 UNTS 163 (BWC).

<sup>39</sup> Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (adopted 18 September 1997, entered into force 1 March 1999) 2056 UNTS 211.

<sup>40</sup> Convention on Cluster Munitions (adopted 30 May 2008, entered into force 1 August 2010) 2688 UNTS 39.

<sup>41</sup> Treaty on the Non-Proliferation of Nuclear Weapons (adopted 12 June 1968, entered into force 5 March 1970) 729 UNTS 161 (NPT).

<sup>42</sup> Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (with Protocols I, II and III) (adopted 10 October 1980, entered into force 2 December 1983) 1342 UNTS 137 (CCW).

<sup>43</sup> Arms Trade Treaty, (adopted 2 April 2013, entered into force 24 December 2014) UNGA Res 67/234B (ATT).

<sup>44</sup> Comprehensive Nuclear-Test-Ban Treaty (adopted 10 September 1996), UN Doc A/50/1027 (CTBT).

<sup>45</sup> Gillis (n 34) 84.

<sup>46</sup> Den Dekker (n 33) 62-66.

<sup>47</sup> Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law. Volume I: Rules*, (CUP 2005), rule 73 and 74.

<sup>48</sup> For example the BWC, the CWC and Convention on Cluster Munition.

Secondly, States can have obligations regarding the use of certain weapons. In this case, restrictions and regulations on the use of arms have been legally regulated.<sup>49</sup>

Additionally, States may have obligations regarding the proliferation or transfer of weapons. The spread of some weapons is explicitly prohibited<sup>50</sup>, whereas other treaties impose only restrictions on the transfer of weapons.<sup>51</sup>

Finally, States may have an obligation to refrain from testing certain weapons.<sup>52</sup>

### **2.2.3 Enforcement of Disarmament Law**

As within IHRL, monitoring of arms control compliance mainly takes place at a national level. Those treaties having a supervisory mechanism usually establish a reporting duty for State parties. These reports and declarations should describe the implementing activities of the State concerned.<sup>53</sup> The powers of the supervisory mechanisms in the field of disarmament are mainly of a monitoring nature. This means that they will have verification possibilities to check the reports and declarations.<sup>54</sup> Once non-compliance has been established within the limits of these powers, enforcement of disarmament law will usually be sought by diplomatic measures. Judicial enforcement is currently non-existent in this field.<sup>55</sup> It has been argued that remedies under general International law should play a more prominent role when non-compliance with disarmament law cannot be resolved within the treaty based regime.<sup>56</sup>

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<sup>49</sup> A clear example is the CCW.

<sup>50</sup> This is for example the case for nuclear weapons according to Article 1 NPT.

<sup>51</sup> See the ATT.

<sup>52</sup> See the CTBT, which has not yet entered into force.

<sup>53</sup> Den Dekker (n 33) 120.

<sup>54</sup> For example on-site inspections.

<sup>55</sup> Den Dekker (n 33) 371.

<sup>56</sup> See for a general discussion on enforcement in of disarmament law and the general remedies relevant to this field Ibid, 340-372.

### **3 Current Intersectionality between Human Rights Law and Disarmament within the United Nations**

As the fields have been defined in the previous chapter, this chapter will explore the intersection between the field of human rights and the field of disarmament. This chapter focuses on the formal connections between the two fields, as recognised within the UN. Chapter 4 will explore this connection further by conceptualising the linkage between the disarmament and the human rights regime.

#### **3.1 Linkage between Disarmament and Human Rights Within Resolutions of the General Assembly and the Security Council**

From the outset, States have been reluctant to link the two fields explicitly. It is stated in the 1976 Yearbook that some countries opposed to including reference to a disarmament issue in the preamble of a UNGA resolution on human rights. They were of the opinion that 'in a resolution on human rights reference to the matter was inappropriate because it was a disarmament question'.<sup>57</sup>

Since that time, the UNGA has adopted some resolutions that explicitly link disarmament and human rights. In a resolution of 1989 on the review of the implementation of the Declaration on the Strengthening of International Security, a cautious recognition of a general link between the two fields can be found. While summing up in one section the relevance of different topics for international security, it is stressed that amongst other topics, disarmament and respect for human rights are 'closely related to each other'.<sup>58</sup> In several resolutions, it has been acknowledged that there is a link between certain weapons and the realisation of human rights. The UNGA has for example asserted in a resolution on the condemnation of nuclear war, that a nuclear war is 'a violation of the foremost human right - the right to life'.<sup>59</sup> On a few occasions the harm of illicit trade of Small Arms and Light Weapons (SALW)<sup>60</sup> and illicit arms trade in general<sup>61</sup> for the enjoyment of human rights have been underlined in UNGA resolutions as well.

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<sup>57</sup> United Nations Centre for Disarmament, *The United Nations Disarmament Yearbook. Volume I: 1976* (1977) 199.

<sup>58</sup> UNGA Res 44/126 (15 December 1989) UN Doc A/RES/44/126. See also UNGA Res 48/83 (13 January 1994) UN Doc A/RES/48/83.

<sup>59</sup> UNGA Res 38/75 (15 December 1983) UN Doc A/RES/38/75.

<sup>60</sup> See UNGA Res 60/68 (6 January 2006) UN Doc A/RES/60/68; UNGA Res 60/1 (24 October 2005) UN Doc A/RES/60/1, para 111 (World Summit Outcome Document).

<sup>61</sup> UNGA Res 46/36 (6 December 1991) UN Doc A/RES/46/36 para H; UNGA Res 49/75 (15 December 1994) UN Doc A/RES/49/75 para M; UNGA Res 50/70 (15 January 1996) UN Doc A/RES/50/70; UNGA Res 51/45 (10 January 1997) UN Doc A/RES/51/45 para F.

The Security Council has also highlighted the detrimental effects of SALW on human rights in their first and only resolution dedicated to SALW.<sup>62</sup>

It is noteworthy that most of the UNGA resolutions have been adopted with reference to the first committee. This committee is responsible for disarmament and international security issues. The UNGA consists of six committees in total<sup>63</sup>, of which the third committee works specifically on human rights issues. It can be concluded that any recognition of the intersection within the UNGA resolutions mainly comes from the disarmament field, as most of them originate in the first committee and not the third committee.

### **3.2 Recognition of Intersection in the Field of Human Rights**

Although the two fields work mainly in a vacuum<sup>64</sup>, there have been occasions where some of the human rights bodies seemed to kindle an interest in the intersection between human rights and disarmament issues.

Already in 1982, the Human Rights Committee (HRC), the monitoring body of the International Covenant on Civil and Political Rights (ICCPR), stipulated in its General Comment on the right to life that averting a thermonuclear war is an essential condition for safeguarding this right.<sup>65</sup> The HRC has even dedicated an entire General Comment on nuclear weapons and the right to life. In General Comment 14, nuclear weapons are prescribed as being 'among the greatest threats to the right to life which confront mankind today'.<sup>66</sup> Other treaty bodies have also underlined the potential impact of weapons for the enjoyment of certain human rights within their General Comments. The Committee supervising the International Covenant on Economic, Social and Cultural Rights (ICESCR), the CESCR, has for example stipulated in General Comments 14 and 15 that the obligation to respect the right to health and the right to water include an obligation for States to refrain from testing Weapons of Mass Destruction (WMD).<sup>67</sup> In its General Comment 30, the Committee

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<sup>62</sup> UNSC Res 2117 (26 September 2013) UN Doc S/RES/2117.

<sup>63</sup> The First Committee (Disarmament and International Security Committee), the Second Committee (Economic and Financial Committee), the Third Committee (Social, Humanitarian and Cultural Committee), the Fourth Committee (Special Political and Decolonization Committee), Fifth Committee (Administrative and Budgetary Committee) and the Sixth Committee (Legal Committee).

<sup>64</sup> Peter Weiss and John Burroughs, 'Weapons of Mass Destruction and Human Rights' (2004) 3 Disarmament Forum 25, 26.

<sup>65</sup> HRC 'General Comment 6' in 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies' (27 May 2008) UN Doc HRI/GEN/1/Rev.9 (Vol. I) 176.

<sup>66</sup> HRC 'General Comment 14' in 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies' (27 May 2008) UN Doc HRI/GEN/1/Rev.9 (Vol. I) 188.

<sup>67</sup> CESCR 'General Comment 15' in 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies' (27 May 2008) UN Doc HRI/GEN/1/Rev.9 (Vol. I) 97; CESCR 'General Comment 14' in 'Note by

on the Elimination of Discrimination Against Women (CEDAW) has expressed its concern on the illicit trade of arms, mainly SALW, and their contribution to gender-based violence.<sup>68</sup> The Committee on the Rights of the Child has identified the availability and accessibility of SALW during and after an armed conflict as a major cause for disabilities in their General Comment on the rights of children with disabilities.<sup>69</sup>

In addition, the Human Rights Council has devoted a resolution on the impact of arms trade on human rights. The Council stated that it:

[E]xpresses its deep concern at the fact that arms transfers to those involved in armed conflicts may seriously undermine the human rights of civilians, especially women, children, the elderly, persons with disabilities and vulnerable groups.<sup>70</sup>

One human rights body showed particular interest in the intersection between human rights and disarmament. The former Sub-Commission on the Promotion and Protection of Human Rights was the advisory body for the predecessor of the Human Rights Council. The Sub-Commission comprised of 26 independent experts in the field of human rights who undertook studies and gave recommendations on human rights issues. After expressing concern on the threat of WMD to human rights<sup>71</sup> and the negative effects of SALW on human rights<sup>72</sup>, the Sub-Commission requested a report on both issues. This resulted in two comprehensive reports, one on the impact of WMD on human rights<sup>73</sup> and one on the prevention of human rights violations with SALW.<sup>74</sup> In her study on SALW, independent expert Frey stated that 'Small arms have become the tools of choice in facilitating the barbarous acts which, a half-century after the Universal Declaration of Human Rights pledged to eliminate them, continue

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the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies' (27 May 2008) UN Doc HRI/GEN/1/Rev.9 (Vol. I) 78.

<sup>68</sup> CEDAW 'General Comment 30' (1 November 2013) UN Doc CEDAW/C/GC/30.

<sup>69</sup> UN CRC Committee 'General Comment 9' in 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies' (27 May 2008) UN Doc HRI/GEN/1/Rev.9 (Vol. II) 497.

<sup>70</sup> Human Rights Council 'Impact of arms transfers on human rights in armed conflicts : resolution / adopted by the Human Rights Council' (8 October 2013) UN Doc A/HRC/RES/24/35.

<sup>71</sup> Sub-Commission on the Promotion and Protection of Human Rights Decision 2001/119, 'Human rights and weapons of mass destruction, or with indiscriminate effect, or of a nature to cause superfluous injury or unnecessary suffering' (15 August 2001).

<sup>72</sup> Sub-Commission on the Promotion and Protection of Human Rights Decision 2001/120, 'The question of the trade, carrying and use of small arms and light weapons in the context of human rights and humanitarian norms' (16 August 2001).

<sup>73</sup> Y.K.J. Yeung Sik Yuen, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights 'Human rights and weapons of mass destruction, or with indiscriminate effect, or of a nature to cause superfluous injury or unnecessary suffering', Working Paper (27 June 2002) UN Doc E/CN.4/Sub.2/2002/38.

<sup>74</sup> Barbara Frey, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, 'Prevention of human rights violations committed with small arms and light weapons', Preliminary Report (25 June 2003) UN Doc E/CN.4/Sub.2/2003/29.

to outrage the conscience of humankind'.<sup>75</sup> With this strong statement, it is clear that the report acknowledged that SALW form a potential threat to all human rights. This report went beyond any previous document in recognising the link between the two fields, as it even provided a framework for making human rights analysis of misuse of small arms through indicators.<sup>76</sup> After the Sub-Commission ceased to exist, the new advisory body of the Human Rights Council does not seem to have continued with the efforts made by the Sub-Commission on the relation between human rights and disarmament.

Independent Experts have also occasionally linked the two fields. An Independent Expert or Special Rapporteur is appointed by the Human Rights Council and analyses and reports on human rights issues in a specific country or on a specific theme. These experts are mechanisms that receive their mandate based on the 'special procedures'.<sup>77</sup> Alfred-Maurice de Zayas, the Independent Expert on the promotion of a democratic and equitable international order, has raised some important issues on the relationship between human rights and disarmament. In his third report he has referred to the adverse impact of military spending on the enjoyment of human rights<sup>78</sup> and he identified disarmament as a precondition for human security.<sup>79</sup> Calin Georgescu, Special Rapporteur on the human rights obligations related to environmentally sound management and disposal of hazardous substances and waste, has linked nuclear testing with the adverse effects on Indigenous rights.<sup>80</sup>

Lastly, it is worth mentioning that specific reference is made to disarmament in the declaration on the Right to Development<sup>81</sup>. However, the meaning of this right has been disputed, as a declaration is not a legally binding instrument. It might be possible that disarmament will be explicitly mentioned if the UN will adopt a new declaration on the right to peace.<sup>82</sup> The issue of the relation between disarmament and the right to development and the right to peace will be further explored in chapter 4.

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<sup>75</sup> Ibid para 11.

<sup>76</sup> Ibid para 12.

<sup>77</sup> Alston and Goodman (n 19) 699.

<sup>78</sup> Alfred-Maurice de Zayas, Human Rights Council, 'Report of the Independent Expert on the promotion of a democratic and equitable international order' (17 July 2014) UN Doc A/HRC/27/51 para 7.

<sup>79</sup> Ibid para 19.

<sup>80</sup> Calin Georgescu, Human Rights Council, 'Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes' (3 September 2012) UN Doc A/HRC21/48.Add.1. Cited in Daryl Kimball, 'Marshall Islands People Still Suffering Decades After U.S. Nuclear Testing' (*Project for the CTBT*, 5 March 2012) <<http://projectforthechtbt.org/Marshall-Islands-People-Still-Suffering-Decades-After-US-Nuclear-Testing>> accessed 9 June 2015.

<sup>81</sup> UNGA Declaration 41/128 'Declaration on the Right to Development' (4 December 1986) UN Doc A/RES/41/128

<sup>82</sup> Human Rights Council 'Report of the Open-ended Inter-Governmental Working Group on the Draft United Nations Declaration on the Right to Peace' (26 April 2013) UN Doc A/HRC/WG.13/1/2.

### 3.3 Recognition of Intersection in the Field of Disarmament

Within the disarmament field, there have been less efforts to acknowledge the overlapping issue of disarmament and human rights. However, this starts to change. The first recognition found by this author can be traced back to an annual report of 1990 of the Disarmament Commission. The Disarmament Commission is a subsidiary body of the UNGA, supported by disarmament body UNODA and therefore the equivalent of the Human Rights Council regarding disarmament issues. The report states that:

Disarmament, development, (...) and respect for human rights (...) are related to each other. Progress in any of these spheres has a beneficial effect on all of them; in turn, failure in one sphere can have negative effects on the others.<sup>83</sup>

Despite the fact that UNODA describes in its disarmament yearbooks<sup>84</sup> activities which show the link between the two fields, these activities are usually undertaken in bodies not directly involved in disarmament work. It is noteworthy that the disarmament yearbooks of 2001 until 2006 devoted a whole section on disarmament, human rights and human security. Notwithstanding the fact that these sections mainly described activities deployed by external bodies such as the Human Rights Council, it can be concluded that UNODA accepted at that time a link between human rights and disarmament.

The former Under-Secretary-General for disarmament affairs Jayantha Dhanapala has been of major importance for establishing a relation between disarmament and other fields of law. Besides other achievements, he has raised the issue of State's duties regarding weapons in the light of IHRL<sup>85</sup> and explicitly qualified disarmament as a prerequisite for the protection of human rights.<sup>86</sup>

Currently, specific attempts are made within one particular disarmament area. Nuclear disarmament efforts are going towards a humanitarian approach. This shift will be explored further in chapter 6, but the acknowledgement of human rights within some of these efforts should be mentioned here.

Firstly, an Open-ended Working Group has been established by the UNGA with the aim of proposing ideas on taking 'forward

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<sup>83</sup> Disarmament Commission 'Report of the Disarmament Commission' (20 June 1990) UN Doc A/45/42.

<sup>84</sup> The United Nations Disarmament Yearbooks describe the developments and trends of key disarmament issues in one year. Available at: <http://www.un.org/disarmament/publications/yearbook/> accessed 20 May 2015.

<sup>85</sup> Jayantha Dhanapala, 'International Law, Security and Weapons of Mass Destruction' (Showcase Program, Speech at the 2002 Spring Meeting of the Section of International Law and Practice, American Bar Association, New York, 9 May 2002).

<sup>86</sup> Jayantha Dhanapala, 'Remarks Upon Accepting the Alac Cranston Peace Award', (Alac Cranston Peace Award Ceremony, United Nations New York, 16 April 2002).

multilateral nuclear disarmament negotiations'.<sup>87</sup> This Working Group consists of experts and its meetings are open to NGO's and stakeholders. Therefore, the Working Group is working closely together with International organisations and civil society. The report of this Working Group states that a discussion took place on the 'idea of undertaking a study of the evolution of international law relevant to the achievement of a world without nuclear weapons, including (...) human rights law'.<sup>88</sup>

Additionally, a group of States has initiated conferences on the HINW, Humanitarian Impacts of Nuclear Weapons. Three conferences have been organised so far and 158 States participated in the last conference in Vienna. The disarmament research body UNIDIR has written some papers in preparation of these conferences. Some of these papers mention the relevance of nuclear disarmament for human rights. One paper on humanitarian initiatives states:

Non-nuclear-weapon states have an opportunity to collectively reframe the debate on how humanity deals with the question of nuclear violence by focusing on the basic principles of human rights and wrongs to question the legitimacy of nuclear weapons as acceptable instruments of statecraft.<sup>89</sup>

In another of its papers from this serie, IHRL is qualified as 'relevant' for discussing the applicable legal frameworks significant for protecting individuals from nuclear violence.<sup>90</sup> Additionally, Nick Ritchie points out in a book of UNIDIR that it seems quite contradictory that the same States who are willing to commit to human rights obligations, a responsibility to protect and Millenium Development Goals are holding nuclear weapons which can lead to destruction on so many aspects.<sup>91</sup>

A major development in the disarmament field is the explicit reference to human rights in disarmament treaties. The Convention on Cluster Munitions refers to human rights and the CRPD in its preamble and establishes an obligation to provide assistance to cluster munition victims 'in accordance with human rights law'.<sup>92</sup> The most recent treaty adopted within the disarmament field is the treaty regulating arms trade, the ATT. The adoption of this treaty was highly influenced by humanitarian

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<sup>87</sup> UNGA Res 67/56 (3 December 2012) UN Doc A/RES/67/56.

<sup>88</sup> Open-ended Working Group 'Report of the Open-ended Working Group to develop proposals to take forward multilateral nuclear disarmament negotiations for the achievement and maintenance of a world without nuclear weapons' (9 October 2012) UN Doc A/68/514.

<sup>89</sup> Nick Ritchie, 'The Story So Far. The Humanitarian Initiative on the Impacts of Nuclear Weapons' (UNIDIR 2010) 6.

<sup>90</sup> Gro Nystuen, 'Legal Aspects of Nuclear Weapons. A 'Bird's-Eye View' of International Law and Nuclear Weapons', (UNIDIR 2014) 2-3.

<sup>91</sup> Nick Ritchie, 'Legitimizing and Delegitimizing Nuclear Weapons' in John Borrie and Tim Caughly (eds), *Viewing Nuclear Weapons through a Humanitarian Lens* (UNIDIR, 2013) 72.

<sup>92</sup> Convention on Cluster Munitions (n 40) article 5 as pointed out by Michael Schoiswohl, 'Human Rights and Disarmament. A Blind Date or a Shotgun Marriage' (2010) 15 *Austrian Review of International and European Law* 109.

concerns. As a result, human rights and its link to peace and security are referred to in the preamble. Additionally, article 7 of the ATT establishes an obligation for States to consider the potential use of conventional weapons for human rights violations before exporting such weapons. Chapter 6 will elaborate on this pivotal development in the disarmament field that could not have taken place without the influence of human rights and humanitarian concerns. The Plan of Action on Victim Assistance under Protocol V of the Convention on Certain Conventional Weapons (CCW) also refers to human rights as a framework for cooperating victim assistance.<sup>93</sup>

### **3.4 Recognition of Intersection within other UN Bodies**

Outside the organisations and bodies that are explicitly working in the field of human rights or disarmament, there has been an acknowledgement of a link between arms and respect for human rights.

The SG has for example referred to the link between the two fields in some reports and speeches. In its report 'We the Peoples: the role of the United Nations in the twenty-first century' the SG indicated that the proliferation of arms cannot only be viewed as an issue of security, as it is also an issue of human rights.<sup>94</sup> In another SG report, it is reaffirmed that the illicit spread of SALW is a threat to human security and human rights.<sup>95</sup> With regard to nuclear weapons, the SG has underlined the importance of a better understanding of security. Security should be seen as human security and should include human rights concerns.<sup>96</sup>

In the work of other bodies, a confirmation of the relation between disarmament and human rights can be found. In the final document of the World Congress on Disarmament Education organised by UNESCO, it was for example indicated that:

Disarmament education has essential links with human rights education and development education, in so far as each of the three terms peace, human rights and development must be defined in relation to the other two.<sup>97</sup>

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<sup>93</sup> Plan of Action on Victim Assistance under Protocol V, adopted at the Second Conference of the High Contracting Parties to Protocol V on Explosive Remnants of War to the Convention on Certain Conventional Weapons, Geneva, 10 and 11 November 2008, Final Document, UN Doc CCW/P.V/CONF/2008/12, Annex IV as underlined by Schoiswohl (n 92).

<sup>94</sup> UNGA, 'We the Peoples: the role of the United Nations in the twenty-first century. Report of the Secretary-General' (27 March 2000) UN Doc A/54/2000, para 239.

<sup>95</sup> UNSC, 'Small Arms. Report of the Secretary-General' (20 September 2002) UN Doc S/2002/1053, para 4.

<sup>96</sup> 'Speech by UN Secretary-General Kofi Annan' (John Jay College, New York, November 17, 2000) UN Doc SG/SM/7631.

<sup>97</sup> UNESCO, 'World Congress on Disarmament Education. Final Document of the Congress' (UNESCO House, Paris, 9-13 June 1980) para 7.

Another important acknowledgement of the role of IHRL for disarmament, can be found in the famous Nuclear Weapons Opinion of the main judicial organ of the UN; the International Court of Justice<sup>98</sup>. In this Opinion, the ICJ pointed out that IHRL is applicable in reviewing the legality of the use or threat of nuclear weapons. Although the Court does not come to a definitive conclusion regarding the question of the legality of the use of nuclear weapons, the Opinion gives a clear signal that IHRL cannot be disregarded in a discussion on arms. In addition, there has been some cases on nuclear weapons before the HRC, the treaty body of the ICCPR. In none of these cases a violation of human rights was found. Wright gives a clear overview of all these cases in his article 'Do Nuclear Weapons Violate the Right to Life under International Law'.<sup>99</sup>

The described UN documents show a formally recognised link between both regimes. Although this formal connection is a thin one, it demonstrates ground for further exploring the intersectionality and possibilities for human rights mainstreaming.

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<sup>98</sup> *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226.

<sup>99</sup> Tim Wright, 'Do Nuclear Weapons Violate the Right to Life under International Law' (2008) 3 *Australian Journal of Peace Studies* 99.

## 4 Human Rights Aspects Relevant to Disarmament

The formal intersection between human rights and disarmament has been described in the previous chapter. This chapter continues with exploring the relation between IHRL and disarmament by conceptualising the linkage between both regimes. Based on materials from scholars and NGO's, the aspects of human rights law that are of particular relevance to disarmament will be analysed.<sup>100</sup> The relevant aspects will give a better understanding of the potential implications of human rights mainstreaming for disarmament.

### 4.1 Applicability of Human Rights Law during Armed Conflicts

Before elaborating on those human rights components that are relevant to disarmament, the issue of applicability of IHRL during armed conflicts needs to be briefly reviewed. Although weapons do not only form a threat to the realisation of human rights during armed conflict, they are mainly used in times of war. The potential relevance of IHRL for disarmament is therefore highly dependent on its applicability during warfare. A separate branch of International Law, International Humanitarian Law (IHL), has been established to regulate the conduct of armed conflicts. It has been debated whether IHRL does apply during armed conflicts. Although interesting, the discussion on the relationship between IHRL and IHL is not part of this study.<sup>101</sup> For the purpose of this research, it is sufficient to share the opinion of the ICJ on this matter:

The protection offered by the human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of any kind to be found in Article 4 of the International Covenant on Civil and Political Rights. As regards the relationship between international humanitarian law and human rights law, there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively

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<sup>100</sup> The analysis does not include a potential link between disarmament and the responsibility to protect as laid down in UNGA Res 63/308 (14 September 2009) UN Doc A/RES/63/308. This link has hardly been explored, although it might have some potential to be included in the debates on disarmament (see Bennedict K, 'Does the "responsibility to protect" include nuclear disarmament' (*Bulleting of the Atomic Scientists*, 22 October 2013) <<http://thebulletin.org/does-responsibility-protect-include-nuclear-disarmament>> accessed 20 May 2015).

<sup>101</sup> Further reading about the relation between IHRL and IHL: Alston and Goodman (n 19) 406-414.

matters of human rights law; yet others may be matters of both these branches of international law.<sup>102</sup>

The treaty body HRC has stated that 'both spheres of law are complementary, not mutually exclusive'.<sup>103</sup> Hence, possible violations of human rights during armed conflict will be assessed differently, as IHL plays a role in establishing a violation. IHRL does however not cease to apply in times of war. This means that human rights aspects relevant to disarmament are worth exploring in the light of its possible contribution to the disarmament field before, during and after conflicts.

## **4.2 Common Traits of Human Rights Law and Disarmament**

Although human rights and disarmament have mainly developed within their own vacuum, various overlapping interests and principles are common to both regimes. These underlying goals and principles are a good starting point for further exploring the relationship between the fields concerned.

Four objectives can be identified regarding the development of a disarmament regime. Firstly, to reduce the 'likelihood of war' by imposing restrictions on the proliferation of weapons that may lead to destabilisation and create an incentive for attacks of a preventive nature; the second is to limit suffering and damage resulting from warfare; the third is to contribute to a reduction of arms expenditure; and the fourth is to provide a framework for building an atmosphere of trust amongst States.<sup>104</sup>

Looking at the preamble of the UDHR, it becomes clear that these objectives share characteristics with the objectives of IHRL. Human rights are described as 'the foundation for freedom, justice and peace'. Both regimes are therefore seen as fundamental for preventing war and achieving peace. The second disarmament objective is closely related to the ultimate objective of IHRL, which is promoting 'human well-being and honouring the inherent dignity of people'.<sup>105</sup> The preamble also acknowledges the importance of 'promoting friendly relations between nations'. This is again connected to one of the goals of disarmament law, as an atmosphere of trust also contributes to the relation between nations. Lastly, although the reduction of arms expenditure cannot be seen as a goal of IHRL in itself, it is closely related to

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<sup>102</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136 [106].

<sup>103</sup> HRC 'General Comment 31' in 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies' (27 May 2008) UN Doc HRI/GEN/1/Rev.9 (Vol. I), para 11.

<sup>104</sup> Robert J. Mathews and Timothy L.H. McCormack. 'The Influence of Humanitarian Principles in the Negotiations of Arms Control Treaties' (1999) 834 *International Review of the Red Cross* 331, 333.

<sup>105</sup> UNDP 'Human Rights and the Millennium Development Goals. Making the Link' (1 January 2007) 10.

the right to development, which will be further discussed in the next section.

In addition, the regimes share principles. These principles may be interpreted differently, but it does show some overlapping aspects. In a study of 1985, the predecessor of disarmament body UNODA described the principles of conventional disarmament in a study on conventional weapons.<sup>106</sup> This study shows the relevance of equality and non-discrimination. The conventional disarmament process should ensure security 'equally for all states'.<sup>107</sup>

Accountability is another fundamental principle underpinning both regimes. Although the regimes have different forms of enforcement<sup>108</sup>, both regimes have established methods of monitoring. These methods exist to encourage compliance and to hold parties accountable when failing to comply with the established norms within the regime.

Finally, the important principle of participation and inclusion within the field of human rights seems to become of increasing importance within the field of disarmament. This can mainly be traced back to the introduction of gender mainstreaming within the disarmament field. The integration of gender perspectives in the disarmament field followed from the landmark resolution of the UNSC on women in peace and security.<sup>109</sup> After this resolution, the UNGA adopted a specific resolution on women and disarmament<sup>110</sup>. This resolution further stressed the importance of effective participation of women with regard to disarmament-related matters. UNODA updated in 2014 its gender mainstreaming action plan.<sup>111</sup> Participation of women directly affected by arms and women-led policy initiatives are an area of focus within the action plan. Besides initiatives involving the participation of women, there is a growing recognition regarding the importance of participation of civil society within the disarmament field.<sup>112</sup>

Besides the common goals and principles underpinning the human rights and disarmament regimes, scholars have indicated that both fields face similar challenges. Within both fields political commitment decreases in difficult times, such as in economic and security crises. At such times, national security or financial arguments are used to suspend human rights or disarmament efforts.<sup>113</sup> Similarly, the full implementation of the norms from

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<sup>106</sup> UN Department for Disarmament Affairs, *Study on Conventional Disarmament* (1985).

<sup>107</sup> Ibid para 106.

<sup>108</sup> cf chs 2.1.3 and 2.2.3.

<sup>109</sup> UNSC Res 1325 (31 October 2000) UN Doc S/RES/1325.

<sup>110</sup> UNGA Res 68/33 (5 December 2013) UN Doc A/RES/68/33.

<sup>111</sup> UNODA 'Gender Mainstreaming Action Plan. Update 2014' (2014).

<sup>112</sup> UNODA 'Public Participation in Disarmament. By Angela Kane, High Representative for Disarmament Affairs' (2012 World Conference Against Atomic and Hydrogen Bombs Rally in Nagasaki, Japan 9 August 2012); Conference on Disarmament, 'Proposal by the President on Civil Society Participation at the Conference on Disarmament' (4 February 2015) CD/WP.585.

<sup>113</sup> Weiss and Burrough (n 64) 25; Michael Schoiswohl, 'Human Rights and Disarmament. A Blind Date or a Shotgun Marriage' (2010) 15 *Austrian Review of International and European Law* 109, 110.

both regimes are resource-demanding. States are not always willing to provide money for this process. In the case of an economic crisis, both fields are the first affected. Expenses on human rights and disarmament efforts are cut down, while a reduction of military expenditures does not take place.<sup>114</sup> The last characteristic closely connected to the challenges both regimes are facing, is the lack of real commitment. As Schoiswohl puts it, 'everyone likes them in a superficial sort of way, but when it comes to getting serious about putting them into practice, they are quickly left alone'.<sup>115</sup>

All those common traits show that the link between disarmament and human rights might be broader than it has been acknowledged so far within the UN system.

### **4.3 Relevant Rights**

In addition to the common traits described in the previous section, there are other aspect of IHRL that are of relevance to disarmament. Arms have a negative effect on the realisation of potentially the whole spectrum of human rights. This section will provide an overview of those rights that seems to be most directly affected by arms. These rights should therefore receive special attention from a human rights perspective during disarmament efforts. The sub-section gives a basic overview of those rights and their relation with disarmament.

#### **4.3.1 Right to Life**

The right most obviously affected by weapons is the right to life, as laid down in article 6 of the ICCPR. This article provides that 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.' As discussed, it has been acknowledged within different UN documents that both WMD and conventional weapons do have an adverse impact on the right to life.<sup>116</sup> From the General Comment of the HRC<sup>117</sup> and other prescribed UN documents, it follows clearly that the threat or use of nuclear weapons is difficult to reconcile with norms under IHRL.<sup>118</sup>

Conventional weapons can also have a negative effect on the fundamental right to life. From a human rights perspective, mainly the State's obligation to protect might be relevant. If mines are for example still present in a State, they will form a potential threat to the right to life (and other rights) of the inhabitants of that State. In such a scenario, States will have a duty to remove these mines. There is also a risk that the illicit trade of SALW contributes to human rights violations in crimes or

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<sup>114</sup> Schoiswohl Ibid.

<sup>115</sup> Ibid.

<sup>116</sup> Ch 3.

<sup>117</sup> HRC 'General Comment 14' (n 66).

<sup>118</sup> Tim Wright (n 99) 119.

conflicts. States can play a role by regulating SALW and thereby reducing the risk of their use in human rights abuses.<sup>119</sup>

### 4.3.2 Right to Health

Both WMD and conventional weapons have a negative effect on the realisation of the right to health. Article 12 of the ICESCR provides that, 'The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.' The obligations based on the right to health include taking steps to improve all aspects of environmental and industrial hygiene<sup>120</sup> and steps to prevent diseases<sup>121</sup>.

Especially with regard to the testing and use of nuclear weapons, health implications have received some attention. Besides the aforementioned establishment of an obligation to refrain from testing nuclear weapons by the treaty body CESC<sup>122</sup>, there is an increasing interest in the humanitarian consequences of nuclear weapons. This development will be further explored in chapter 6. For now, it is sufficient to explain the attention drawn to the health consequences of nuclear detonation and radiation.<sup>123</sup> These consequences vary from acute radiation syndrome<sup>124</sup> to increased risks of cancer and effects on the immune system.<sup>125</sup> During the last conference on HINW, different presentations addressed the health implications of nuclear weapons. However, these implications have not been addressed from a human rights perspective and no explicit reference has been made to the right to health in the presentations. Chemical and biological weapons have direct and long-term consequences.<sup>126</sup> These consequences have received less attention, because these weapons are already prohibited. The health implications of WMD have thus been widely accepted and if one looks to State's obligations under the right to health, it can be argued that States should take steps to limit the effects of such weapons.

WMD are not the only weapons with a negative impact on the right to health. Victims of gun violence struggle with many health issues as well, both mentally as physically.<sup>127</sup> Those gun-related incidents are in some cases the consequence of the illicit trade in SALW. These weapons are sometimes enablers of sexual violence

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<sup>119</sup> Schoiswohl (n 113) 119.

<sup>120</sup> ICESCR, art. 12(2)(b).

<sup>121</sup> ICESCR, art. 12(2)(c).

<sup>122</sup> CESC 'General Comment 14' (n 67).

<sup>123</sup> See for example Ime A. John, 'Nuclear weapons abolition – a fundamental human right in a democratic world' (9th Summit of Nobel Peace Laureates in Paris, 11-13 December 2008).

<sup>124</sup> Epilation, reduction in the number of blood cells, purpura, nausea and vomiting.

<sup>125</sup> Radiation Effects Research Foundation

<[http://www.rerf.jp/radefx/late\\_e/immunity.html](http://www.rerf.jp/radefx/late_e/immunity.html)> accessed 20 May 2015.

<sup>126</sup> WHO 'Public Health Response to Chemical and Biological Weapons. WHO Guidance' (2004).

<sup>127</sup> Cate Buchanan, 'The health and human rights of survivors of gun violence: Charting a research and policy agenda' (2011) 13 Health and Human Rights 1, 2.

and torture. Human rights violations that might indirectly lead to health implications.<sup>128</sup> The State can play an important role in preventing gun violence and incidents. One can think of strengthening the justice system and arms control.<sup>129</sup>

### 4.3.3 Right to Development

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.<sup>130</sup>

This human right has not been acknowledged in a binding document, but an entire declaration has been dedicated to codify the RtD. Despite the lack of legal obligations, a declaration does provide a basis for moral and political obligations.<sup>131</sup> Although the usefulness of the right has been subject to criticism<sup>132</sup>, it has been affirmed in several declarations<sup>133</sup>. This recognition shows that more than 25 years after the adoption of the declaration, the RtD cannot be disregarded in an overview of those rights that are of relevance to disarmament.

The RtD is especially relevant, because it is the only human right that recognises an explicit link with disarmament. The declaration<sup>134</sup> states that there is 'a close relationship between disarmament and development'<sup>135</sup> and that all States 'should do their utmost to achieve general and complete disarmament'.<sup>136</sup> The RtD does therefore really add something in any discussion on the relation between disarmament and human rights.

From the outset, the link between disarmament and development has mainly focused on the adverse impact of military expenditures on development initiatives. This is no surprise as the declaration itself urges 'to ensure that the resources released by effective disarmament measures are used for comprehensive development, in particular that of the

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<sup>128</sup> Ibid 3.

<sup>129</sup> Ibid 6.

<sup>130</sup> UNGA Res 41/128 (4 December 1986) UN Doc A/RES/41/128 (Declaration on the RtD), art. 1.

<sup>131</sup> Stephan P. Marks, 'The Politics of the Possible. The Way Ahead for the Right to Development' [2011] Dialogue on Globalization 1,4. Available at <http://library.fes.de/pdf-files/iez/08156.pdf>, accessed 26 April 2015.

<sup>132</sup> See amongst others: J. Donnelly, 'In Search of the Unicorn: the Jurisprudence and Politics of the Right to Development' (1985) 15 Calif. Western. Int. L. 473; B. Ibhawoh, 'The Right to Development: The Politics and Polemics of Power and Resistance' (2011) 3 HRQ 76. Both cited in: Faisal Saeed, 'The Right to Development as a Human Right: a critique with reference to GA resolution 41/120' available at: <[http://www.academia.edu/1415512/THE\\_RIGHT\\_TO\\_DEVELOPMENT\\_AS\\_A\\_HUMAN\\_RIGHT\\_a\\_critique\\_with\\_reference\\_to\\_GA\\_Resolution\\_41\\_120](http://www.academia.edu/1415512/THE_RIGHT_TO_DEVELOPMENT_AS_A_HUMAN_RIGHT_a_critique_with_reference_to_GA_Resolution_41_120)> accessed 9 June 2015.

<sup>133</sup> See amongst other documents Rio Declaration on Environment and Development (UN Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992); Vienna Declaration and Programme of Action (World Conference on Human Rights, Vienna, 25 June 1993) paras 10-11; UNGA Res 60/1 (24 October 2005) UN Doc A/RES/60/1.

<sup>134</sup> Declaration on the RtD (n 129).

<sup>135</sup> Ibid Preamble.

<sup>136</sup> Ibid art. 7.

developing countries'.<sup>137</sup> The link between military expenditure and development was already explored in 1987 in the final report of the UN International Conference on the Relationship between Disarmament and Development.<sup>138</sup> The report mainly focused on the implications of military spending for development. Surprisingly, development was not explicitly recognised as a human right within this Conference. The point of unnecessary high military expenditures is still relevant today. As the SG has put it: 'the world is over-armed and development underfunded'.<sup>139</sup> New challenges, such as terrorism, have resulted in increasing military spending which still affects the realisation of development.<sup>140</sup> Because military spending has been specifically mentioned in the RtD, this human right should play a bigger role in the discussion on unnecessary high military expenditures in relation to development. More recently, it has been acknowledged that the link between disarmament and development is broader than shifting resources from military expenditures to development assistance. In a UN report by governmental disarmament and development experts on the disarmament-development relationship, it is stated that:

Armaments in themselves may not be the root cause of violence and conflict. However, their spread and availability can threaten physical safety, endanger stability and welfare and diminish social and economic confidence, thus discouraging investment and economic development and contributing to a cycle of poverty, underdevelopment and distress.<sup>141</sup>

This statement is closely connected to the idea that security is broader than just national security. Approaching security from this wider humanitarian perspective is called human security. This concept will be further explored in chapter 6. The concept implies the focus on security for people instead of territorial security and a shift from security through armaments to security through sustainable development.<sup>142</sup> This last shift represents another relation between the RtD and disarmament. They are both essential for the realisation of human security.

As shown, the RtD and disarmament are still recognised as being linked and the RtD is one of the most relevant rights for potential human rights mainstreaming in the disarmament field.

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<sup>137</sup> Ibid.

<sup>138</sup> UN, *International Conference on the Relationship between Disarmament and Development. Final Document* (New York, 24 August – 11 September 1987).

<sup>139</sup> According to the UNODA site over-armed <<http://www.un.org/disarmament/over-armed/>> , accessed 20 May 2015.

<sup>140</sup> Ray Acheson, 'Merging Disarmament and Development Priorities' in Mr Zuber and Ms Prizeman (eds), *Applying a Disarmament Lens to Gender, Human Rights, Development, Security, Education and Communication: Six Essays* (United Nations Publications, 2012) 4.

<sup>141</sup> UN Department for Disarmament Affairs, *The relationship between disarmament and development in the current international context* (United Nations Publications, 2004) para 18.

<sup>142</sup> UNDP, *Human Development Report* (OUP 1994) 23.

#### 4.3.4 Right to Peace

The right to peace has not been acknowledged in any binding instrument. However, it is closely related to the primary objective of the UN to 'save succeeding generations from the scourge of war'.<sup>143</sup> The right to peace has been codified in a declaration.<sup>144</sup> In this declaration it is stated that 'the peoples of our planet have a sacred right to peace'. The discussion on the effect of arms on the right to peace have mainly focused on nuclear weapons. The declaration emphasises that 'ensuring the exercise of the right of peoples to peace demands that the policies of States be directed towards the elimination of the threat of war, particularly nuclear war'. Moreover, 31 heads of Latin American and Caribbean States have proclaimed their States as a zone of peace during their second Summit of the Community of Latin American and Caribbean States<sup>145</sup>. The proclamation explicitly refers to both the right to peace and a commitment to nuclear disarmament.

Weiss and Burroughs have demonstrated another implication of the existence of nuclear weapons for the realisation of the right to peace. WMD have played a role in justifying the Iraq war. The United States used the pursuit of WMD by Iraq as the main reason for invoking the doctrine of pre-emptive self-defence. According to this doctrine, the future risk of defying the international community allows self-defence<sup>146</sup> as an exception to the prohibition of the use of force<sup>147</sup>.<sup>148</sup> In other words, WMD do not only have potential devastating effects within a war, but also form a trigger for starting wars with reliance on the pre-emptive self-defence doctrine.<sup>149</sup> This way, the existence of such weapons negatively affect the right to peace.

Currently, efforts are made to adopt a new UN declaration on the right to peace. In 2012, the Human Rights Council decided to establish an open-ended working group on a draft United Nations declaration on the right to peace.<sup>150</sup> The working group, existing of human rights experts, has met three times and their meetings have been open to NGO's and stakeholders. In the last report of the working group,<sup>151</sup> it has been stated that NGO's and other stakeholders have requested explicit reference in the future declaration to a commitment to disarmament.

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<sup>143</sup> Preamble UN Charter.

<sup>144</sup> UNGA Res 39/11 (12 November 1984) UN Doc A/RES/39/11.

<sup>145</sup> 'Proclamation of Latin America and Caribbean as a zone of peace' (CELAC Second Summit, Havana, 28 and 29 January 2014) available at <<http://warisacrime.org/content/heads-31-nations-declare-zone-peace-commit-uprooting-forever-threat-or-use-force>> accessed 25 April 2015.

<sup>146</sup> As recognised in the UN Charter, art. 51.

<sup>147</sup> UN Charter, art. 2(4).

<sup>148</sup> See for further reading on pre-emptive self-defence: Malcolm D. Evans (ed), *International Law* (3<sup>rd</sup> edn, OUP 2010) 628-632.

<sup>149</sup> Weiss and Burroughs (n 64) 28.

<sup>150</sup> UN Human Rights Council Res 20/15 (17 July 2012) UN Doc A/HRC/RES/20/15.

<sup>151</sup> UN Human Rights Council 'Report of the open-ended intergovernmental working group on a draft United Nations declaration on the right to peace' (8 Augustus 2014) UN Doc A/HRC/27/63.

Even if there will be no explicit acknowledgement of the linkage between disarmament and the right to peace in the future declaration, it can be argued that the existence of WMD are incompatible with the right to peace.<sup>152</sup>

#### **4.3.5 Other Relevant Rights**

Besides the rights that are of particular relevance for disarmament, there are many human rights which are (in)directly affected by arms. As stated, disarmament might have implications for the whole spectrum of human rights. The link made between military expenditures and the realisation of the right to development does for example also apply to other human rights. All resources spent on militarisation affect the budget available for the realisation of mainly economic, social and cultural rights.<sup>153</sup> In addition, one of the consequences of nuclear weapons detonation will be the displacement of an enormous amount of people. This will indirectly lead to implications on the right to food, right to housing, right to education and right to health.<sup>154</sup>

These few examples show the broad implication and relation of human rights and disarmament.

#### **4.4 Vulnerable Groups**

One of the features of human rights is the attention given to the protection of the rights of specific groups. This attention results from the realisation that some groups will 'systematically lack enjoyment of a wide range of human rights'.<sup>155</sup> Usually these groups are referred to as vulnerable groups. According to Chapman and Carbonetti, there is no clear-cut definition of vulnerable groups and these groups can also be described as marginalised or disadvantaged groups.<sup>156</sup> Vulnerable groups consist of people that share a status. This status might be fixed or variable. Changing the status of fixed groups, such as children and women, does not provide a solution for the lack of the enjoyment of human rights. This is different for variable groups, such as homeless people and migrant workers. Working on changing their status is an acceptable solution for improving the realisation of their rights.<sup>157</sup>

The special focus on vulnerable groups is of relevance for disarmament efforts. Three groups that are especially affected by arms will be briefly discussed. This does not mean that other

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<sup>152</sup> Weiss and Burroughs (n 64) 25.

<sup>153</sup> De Zayas (n 78) para 10.

<sup>154</sup> UNIDIR, 'Population Displacement. Displacement in the Aftermath of Nuclear Weapon Detonation Events' (2014).

<sup>155</sup> Audrey R. Chapman and Benjamin Carbonetti, 'Human Rights Protections for Vulnerable and Disadvantaged Groups: The Contributions of the UN Committee on Economic, Social and Cultural Rights' (2011) 33 HRQ 682, 683.

<sup>156</sup> Ibid 724.

<sup>157</sup> Ibid, 706.

groups are not vulnerable when it comes to the possible damage of weapons.

It has been acknowledged within the UNSC and the treaty body of the Convention on the Elimination of Discrimination Against Women that women are especially vulnerable when it comes to SALW and their use in gender-based violence.<sup>158</sup> Not only are women and girls more often victims of sexual and gender-based violence involving weapons, they also endure marginalisation in the aftermath of such events due to their socio-political status.<sup>159</sup> Women are also differently affected by nuclear weapons. Research has shown that women have increased health risks in the event of nuclear radiation exposure.<sup>160</sup> As explained, efforts have been made for applying gender mainstreaming in the field of disarmament, to address the vulnerabilities women are facing.<sup>161</sup> Chapter 7 will explain the additional value of human rights, once gender mainstreaming already applies in a field.

In addition, children are disproportionately affected by weapons. Not only is the availability and accessibility of weapons cause of death or injuries for many children<sup>162</sup>, it also results in the exploitation and abuse of child soldiers.<sup>163</sup> An optional protocol to the CRC on the involvement of children in armed conflict explicitly condemns the use and recruitment of child soldiers.<sup>164</sup> SALW are thus contributing to potential human rights violations involving children. Moreover, children have increased health risks in the event of the use of nuclear weapons.<sup>165</sup> The whole spectrum of arms place children in an increased vulnerable position.

Another group disproportionately affected by weapons are Indigenous peoples. Especially in the event of nuclear testing. Indigenous groups have a special relation with their environment. By maintaining their traditional way of living, their land and its resources form the basis of their economic livelihood and of their cultural, spiritual and social identity.<sup>166</sup> The unique relation between Indigenous groups and their land has been acknowledged *inter alia* within the United Nations Declaration on the Rights of Indigenous Peoples.<sup>167</sup> The use and testing of WMD

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<sup>158</sup> UNSC Res 2117 (n 62); CEDAW 'General Comment 30' (n 68).

<sup>159</sup> Buchanan (n 127) 4,6.

<sup>160</sup> Mary Olson, 'War of Human Consequences. Health consequences of the Use of Nuclear Weapons' (Vienna Conference on the Humanitarian Impact of Nuclear Weapons, Vienna, 8-9 December 2014). Available at <<http://www.bmeia.gv.at/en/european-foreign-policy/disarmament/weapons-of-mass-destruction/nuclear-weapons-and-nuclear-terrorism/vienna-conference-on-the-humanitarian-impact-of-nuclear-weapons/presentations/>> accessed 28 April 2015.

<sup>161</sup> ch 5.2.

<sup>162</sup> UNCRC Committee, 'General Comment 9' (n 69).

<sup>163</sup> UNICEF, 'No Guns Please. We are Children!' (July 2001).

<sup>164</sup> Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (adopted 25 May 2000, entered into force 12 February 2002) 2173 UNTS 222.

<sup>165</sup> Olson (n 160).

<sup>166</sup> International Work Group for Indigenous Affairs <<http://www.iwgia.org/environment-and-development/land-rights>>, accessed 20 May 2015.

<sup>167</sup> United Nations Declaration on the Rights of Indigenous Peoples (adopted 13 September 2007) UNGA Res 61/295, UN Doc A/RES/61/295, arts. 29 and 32.

have a detrimental effect on the environment<sup>168</sup>, which in turn has an extreme effect on the rights of Indigenous peoples.<sup>169</sup> One noteworthy example of this is the case of the Marshall Islanders against the nuclear weapons States. Indigenous communities from these islands have suffered dislocation from their traditional lifestyle because of nuclear testing.<sup>170</sup> In 2014, the Marshall Islands filed applications against nine nuclear weapons states.<sup>171</sup> These cases are currently still pending before the ICJ. As six States have not yet accepted the Court's jurisdiction, it is questionable what change the case will make. However, it shows that more steps are taken to realise accountability for disobeying disarmament obligations.

The special attention to vulnerable groups provides another linkage between disarmament and human rights. It has become clear that these groups deserve specific attention and human rights law provides the disarmament field with a framework for addressing the specific needs of vulnerable groups.

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<sup>168</sup> Declaration of the United Nations Conference on the Human Environment (The United Nations Conference on the Human Environment, Stockholm, 5 -16 June 1972), principle 26; Arjun Makhijani, 'Assessing the Harm from Nuclear Weapons Testing and Production' (Vienna Conference on the Humanitarian Impact of Nuclear Weapons, Vienna, 8-9 December 2014). Available at <<http://www.bmeia.gv.at/en/european-foreign-policy/disarmament/weapons-of-mass-destruction/nuclear-weapons-and-nuclear-weapons/presentations/>> accessed 28 April 2015.

<sup>169</sup> George P and Russ A, 'Nuclear Testing and Native Peoples. Tribal Research Uncovers Unexpected Exposures' (*Reimagine*) <<http://reimaginepe.org/node/165>> accessed 20 May 2015; Preparatory Commission for the Nuclear-Test-Ban Treaty <<http://www.ctbto.org/specials/testing-times/3-october-1952-first-british-nuclear-test/>> accessed 28 April 2015; Gelis U, 'The Caretaker and the Plague: British Nuclear Weapons Testing in Australia' (*Nuclear Age Peace Foundation*, 27 January 2015) <<http://www.wagingpeace.org/the-caretaker-and-the-plague/>> accessed 20 May 2015.

<sup>170</sup> Georgescu (n 80).

<sup>171</sup> ICJ Press Releases, ICJ Press Release No. 2014/18 (25 April 2014) <<http://www.icj-cij.org/presscom/files/0/18300.pdf>>, accessed 28 April 2015.

## 5 Human Rights Mainstreaming

The link between disarmament and human rights has been examined throughout the last chapters. Human Rights mainstreaming is a tool for integrating disarmament and human rights. This concept has been developed within the UN. In order to explore the possibilities of mainstreaming human rights within the particular field of disarmament, the concept of human rights mainstreaming should be explained. This chapter will describe how the concept of human rights mainstreaming entered the UN system and give three examples on human rights mainstreaming within different UN bodies. This will be done by highlighting those documents most frequently referred to within the general literature on human rights mainstreaming. The sub-sections describe the formal integration of human rights within these fields as well as the operationalisation of human rights mainstreaming. It will conclude with some general observations on the concept of human rights mainstreaming.

### 5.1 The Mandate for Human Rights Mainstreaming

SG Kofi Annan has introduced the concept, which is known as human rights mainstreaming, for the first time in his report 'Renewing the United Nations: A Programme for Reform'. After stating that human rights are a cross-cutting issue for 'each of the substantive fields of the Secretariat's work Programme', the SG called upon the UN 'to enhance its human rights programme and fully integrate it into the broad range of the Organisation's activities'.<sup>172</sup> Since then, the concept has been affirmed in different UN documents.

In a 2002 report by the SG on strengthening the UN, human rights have been defined as 'a bedrock requirement for the realisation of the Charter's vision of a just and peaceful world'.<sup>173</sup> The same report noticed a progress in integrating human rights throughout the UN system.<sup>174</sup> In 2005, the SG underlined in his report on development, security and human rights, that 'human rights must be incorporated into decision-making and discussion throughout the work of the Organisation'.<sup>175</sup> Furthermore, he noticed that 'the concept of "mainstreaming" human rights has gained greater attention in recent years, but has not been adequately reflected on in key policy and resource decision'.<sup>176</sup> States also reaffirmed their commitment to human rights mainstreaming in the Outcome Document of the 2005 World

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<sup>172</sup> UN 'Renewing the United Nations: A Programme for Reform' (n 1) para 79.

<sup>173</sup> UN, 'Strengthening of the United Nations: An Agenda for Further Change. Report of the United Nations Secretary-General' (9 september 2002) UN Doc A/57/387 para 45.

<sup>174</sup> Ibid para 48.

<sup>175</sup> UN, 'In Larger Freedom. Report of the United Nations Secretary-General' (21 March 2005) UN Doc A/59/2005 para 144.

<sup>176</sup> Ibid.

Summit<sup>177</sup>. Heads of States or government came together at this Summit to discuss major world issues, such as the progress of the Millennium Development Goals. Moreover, when the Human Rights Council has been established by the UNGA in 2006, it had the explicit task to promote human rights mainstreaming.<sup>178</sup> Yet, another UN document of a high-level Panel on coherence of the UN system showed concern on the achievements so far regarding human rights mainstreaming in all areas of the UN work.<sup>179</sup>

Although all these SG documents confirm the importance of the concept of human rights mainstreaming, they do not give any guidance on how the concept works in practice and to what extent human rights should be integrated within the programmes, policies and activities of all the different UN organisations. Different bodies within the UN have therefore developed their own documents and tools to guide this process within their field.

## **5.2 Examples of Human Rights Mainstreaming**

To explain the concept of human rights mainstreaming, three examples of human rights mainstreaming within UN organisations will be addressed. The sub-sections will discuss both formal mainstreaming and the operationalisation of the integration of human rights. These UN organisations are not the only bodies that have applied human rights mainstreaming within their work. A specific choice has been made to explore those organisations whose activities are related to different human rights issues and who have most experience in integrating human rights. Human rights mainstreaming within the International Labour Organisation plays no part in this description, as their mandate is highly linked to human rights and therefore human rights have always played a role within this organisation. The examples show that human rights mainstreaming can play out differently within different UN fields and there is not one clear-cut approach on mainstreaming human rights.

### **5.2.1 Human Rights Mainstreaming Within the Development Field**

The United Nations Development Programme (UNDP) was amongst the first organisations to act upon the call from the SG to integrate human rights within their work. In 1998, it adopted a policy document on integrating human rights in which it acknowledged that 'human rights and sustainable development are interdependent and mutually reinforcing'.<sup>180</sup> In this document, the UNDP explained how human rights affect sustainable

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<sup>177</sup> World Summit Outcome Document (n 60) para 126.

<sup>178</sup> UNGA Res 60/251 (3 April 2006) UN Doc A/RES/60/51 para 3.

<sup>179</sup> UN 'Delivering as One, Report of the Secretary-General's High-Level Panel on UN system wide coherence' (9 November 2006) para 51.

<sup>180</sup> UNDP, 'Integrating Human Rights with Sustainable Human Development, a UNDP Policy Document' (January 1998).

development and called for a Human Rights Based Approach to Development (HRBAD). According to the document such an approach should be 'universal and holistic, stressing the indivisibility and interrelatedness of all human rights'. For the process of implementing a HRBAD, the document established that close co-operation should be strived for with human rights body OHCHR and a focus should be on capacity building and strengthening human rights at a national level.

The policy document resulted in a Memorandum of Understanding between UNDP and OHCHR on co-operation in mainstreaming human rights. The organisations launched a Human Rights Strengthening Programme (HURIST) to implement UNDP's policy document. The main purpose of the Programme was to test guidelines and methodologies in order to identify best practises for capacity building and for applying a HRBAD.<sup>181</sup> After an initial period of three years, the focus shifted to the development of tools and UNDP capacity building for integrating human rights in key focus areas. HURIST's activities ended in 2006. HURIST has contributed by catalysing action, but it is hard to find real achievements regarding practical tools on how to mainstream human rights.

The UNDP Human Development Report of 2000<sup>182</sup> was another important document regarding the integration of human rights in the field of development. The UNDG report elaborated on the benefits of human rights for the field of development and *vice versa*. Furthermore, it explained the importance of using human rights indicators to establish accountability and it has set out the legal norms applicable to human rights. In the report, the following norms have been identified: non-discrimination, adequate progress, true participation and an effective remedy.<sup>183</sup> The report emphasised the importance of a human rights progress assessment in development.<sup>184</sup>

Based on the SG report 'Strengthening of the United Nations: An Agenda for Further Change'<sup>185</sup> the "Action 2 Initiative" was introduced. This initiative aimed to support 'the sustainability of national human rights protection systems' by promoting a HRBAD'.<sup>186</sup> Therefore, the initiative focussed on the promotion and protection of human rights by assisting Member States to integrate such an approach in their development and humanitarian processes.

In 2003, the United Nations Development Group (UNDG), established by the 1997 Reform process, adopted a common

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<sup>181</sup> Human Rights Strengthening – HURIST Programme Document <[http://europeandcis.undp.org/files/uploads/HR/Hurist\\_prodoc.pdf](http://europeandcis.undp.org/files/uploads/HR/Hurist_prodoc.pdf)> accessed 20 May 2015.

<sup>182</sup> UNDP, *Human Development Report 2000*, (New York, OUP, 2000).

<sup>183</sup> Ibid 95.

<sup>184</sup> Ibid 108.

<sup>185</sup> UN, 'Strengthening of the United Nations: An Agenda for Further Change. Report of the United Nations Secretary-General' (9 september 2002) UN Doc A/57/387.

<sup>186</sup> Action 2 Initiative <<http://www.un.org/events/action2/index.html>>, accessed 20 April 2015.

understanding on the HRBAD (the Common Understanding). The UNDG consists of those UN funds, programmes, agencies, departments and offices working in the field of development.<sup>187</sup> The Common Understanding, which can be found in supplement C, provides the following:

1. All programmes of development cooperation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.
2. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.
3. Development cooperation contributes to the development of the capacities of "duty-bearers" to meet their obligations and of "rights-holders" to claim their rights.<sup>188</sup>

Although the Common Understanding has been established for the development field, it gives a good idea of what a human rights based approach (HRBA) might entail. The Common Understanding has been further explained in the UNDP Practice Note Human Rights.<sup>189</sup> Within the Practice Note three areas of focus have been set out: supporting national systems, promoting and applying a HRBAD and increasing engagement with the international human rights machinery. With regard to a HRBAD for programming four implications have been identified:

- First, it forces programme staff and policy-makers to reflect upon the **why** and **how** of their actions beyond the questions of **what** should be done;
- Second, the global legitimacy of human rights provides an objective starting point for dialogue and discussions with government, the people and external partners;
- Third, it helps policy-makers and citizens to recognise the power dynamics of the development process; and
- Fourth, the accountability structure pursued through a human rights-based approach facilitates the development of quantitative and qualitative benchmarks and indicators for measuring progress in development planning and delivery.<sup>190</sup>

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<sup>187</sup> United Nations Development Group <<https://undg.org/home/about-undg/>> accessed 20 May 2015.

<sup>188</sup> UNDP 'Practice Note. Human Rights in UNDP' (april 2005) 16, available at: [http://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/dg-publications-for-website/human-rights-in-undp/HRPN2005\\_English.pdf](http://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/dg-publications-for-website/human-rights-in-undp/HRPN2005_English.pdf) , accessed 14 April 2015.

<sup>189</sup> Ibid.

<sup>190</sup> Ibid 15.

The Practice Note defined six Human Rights principles that should be applied in programming: universality and inalienability, indivisibility, inter-dependence and inter-relatedness, equality and non-discrimination, participation and inclusion and lastly, accountability and the rule of law.<sup>191</sup>

Another document worth mentioning is the OHCHR FAQ.<sup>192</sup> Notwithstanding the fact that this document has not been produced by UNDP, it is specifically aimed at development work and provides answers for questions regarding the relation between human rights and development and the meaning and implications of a HRBAD.

All the described documents have formally acknowledged the commitment to mainstream human rights within the field of development. However, they only provide guidance on conceptualising a HRBAD. After reading these documents, practitioners will know more about the meaning of a HRBAD and the principles and standards that should be applied in development programming and goal setting. However, the documents lack any practical guidance on how to mainstream human rights exactly. Over time, experience with the HRBAD has grown. This experience has resulted in the development of more practical guidance as well.

One group has contributed significantly to making the HRBAD operational and that is the UNDG-Human Rights Working Group (UNDG-HRWG). This group specifically works on integrating human rights in UN's development work. The group was founded in 2009 and it builds on the efforts of the Action 2 Initiative. Their efforts have led to a human rights portal to share lessons learnt and good practices on a HRBAD.<sup>193</sup> In this portal, many resources can be found on how to apply a HRBAD. Guidance is provided by case studies and programming tools on different topics. UNDG-HRWG has also developed a common learning package for training UN staff. This learning package consists of different modules for integrating human rights throughout all stages of policymaking. The content of this package will be discussed in the next paragraph based on the 2012 UNDP issue briefs<sup>194</sup> and the Guide on Human Right Indicators<sup>195</sup>, because the content of the modules is largely similar to those two documents. The portal is also used as a digital meeting place for practitioners where online discussions can take place and insights can be shared. The portal is a great starting point for finding practical guidance and sharing knowledge with practitioners on mainstreaming human rights.

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<sup>191</sup> Ibid 16.

<sup>192</sup> OHCHR FAQ (n 7).

<sup>193</sup> UN Practitioner's Portal on Human Rights Based Approaches to Programming <<http://hrbaportal.org/>> accessed 11 May 2015.

<sup>194</sup> UNDP 'Mainstreaming Human Rights in Development Policies and Programming: UNDP Experiences' (March 2012) available at <[http://www.undp.org/content/dam/undp/library/Poverty%20Reduction/Inclusive%20development/Human%20Rights%20issue%20briefs/English\\_Web\\_draft6b.pdf](http://www.undp.org/content/dam/undp/library/Poverty%20Reduction/Inclusive%20development/Human%20Rights%20issue%20briefs/English_Web_draft6b.pdf)> accessed 24 May 2015.

<sup>195</sup> OHCHR 'Human Rights Indicators. A Guide to Measurement and Implementation'(2012) UN Doc HR/PUB/12/5.

Other important resources for practical guidance on how to operationalise the HRBAD are the 2012 issue briefs on achieving human rights mainstreaming in development.<sup>196</sup> The Common Understanding has underlined the applicability of human rights throughout the whole process of policy making and programming. As the UNDP issue brief on the conceptual framework states: 'human rights should inform the outcome and the process of policies and programmes'.<sup>197</sup> The issue brief distinguishes between human rights standards, which are helpful in determining the desired outcomes and human rights principles, which should be used as guidance during the processes. Human rights standards are the human rights norms. For economic, social and cultural rights, the CESCR has determined that those rights need to be available, accessible and of good quality. Availability requires sufficient quantity of a facility service or goods. The accessibility refers to both physical accessibility and economic accessibility. Quality requires facilities, goods and services which are 'relevant, culturally appropriate and of a good quality'.<sup>198</sup> Therefore, the goal of a policy or programme should be the realisation of a human rights norm. The human rights principles of participation, non-discrimination and accountability have been addressed before and they should guide all processes. The fact that human rights should be applied within all 'phases' of programming<sup>199</sup> raises the question what these phases are. The UNDP issue brief on conceptual framework identifies four phases for programming and policymaking: assessment and analysis, planning and design, implementation and monitoring and evaluation. The rest of the 2012 UNDP issue briefs are practical tools that can be applied throughout the different stages. The content of these tools will be discussed briefly in order to better understand how the HRBAD has been operationalised.

The first tool gives an overview of UN human rights bodies and the information they produce relevant to human development. It describes the Human Rights Council and their mandate to appoint experts and working groups based on special procedures. Furthermore, it discusses the treaty committees, their monitoring tasks, and their mandate to issue general comments. It provides a non-exhaustive list of development aspects and relevant human rights mechanisms and their reports as well as relevant human rights instrument. The following table is an example of one aspect as provided in the issue brief 'Tool: What Information Do the UN Human Rights Bodies Produce on Human Development'<sup>200</sup>:

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<sup>196</sup> UNDP 'Mainstreaming Human Rights in Development Policies and Programming: UNDP Experiences' (n 194).

<sup>197</sup> Ibid.

<sup>198</sup> Ibid.

<sup>199</sup> The Common Understanding (n 188) 3. See also Supplement C.

<sup>200</sup> UNDP 'Mainstreaming Human Rights in Development Policies and Programming: UNDP Experiences' (n 194).

<b>Aspect</b>	<b>MDGs</b>	<b>Human Rights Mechanisms (with examples of their reports)</b>	<b>Human Rights Instruments</b>
Hunger	Goal 1: Eradicate Hunger	<ul style="list-style-type: none"> <li>• Special Rapporteur on the right to food (e.g., biofuels, food crisis, seed policies, land acquisitions, country reports)</li> <li>• CESCR General Comment No. 12 on the right to food</li> </ul>	UDHR article 25(1); ICESCR article 11

Therefore, the tool is a good starting point for the assessment and analysis phase of development programming and policymaking from a human rights perspective.

The next tool of the issue briefs is the three-step problem analysis. This tool can be used in all phases of the programming and policymaking cycle, but is most relevant for the assessment and analysis phase. The first step is the causal analysis which answers the question who has been left behind and why. Disaggregated data should be used from different governmental and non-governmental sources and causes should be defined in the light of human rights standards and principles. The causal analysis identifies different levels of causes from immediate causes to root causes. The second step is a role analysis. This step requires the identification of the rights-holders and the duty-bearers. The tool on human rights bodies can be useful to check the obligations. The last step is the capacity gap analysis. This step answers the question 'what capacities rights-holders need to claim their rights and what capacities duty-bearers need to fulfil their obligations'. The tool itself gives more specific information on how to answer the questions of each step, but for the purpose of this study it is sufficient to note that all steps of the analysis stage are completely guided by human rights norms and principles and that a HRBA requires the establishment of an analysis mechanism inspired by human rights.

The last practical tool of the 2012 UNDP issue briefs worth some consideration is the initial checklist. The checklist can be used in all phases of programming and policymaking to answer questions on human rights principles and human rights standards. The checklist includes the following questions:

On Non-Discrimination and Equality:

- Does the analysis of data provide information on individuals and groups that are more affected by a development issue or that benefit less from policies and programmes, e.g., public services? Does this coincide or go beyond pre-conceived notions of who is marginalised?

On Accountability & Rule of Law:

- Are the effects of policies and programmes being monitored?

On Availability:

- Are facilities, goods and services in the sector available continuously in sufficient quantity?<sup>201</sup>

These questions are just a few examples, but they show that the tool is helpful as a reminder of those questions on human rights standards and principles that should be checked throughout the whole process. The checklist should be adapted to the sector, country and issue concerned. Based on the questions in the checklist action points should be identified for addressing the issues from a human rights perspective.

A last essential tool when discussing operationalising a HRBAD is the guide on human rights indicators.<sup>202</sup> This framework is mainly useful for the first and last stage of the programming and policymaking cycle. This guide explains how to measure and implement human rights based on indicators. A human rights indicator is:

[S]pecific information on the state or condition of an object, event, activity or outcome that can be related to human rights norms and standards; that addresses and reflects human rights principles and concerns; and that can be used to assess and monitor the promotion and implementation of human rights<sup>203</sup>

The guide explains different kind of human rights indicators: quantitative and qualitative, fact-based and judgment-based and lastly performance and compliance indicators.<sup>204</sup> The guide furthermore provides useful information on how to use data and selecting human rights indicators.<sup>205</sup> To illustrate the tool, the guide provides examples of indicators for some rights.<sup>206</sup>

It can thus be concluded that human rights are currently a key focus in development programmes and within the UNDP. Major progress has been made from documents just establishing the need for merging human rights and development to building operational tools on how to implement this call for a HRBAD.

### **5.2.2 Human Rights Mainstreaming Within the United Nations Education, Scientific and Cultural Organisation**

UNESCO adopted a strategy in 2003<sup>207</sup> in the light of the 1997 UN reform process. In this Strategy, UNESCO declared their

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<sup>201</sup> Ibid.

<sup>202</sup> OHCHR 'Human Rights Indicators. A Guide to Measurement and Implementation' (n 195).

<sup>203</sup> Ibid 16.

<sup>204</sup> Ibid 16-20.

<sup>205</sup> Ibid 45-70.

<sup>206</sup> Ibid 71-101.

<sup>207</sup> UNESCO 'Strategy on Human Rights' (16 October 2003) UN Doc 32 C/Resolution 27 (UNESCO Strategy).

dedication to a HRBA. However, the Strategy was not their first work on human rights. To the contrary, UNESCO has a long history with human rights work and has a specific mandate in human rights.<sup>208</sup> In its Strategy, it therefore refers to their 'impressive record of human rights activities' including the adoption of human rights instruments and the creation of human rights mechanisms. This is the reason that Oberleitner noticed that 'its human rights mandate and impressive track-record in standard-setting should have given UNESCO a head-start in mainstreaming human rights'.<sup>209</sup> The Strategy that embraced a HRBA was therefore adopted surprisingly late.

The Strategy has three areas of focus. Firstly, integrating a HRBA into all of UNESCO's programmes through staff training and by taking into consideration human rights treaties and conclusions of the treaty bodies.<sup>210</sup> Advancing human rights in an era of globalisation is the second area of focus. UNESCO aims to achieve this by promotion of research and dissemination of knowledge on human rights as an integral part of the right to education and through standard-setting, monitoring and activities related to human rights protection within UNESCO's field of competence.<sup>211</sup> The last area of focus is strengthening co-operation. This concerns co-operation within the UN, with NGO's, academic partners and national partners.<sup>212</sup>

Before the adoption of the Strategy, a Memorandum of Understanding had been signed between the Director-General of UNESCO and the High-Commissioner of Human Rights.<sup>213</sup> In this Memorandum of Understanding, both parties have affirmed their commitment to human rights and to co-operate closely on matters of common interest. The Memorandum of Understanding confirmed that it resulted from the 1997 reform process, which required integrating human rights throughout the UN activities.

After the document establishing a commitment to human rights mainstreaming, UNESCO has produced several studies and manuals on human rights mainstreaming.

In 2004, UNESCO published a manual on rights-based education.<sup>214</sup> This manual aims to serve as a tool for integrating human rights concepts within education.

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<sup>208</sup> Article I(1) UNESCO Constitution (adopted 16 November 1945, entered into force 4 November 1946) 4 UNTS 275.

<sup>209</sup> Gerd Oberleitner, 'A Decade of Mainstreaming Human Rights in the UN: Achievements, Failures, Challenges', (n. 5) 375.

<sup>210</sup> UNESCO Strategy (n 207) 6.

<sup>211</sup> Ibid 6-11.

<sup>212</sup> Ibid 13.

<sup>213</sup> Memorandum of Understanding between the United Nations Educational, Scientific and Cultural Organisation and the Office of the United Nations High Commissioner of Human Rights <<http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/BSP/images/ohchr.pdf>> accessed 15 April 2015.

<sup>214</sup> Katarina Tomasevski, *Manual on Rights Based Education. Global Human Rights Requirements Made Simple, Collaborative Project of the UN Special Rapporteur on the Right to Education and UNESCO Asia and Pacific Regional Bureau for Education* (UNESCO Bangkok, 2004).

In 2006, Frankovits prepared a study for UNESCO on the HRBA and the UN system.<sup>215</sup> This study provides the reader with a good overview of human rights mainstreaming within the UN by bringing together best practices and lessons learnt. The study aims to serve as a useful source for UNESCO staff in the efforts to integrate human rights into their activities.<sup>216</sup>

In 2007, UNESCO and UNICEF completed a joined document on the HRBA to education for all.<sup>217</sup> The document sets out current thinking and practices on implementing a HRBA to education and therefore provides a framework for those organisations working in the field of education.

Another document published by UNESCO and produced in co-operation with other organisations is the document 'Undertaking a HRBA: Lessons for Policy, Programming and Planning'.<sup>218</sup> The document is relevant for sharing lessons learnt and approaches to human rights mainstreaming in the field of development.

A last document worth mentioning as it has a distinctive character is the guide on intercultural competences<sup>219</sup>. This document provides a first overview of relevant concepts and ideas towards the development of guidelines to mainstream the use of human rights-based intercultural competences.

The overview of selected documents shows that UNESCO has started to work on educating in human rights mainstreaming. However, this is mainly done through sharing best practices and lessons learnt. The documents do not give a lot of practical guidance on how to apply such an approach. The exception is Tomasevski's manual on rights-based education. She provides a matrix for the quality of education. For all identified stages<sup>220</sup>, the document gives relevant questions. In order to apply human rights for the process stage the following question should for example be answered: 'Is teacher's participation in the creation of education policies and laws ensured'? Therefore, human rights mainstreaming within UNESCO is currently primarily concerned with conceptualising a HRBA.

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<sup>215</sup> André Frankovits, *The Human Rights Based Approach and the United Nations System*, (UNESCO 2006).

<sup>216</sup> Ibid 4.

<sup>217</sup> UNESCO and UNICEF, 'A Human Rights-Based Approach to Education for All' (2007).

<sup>218</sup> UNESCO Asia and Pacific Regional Bureau for Education, 'Undertaking a Human Rights-Based Approach: Lessons for Policy, Planning and Programming', (2008).

<sup>219</sup> UNESCO, 'Intercultural Competences' (2013).

<sup>220</sup> Intake, input, process, outcomes and impact.

### 5.2.3 Human Rights Mainstreaming Within the United Nations Office of the High Commissioner for Refugees

A close link between refugee issues and human rights issues can be traced back to several International instruments. Different human rights instruments recognise the right to seek asylum<sup>221</sup>, and the Refugee Convention<sup>222</sup> protects certain human rights. Possibly, due to this link, the recognition of the relevance of human rights for refugee issues already took place before the Reform process initiated in 1997. Albeit some reluctance on co-operating with the field of human rights in the first place, the UNHCR addressed the former Human Rights Council for the first time in 1990.<sup>223</sup> UNHCR even described itself in 1994 as an operational human rights organisation, for certain categories of persons.<sup>224</sup>

In a Policy Paper of 1997<sup>225</sup> on the UNCHR and human rights, three levels of intersections have been defined between UNCHR responsibilities and human rights: standards, information and mechanisms. Standards, because UNCHR promotes and is guided by human rights standards. The UNCHR also makes intensive use of human rights information and generates human rights information. Lastly, UNCHR co-operates with the “traditional” human rights mechanisms and field operations.

The 2003 Agenda for Protection<sup>226</sup> underlines the importance of human rights instruments for refugees and asks attention for vulnerable groups such as child soldiers, victims of sexual and gender-based violence and children.

The 2007 10-point plan of action on Refugee protection and mixed-migration<sup>227</sup> does not have a strong focus on human rights, but is aimed at preventing human rights violations and can function as a useful tool in that regard.

Although all these efforts show a commitment to human rights, none of them has explicitly set out what human rights mainstreaming means with regard to refugee issues. However, the OHCHR organised in 2014 a High Level Panel Debate on Human Rights Mainstreaming that focused solely on mainstreaming migration rights.<sup>228</sup> The following statement is included in the outcomes:

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<sup>221</sup> For example art. 14 UDHR.

<sup>222</sup> Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention).

<sup>223</sup> UNHCR ‘UNHCR and Human Rights. A Policy Paper’ (1997).

<sup>224</sup> Ibid.

<sup>225</sup> Ibid.

<sup>226</sup> UNHCR, ‘Agenda for Protection’ (3rd edn, October 2003).

<sup>227</sup> UNHCR, ‘Refugee Protection and Mixed Migration: A 10-Point Plan of Action’ (January 2007) Rev.1.

<sup>228</sup> Human Rights Council. High-Level Panel Discussion on Human Rights Mainstreaming (4 March 2014)

<<http://www.ohchr.org/EN/Issues/Migration/Pages/HRCHighLevelDiscussion4March2014.aspx>> accessed at 20 May 2015.

The discussion also provided suggestions on developing an effective and inclusive human rights-based agenda on migration. Participants expressed support for a human rights-based approach to migration, and the need to work towards a holistic and inclusive agenda that puts human rights at the centre of migration discussions.<sup>229</sup>

Although migration is broader than the protection of refugees, the debate might potentially be a turning point for producing a plan of action on mainstreaming human rights in the field of refugee issues.

### **5.3 General Observations on Human Rights Mainstreaming**

Although UN bodies have approached human rights mainstreaming differently, some general observations can be made based on the examples discussed.

Firstly, human rights mainstreaming is often described as a HRBA. Documents use both terms and therefore it seems correct to conclude that both words can be used interchangeably. As the HRBA has started within the development field, it might be that reference to a HRBA within the literature actually means a HRBAD. In this research a distinction is made between the general HRBA, which is used for mainstreaming human rights, and the HRBAD as a framework used for mainstreaming human rights specifically within the development field.

Secondly, although the Common Understanding applies to the development field, its content is visible in the HRBA within other UN bodies. For example, the site of UNESCO explicitly refers to the Common Understanding to explain the concept of human rights mainstreaming.<sup>230</sup> Therefore, the Common Understanding can be used as a starting point for all bodies within the UN that consider adopting a HRBA.

Thirdly, the process of human rights mainstreaming requires co-operation with the human rights bodies within the UN. Sometimes this dedication to co-operation is expressed through a Memorandum of Understanding.

Additionally, human rights mainstreaming requires time, training and raising awareness. It is common to share best practices and lessons learnt to improve the process of implementing a HRBA. From the development field it can be learnt that a HRBA usually starts with the explicit commitment to mainstream human rights and changing the language of goals and desired outcomes of programmes and policies towards human rights. After years of experience, more practical tools can be developed to guide all stages of programming and

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<sup>229</sup> Ibid.

<sup>230</sup> Site UNESCO <<http://www.unesco.org/new/en/social-and-human-sciences/themes/human-rights-based-approach/>> accessed April 2015.

policymaking. It is clear that all these stages should be guided by human rights standards and principles.

Lastly, there is no clear-cut definition of mainstreaming human rights as different fields give a different interpretation to this concept. The Common Understanding is the most accepted explanation of a HRBA, but this is not applied in all fields that integrate human rights.

Based on the examples above and the documents establishing a mandate for human rights mainstreaming it can be concluded that human rights mainstreaming is a tool for integrating human rights within a UN field. It usually includes acknowledging and exploring the link between human rights and the field concerned and human rights standards and its principles are used as a form of guidance in policy making and programming not only regarding the outcome, but also in processes.

## 6 From National Security to Human Security; relevance for Human Rights?

Although there is a link between disarmament and human rights, human rights mainstreaming has not found its way into the disarmament field yet. Because the concept of human rights mainstreaming was introduced more than fifteen years ago, this raises the question of whether the disarmament field will ever be willing to integrate human rights. This chapter analyses the development from national security to human security within the disarmament field. A shifting paradigm that is of particular interest for this research, as it might enlighten an increased interest in human rights from the disarmament field.

### 6.1 National Security vs. Human Security

This sub-section will examine the concept of human security based on those documents highlighted in the literature as fundamental for the process of developing and defining the concept of human security. Special attention will be paid to the relation between national security and human security.

Within International Law, States have always been the primary subjects. Therefore, security has traditionally been viewed as national security. In this concept, territorial integrity and sovereignty of States have played a key role in debates on peace and security. Pursuant to this perspective, security in arms control debates can be described as 'the enhancement of the security of States through the procurement of (...) arms to protect the national territory against perceived military threats and known enemies'.<sup>231</sup> The concept of security has been expanded by the recognition of non-military threats and internal violence as threats to peace and security.<sup>232</sup> In the light of this development, it is no surprise that human security emerged as a new understanding of the notion of security.<sup>233</sup>

It is generally accepted, that the concept of human security as a distinct concept was introduced within the 1994 UNDP Human Development Report.<sup>234</sup> In its report, UNDP even explicitly pointed at changing the concept of security 'from security through armament to security through sustainable human development'.<sup>235</sup> Another shift identified in the report, focusses on

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<sup>231</sup> Denise Garcia, *Disarmament Diplomacy and Human Security* (Routledge 2011) 12.

<sup>232</sup> Gerd Oberleitner, 'Human Security: a Challenge to International Law?' (2005) 11 *Global Governance* 185, 190.

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

<sup>234</sup> UNDP, *Human Development Report* (1994) (n 142).

<sup>235</sup> *Ibid.* 24.

a people-centred approach to security rather than an exclusive focus on territorial security.<sup>236</sup>

After the introduction of this distinct concept several initiatives within and outside the UN have been established. The United Nations Trust Fund for Human Security was launched in 1999 to provide financial assistance to organisations that work on realising human security. Furthermore, the UN established an independent Commission on Human Security, under the leadership of Sadako Ogata and Amartya Sen. This Commission wrote a report on human security with the aim of advancing human security efforts.<sup>237</sup> Some States formed an association under the name of Human Security Network with the aim of promoting the concept of human security. The concept has since its emergence been subject to academic interest and many initiatives and articles have focused on exploring this concept.<sup>238</sup> Within this rich academic debate, the concept received some criticism.<sup>239</sup> The broader discussion on the shortcomings of the concept is not part of this study, because this thesis focusses on human security within the field of disarmament and its potential relevance for mainstreaming human rights.

Within these efforts and literature that explore the concept of human security, many have tried to define the concept of human security.<sup>240</sup> As no clear-cut definition had been accepted yet, it seemed logical that States committed themselves to defining the notion of human security at the 2005 World Summit.<sup>241</sup> All heads of States or government came together at this Summit to discuss major world issues, such as the progress of the Millennium Development Goals. Pursuant to the commitment to define human security, the SG submitted in 2010 a report on Human Security.<sup>242</sup> In this report, human security is broadly defined as encompassing 'freedom from fear, freedom from want and freedom to live in dignity'.<sup>243</sup> After taking note of this report and organising a debate on human security, the UNGA finally adopted Resolution 66/290<sup>244</sup>, which gives a common understanding of human security. The whole Resolution is attached in supplement D, but a few parts are worth some specific consideration.

After repeating the broad definition of the SG, the resolution provides that 'human security calls for people-centred,

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<sup>236</sup> Ibid.

<sup>237</sup> Commission on Human Security, *Human Security Now* (Communications Development Incorporated 2003).

<sup>238</sup> Oberleitner, 'Human Security: a Challenge to International Law?' (n 232) 186.

<sup>239</sup> See for an overview and reference to criticism: Oberleitner, 'Human Security: a Challenge to International Law?' (n 232) 187.

<sup>240</sup> See for a review: Sabina Alkire, 'Conceptual Framework for Human Security' (Centre for Research on Inequality, Human Security and Ethnicity, Queen Elisabeth House, University of Oxford 2003) <<http://www3.geh.ox.ac.uk/pdf/crisewps/workingpaper2.pdf>> accessed 30 April 2015. Cited by Oberleitner, 'Human Security: a Challenge to International Law?' (n 232) 200.

<sup>241</sup> World Summit Outcome Document (n 60) para 143.

<sup>242</sup> UNGA, 'Human Security. Report of the Secretary-General' (8 March 2010) UN Doc A/64/701.

<sup>243</sup> Ibid para 4.

<sup>244</sup> UNGA Res 66/290 (10 September 2012) UN Doc A/RES/66/290.

comprehensive, context-specific and prevention-oriented responses'.<sup>245</sup> Furthermore, the resolution underlines the interlinkage between peace, development and human rights and states that 'human security does not replace state security'.<sup>246</sup> Therefore, it might not be possible to speak of a complete shift from national security to human security as has taken place. Oberleitner's explanation seems to be more in line with the common understanding. He sees human security as complementing national security. According to him, it helps to identify the goal of security, which is to protect the people and not the entity.<sup>247</sup> Although national security will continue to be a consideration in peace and security debates as well, the concept of human security provides us with a new paradigm that has found its way in the disarmament field.

## **6.2 Human Security within the Disarmament Field**

The rise of the concept of human security 'opened new avenues' in the field of disarmament.<sup>248</sup> Although there are more examples of this change<sup>249</sup>, this sub-section will focus on the two most recent examples of the impact of human security within the disarmament field.

### **6.2.1 The Arms Trade Treaty**

Almost parallel with the introduction of human security as a distinct concept, initiatives were started in support of adopting an instrument for regulating the arms transfer. Under the lead of Oscar Arias, former president of Costa Rica and Nobel Peace Prize winner, a group of Nobel Peace Prize winners worked since 1995 on a Code of Conduct.<sup>250</sup> The Code of Conduct was adopted in 1997<sup>251</sup> and included a strong link to human rights and humanitarian concerns, without disregarding the right to self-defence.<sup>252</sup>

This Code of Conduct marked the beginning of a long road towards the adoption of the ATT by the UN. NGO's bundled their efforts and started to advocate for an ATT under the name Control Arms Campaign.<sup>253</sup> This initiative gained momentum when

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<sup>245</sup> Ibid para 3(b).

<sup>246</sup> Ibid paras 3(c) and 3(e).

<sup>247</sup> Oberleitner, 'Human Security: a Challenge to International Law?' (n 232) 191.

<sup>248</sup> Garcia (n 231) 186.

<sup>249</sup> The adoption of the Ottawa Convention and the Convention on Cluster Munition also succeeded because international discourses were reframed 'from those in which arguments over these weapons' intended uses were paramount, to those in which their actual effects received focus'. Johan Borrie and Tim Caughly (eds), *Viewing Nuclear Weapons through a Humanitarian Lens* (UNIDIR 2013).

<sup>250</sup> Ibid 44.

<sup>251</sup> Nobel Peace Laureates' International Code of Conduct (29 May 1997). See for the full text: <<http://www.hartford-hwp.com/archives/27a/028.html>> accessed 20 May 2015.

<sup>252</sup> Ibid preamble.

<sup>253</sup> Site Control Arms <<http://controlarms.org/en/about-controlarms/>> accessed 2 May 2015.

some big States supported the campaign.<sup>254</sup> After the UK announced its support, many States followed.

All these actions bore fruit and in 2006, the UNGA adopted its first resolution in support of an ATT.<sup>255</sup> The resolution called for the view of States on an instrument including 'common international standards for the import, export and transfer of conventional weapons'. On demand of the SG, States submitted their view on the feasibility and scope of an ATT in 2007.<sup>256</sup> Many States underlined the link with human rights or referred specifically to human security and called for a comprehensive treaty covering all types of weapons. States also put forward their ideas on the criteria for transferring arms. Parker has divided these suggested criteria in the following categories: existing obligations in other agreements and arms embargoes, likely users with due account for non-state actors involved in terrorism, the likely use of arms in IHRL or IHL violations, the likely impact of arms transfer on development and stability and the recipient country.<sup>257</sup> The proposed criteria clearly reflected some humanitarian concerns. A group of governmental experts was formed to review the State submissions. With their help, the SG submitted a report<sup>258</sup>, taking into account the views submitted by the Member States and the governmental experts. The expert group concluded with the call for further consultation between the UN Member States.<sup>259</sup>

In 2008, the second resolution on an ATT was adopted.<sup>260</sup> The resolution established an open-ended working group, open to all States, to further consider the recommendations of the SG's report.

In 2009, another resolution was adopted by the UNGA, which called for an international conference with the aim of drafting a treaty text.<sup>261</sup> After four sessions of the Preparatory Committee, the international conference took place in July 2012 and concluded with a draft treaty text.<sup>262</sup> This draft treaty formed the bases for convening the next conference in March 2013.<sup>263</sup> A draft ATT was presented at the conference, but the required consensus was not reached and therefore the conference did not

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<sup>254</sup> Garcia (n 231) 50.

<sup>255</sup> UNGA Res 61/89 (6 December 2006) UN Doc A/RES/61/89.

<sup>256</sup> UNGA, 'Towards an Arms Trade Treaty: Establishing Common International Standards for the Import, Export and Transfer of Conventional Arms. Report of the Secretary-General' (17 August 2007) UN Doc A/62/278.

<sup>257</sup> Sarah Parker, 'Analysis of States' Views on an Arms Trade Treaty' (2007 UNIDIR). Cited by Garcia (n231) 60.

<sup>258</sup> UNGA 'Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms. Note by the Secretary-General' (26 August 2008) UN Doc A/63/334.

<sup>259</sup> Ibid para 27.

<sup>260</sup> UNGA Res 62/240 (24 December 2008) UN Doc A/63/240.

<sup>261</sup> UNGA Res 64/48 (2 December 2009) UN Doc A/RES/64/48.

<sup>262</sup> President of the Conference. 'Draft of the Arms Trade Treaty' (United Nations Conference on the Arms Trade Treaty, New York, 2-27 July 2012) UN Doc A/CONF.217/CRP.1.

<sup>263</sup> UNGA Res 67/234 (24 December 2012) UN Doc A/RES/67/234.

end with the adoption of the draft ATT.<sup>264</sup> Contrary to the conference, the UNGA had the ability to decide by majority. After the failure of the final conference, the ATT was finally adopted by the UNGA at 2 April 2013.<sup>265</sup>

Throughout the process that led to the adoption of the ATT, it became clear that the ATT was a result of the wider acceptance of the grave impact of conventional weapons on human beings. Not only was the first initiative by the Nobel Peace Laureates the result of humanitarian concerns, States also underlined the need for arms regulation from a humanitarian perspective. As the United Kingdom disarmament ambassador John Duncan has stated:

The absence of common international standards on the import, export and transfer of conventional arms is a contributory factor to conflict, the displacement of people, crime and terrorism, thereby undermining peace, reconciliation, safety, security, stability and sustainable development.<sup>266</sup>

The question of human security and the humanitarian impact of weapons got attention in many of the State reports as a response to the SG's call. Although no explicit reference has been made to human security within the final text of the ATT, many criteria can be traced back to this concept. Especially the reference to human rights within the preamble and the obligation of article 7 to consider the potential use of conventional weapons for human rights violations before exporting such weapons have been influenced by the call for enhancing human security. As Garcia has noted:

[H]umanitarian concerns (...) have not only played an essential role in motivating civil society and States to draw up new treaties that aim to enhance human security, but have also become a constituent part of such treaties.<sup>267</sup>

In other words, the concept of human security played an essential role in the call for and adoption of the ATT. It is because of this contribution to human security that the SG labeled the treaty as 'a victory for the world's people'.<sup>268</sup>

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<sup>264</sup> 'Report of the Final United Nations Conference on the Arms Trade Treaty' (Final United Nations Conference on the Arms Trade Treaty, New York, 18-28 March 2013) UN Doc A/CONF.217/2013/2.

<sup>265</sup> UNGA Res 67/234 (2 April 2013) UN Doc A/RES/67/234 B.

<sup>266</sup> John Duncan, 'Open-ended Working Group on Arms Trade Treaty: Goals and Objectives of a Feasible Arms Trade Treaty' (UK Statement, New York, March 2009). Cited by Garcia (n 231) 65.

<sup>267</sup> Garcia (n 231) 185.

<sup>268</sup> UN Secretary-General, 'Arms Trade Treaty Will Generate 'Much-Needed Momentum' for Other Global Disarmament, Non-Proliferation Efforts, Secretary-General Says', (2 April 2013) UN Press Release SG/SM/14919-DC/3426, available at April <<http://www.un.org/press/en/2013/sgsm14919.doc.htm>> accessed 2 May 2015.

## 6.2.2 Humanitarian Initiatives for Nuclear Disarmament

Since a few years, the shift towards human security has become visible within the nuclear disarmament debate. In preparation of the 2010 NPT Review Conference, a conference organised every five years to review the operation of the Non-Proliferation Treaty, non-nuclear weapon States started to push for this shift. They urged to change the focus from arguments on strategic stability and nuclear deterrence to arguments regarding the humanitarian consequences of nuclear weapons.<sup>269</sup> This push resulted in reference to the possible 'catastrophic humanitarian consequences' within the Final Document of the Conference.<sup>270</sup> This reference to humanitarian consequences proved not to be a one off and throughout the years, different initiatives have been established to consider the effects of nuclear weapons.

The UNGA followed the wording of the final document and expressed in a resolution its deep concern on the 'catastrophic humanitarian consequences of any use of nuclear weapons' as well.<sup>271</sup> In the same resolution it decided to establish an Open-ended Working Group to take forward multilateral nuclear disarmament negotiations. This workgroup, consisting of experts, worked closely with International organisations and civil society, because its meetings are open to NGO's and stakeholders.

Due to the emergence of humanitarian concerns, the Norwegian government decided to organise a first conference on the Humanitarian Impact of Nuclear Weapons (HINW) in March 2013. 127 countries participated in the conference, as well as UN organisations and the Red Cross.<sup>272</sup> At this conference, it was decided that a follow-up conference would be organised.

In August 2013, the Open-ended Working Group adopted its report on taking forward nuclear disarmament negotiations.<sup>273</sup> In its report, the group referred explicitly to the changed environment, in which nuclear weapons were addressed as a humanitarian and human security issue.<sup>274</sup> The report also stated that a discussion took place within the group on the 'idea of undertaking a study of the evolution of international law relevant to the achievement of a world without nuclear weapons, including (...) human rights law'.<sup>275</sup>

In February 2014, a second conference on the HINW was hosted by Mexico. The conference concluded with a call from the

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<sup>269</sup> Nick Ritchie. 'The Story So Far. The Humanitarian Initiative on the Impacts of Nuclear Weapons' (n 89) 2.

<sup>270</sup> Final Document NPT Review 2010 (210 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, New York, 3-28 May 2010) UN Doc NPT/CONF.2010/50 (Vol. I), 19.

<sup>271</sup> UNGA Res 67/56 (n 87).

<sup>272</sup> Ministry of Foreign Affairs Norway <[https://www.regjeringen.no/en/topics/foreign-affairs/humanitarian-efforts/humimpact\\_2013/id708603/](https://www.regjeringen.no/en/topics/foreign-affairs/humanitarian-efforts/humimpact_2013/id708603/)> accessed 3 May 2015.

<sup>273</sup> UNGA, 'Report of the Open-ended Working Group to develop proposals to take forward multilateral nuclear disarmament negotiations for the achievement and maintenance of a world without nuclear weapons' (9 September 2013) UN Doc A/AC.281/2.

<sup>274</sup> Ibid para 43.

<sup>275</sup> Ibid para 39.

Mexican hosts to start the process for banning nuclear weapons, because of its impact on the environment and human beings.<sup>276</sup>

In the 2014 NPT Preparatory Committee's recommendations, explicit reference was made again to the humanitarian consequences of a nuclear war.<sup>277</sup>

In December 2014, the third conference on the HINW was held in Vienna. Interestingly, Western nuclear weapons States attended the conference.<sup>278</sup>

This shifting paradigm shows that a human security perspective is high on the nuclear disarmament agenda. Although not all documents and conferences refer explicitly to the concept of human security, it has been underlined that nuclear disarmament is 'integral to promoting human security'.<sup>279</sup> Furthermore, it has been stressed that 'The international initiative on the humanitarian impacts of nuclear weapons has created an opportunity to discuss the legality of nuclear weapons from new angles'.<sup>280</sup> Therefore, the emergence of human security has completely changed the debate on nuclear disarmament and hopefully this is only the start of the impact of this shift.

### **6.3 Relation between Human Security and Human Rights**

The previous sub-section shows that the concept of human security is of increasing importance within the disarmament field. This leaves the question of whether the emergence of the notion of human security adds anything to the discussion on possibilities for integrating human rights within the field of disarmament. The relation between human rights and human security needs to be examined to answer this question and this will mainly be based on academic literature.

Looking at the common understanding on the notion of human security, reference can be found to some of the famous fundamental freedoms as proposed by Roosevelt<sup>281</sup>. As the Four Freedoms Speech also inspired the UDHR, both human security and human rights find their origin within the same speech. However, human security and human rights share more than their origin.

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<sup>276</sup> International Campaign to Abolish Nuclear Weapons <<http://www.icanw.org/campaign-news/navarit-point-of-no-return-mexico-conference-marks-turning-point-towards-nuclear-weapon-ban-2/>> accessed 3 May 2015.

<sup>277</sup> 'Draft recommendations to the 2015 NPT Review Conference', (3rd NPT Preparatory Committee, New York, 28 April – 9 May 2014) UN Doc NPT/CONF.2015/PC.III/CRP.7.

<sup>278</sup> Europe Integration Foreign Affairs, Federal Ministry Republic of Austria <<http://www.bmeia.gv.at/en/european-foreign-policy/disarmament/weapons-of-mass-destruction/nuclear-weapons-and-nuclear-terrorism/vienna-conference-on-the-humanitarian-impact-of-nuclear-weapons/>> accessed 3 May 2015.

<sup>279</sup> Tim Caughly 'Tracing Notions about Humanitarian Consequences' in John Borrie and Tim Caughly (eds), *Viewing Nuclear Weapons through a Humanitarian Lens* (UNIDIR, 2013) 23.

<sup>280</sup> Gro Nystuen (n 90) 5.

<sup>281</sup> President Franklin Roosevelt, 'The Four Freedoms Speech' (Annual Message to Congress on the State of the Union, 6 January 1941).

An approach to human security has been described in academic literature as 'participative instead of exclusive'<sup>282</sup>. This is a first hint of their common features. As explained, a HRBA asks for participation. Moreover, both human rights and human security are concerned with human dignity.<sup>283</sup> Therefore, both concepts focus on the individual human being. As Oberleitner puts it, 'The ultimate focus and bearer both of human rights and human security is said to be the individual'.<sup>284</sup>

Therefore, it can be concluded that human rights and human security are interrelated, something that has explicitly been acknowledged within the common understanding. When two things are interrelated, the question can be asked how one can be achieved without the other. This is the first reason why the emerging concept of human security seems relevant for the potential of mainstreaming human rights within the field of disarmament. This is even more true now human security has been defined as a concept that 'brings together fields that have traditionally been kept separate'.<sup>285</sup> A position that captures the essence of this research, as the thesis aims to explore the possibilities of bringing together two fields that have traditionally been separated.

However, there are more questions to answer. Because if human rights and human security are interrelated, how exactly do they interact?

Human rights are seen as the 'core of human security' and have been described as a conceptual and 'normative framework for human security'.<sup>286</sup> Indeed, human rights define human security and upholding human rights can contribute to achieving human security.<sup>287</sup> Economic, social and cultural rights can especially define the freedom from want.<sup>288</sup> Additionally, human rights violations are in many cases root causes of conflicts. Respecting and realising human rights can also contribute to realising the freedom from fear.<sup>289</sup> The right to development has been highlighted as especially relevant for human security.<sup>290</sup> However, human security is broader than human rights as it does not make the division between public and private and it is concerned with more threats than the human rights regime. In that sense, it can be said that human rights are a component of human security.<sup>291</sup> In the context of this study, it is noteworthy

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<sup>282</sup> Wolfgang Benedek, 'Human Security and Human Rights Interaction' [2008] *International Social Science Journal* 1, 10.

<sup>283</sup> *Ibid* 13.

<sup>284</sup> Gerd Oberleitner, 'Human Security and Human Rights' (2002) 8 *Human Rights & Democracy. Occasional Paper Series* 1, 14.

<sup>285</sup> *Ibid* 27.

<sup>286</sup> *Ibid* 19.

<sup>287</sup> Bertrand G. Ramcharan, 'Human Rights and Human Security', 1-2. [http://www.hegoa.ehu.es/dossierra/seguridad/Human\\_Rights\\_Human\\_Security.pdf](http://www.hegoa.ehu.es/dossierra/seguridad/Human_Rights_Human_Security.pdf), accessed 1 May 2015.

<sup>288</sup> Gerd Oberleitner, 'Human Security and Human Rights' (n 284) 20.

<sup>289</sup> *Ibid* 21.

<sup>290</sup> *Ibid* 20.

<sup>291</sup> *Ibid* 19.

that a HRBA has been presented as a 'useful framework for the promotion of human security'.<sup>292</sup>

Because of its relevance for human rights, the emergence of human security within the disarmament field seems to form a key element in any discussion on possibilities of mainstreaming human rights and disarmament. Human security has rightly been promoted as being able 'to clarify and strengthen a human rights perspective on disarmament'.<sup>293</sup> The ever-extending interest and focus on human security initiatives in the disarmament field make this the perfect time to affirm the relationship between human rights and disarmament and discuss the potential of human rights mainstreaming.

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<sup>292</sup> Ibid 21.

<sup>293</sup> Kevin Boyle and Sigmund Simonsen, 'Human Security, Human Rights and Disarmament' (2004) 3 Disarmament Forum 5, 11.

## **7 Human Rights Mainstreaming in the Field of Disarmament?**

Throughout this research, it has become clear that there is a formal link between human rights and disarmament. However, there are human rights aspects that are of particular relevance to disarmament, which go beyond the formal intersection. Arguably, due to the shifting paradigm of security, there is an increased interest within academic literature, NGO's and the UN to extent the linkage between human rights and disarmament. No efforts have been made within the UN to initiate human rights mainstreaming within disarmament. With this increased interest in human rights, it is time to analyse the potential of human rights mainstreaming for the disarmament field. What would be its added value and drawbacks and limitations? Moreover, how could an integration of human rights be dealt with? It is not the aim of this study to provide a full proposal on a methodology for human rights mainstreaming, because further research is necessary in order to make such a proposal. The chapter rather finishes with conclusions and recommendations on the potential and aspects of human rights mainstreaming that are relevant to the disarmament field.

### **7.1 Added Value of Human Rights Mainstreaming in the Disarmament Field**

Because a HRBA to disarmament does currently not exist, its added value can only be based on literature and UN documents reviewing a HRBA in other fields or articles by scholars suggesting a HRBA to disarmament. Therefore, this sub-section builds on the analyses throughout this research and additional literature on human rights mainstreaming within different UN fields. Only those arguments relevant for the disarmament field will be described.

There is one obvious rationale for mainstreaming human rights. As discussed, there is a mandate for mainstreaming human rights 'into the broad range of the Organisation's activities'.<sup>294</sup> Clearly, disarmament activities are part of the 'Organisation's activities' and therefore the call for mainstreaming human rights also applies to the disarmament field.

Although a HRBA to disarmament has rarely been explored, some authors have suggested human rights mainstreaming within the field of disarmament. Mubiala proposes a rights-based approach to nuclear disarmament and non-proliferation<sup>295</sup> and advocates for 'an adoption of an OHCHR policy' on human rights

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<sup>294</sup> United Nations, 'Renewing the United Nations: A Programme for Reform, Report by the Secretary-General' (n 1) para 79.

<sup>295</sup> Mutoy Mubiala, 'A Rights-Based Approach to Nuclear Disarmament and Non-Proliferation (ACUNS Summer Workshop, Vienna, 19-26 July 2013) available at <http://acuns.org/wp-content/uploads/2013/10/Mutoy-Mubiala.pdf> accessed 5 May 2015.

mainstreaming regarding nuclear disarmament and non-proliferation.<sup>296</sup>

Most of his arguments in favour of such a HRBA to disarmament are based on the current shift within the disarmament field that creates 'a *momentum*' for such an approach.<sup>297</sup> With the aforementioned organisation of conferences on the HINW, the consequences on human rights have been overlooked and these consequences are exactly the element, which would 'justify' a HRBA.<sup>298</sup> Such an approach would add to the debate by shifting from consequences on human beings to consequences on the rights of human beings.<sup>299</sup>

According to Mubiala, the current developments within the disarmament field show an increasing focus on participation through the organisation of conferences and the establishment of an open-ended working group on taking forward multilateral nuclear disarmament negotiations. However, the participation of non-state actors can still be improved. This might 'contribute to bring the nuclear powers to integrate shared interests to their games, including human rights in particular'.<sup>300</sup>

In addition to arguments currently used, such as development and peace and security, human rights law would provide a solid legal framework on which a collective duty can be based to prevent humankind from grave human rights violations.<sup>301</sup>

Therefore, Mubiala emphasises the potential contribution of a HRBA, but calls even more for a shift towards human rights mainstreaming, because of the changing environment.

Schoiswohl has suggested a HRBA to disarmament, more specifically within the field of victim-assistance.<sup>302</sup> After establishing the common traits of human rights and disarmament<sup>303</sup>, he gives an analysis of both the contribution and limitation of a HRBA to disarmament. The latter will be discussed in the next sub-section, for now his view on the added value is worth mentioning.

IHRL provides States with both a 'benchmark for the long term consequences of weapons'<sup>304</sup> and a tool to reaffirm the duties States have in investing time in disarmament efforts. He gives the example of mines on State ground, which have the potential to cause harm.<sup>305</sup> Moreover, IHRL helps to reinforce a collective duty to invest and provide help in disarmament efforts.<sup>306</sup>

Schoiswohl states specific reasons for the value of a HRBA to victim assistance. In some disarmament treaties, explicit

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<sup>296</sup> Ibid 8.

<sup>297</sup> Ibid 2.

<sup>298</sup> Ibid 4.

<sup>299</sup> Ibid 6.

<sup>300</sup> Ibid.

<sup>301</sup> Ibid 7.

<sup>302</sup> Schoiswohl (n 113).

<sup>303</sup> His view on common traits is incorporated in the analysis of ch 4.2.

<sup>304</sup> Ibid 119

<sup>305</sup> Ibid.

<sup>306</sup> Ibid.

reference has been made to human rights<sup>307</sup>, but victim assistance is still seen in terms of humanity. IHLR provides a normative framework for understanding victim assistance.<sup>308</sup> In addition, a HRBA is a tool for the process of victim assistance.<sup>309</sup> For example, based on the cross-cutting principle of non-discrimination victims of different weapons systems should be treated the same, irrespective of the specific provisions in the disarmament treaty.

Both authors suggest a HRBA for specific areas within the disarmament field. However, arguments in favour of such an approach apply to the whole disarmament field. The OHCHR has set out different rationales for a HRBAD: the intrinsic rationale and the instrumental rationale.<sup>310</sup> The intrinsic rationale refers to the argument that a HRBA is 'the right thing to do', whereas the instrumental rationale focusses on the added value on the outcomes.<sup>311</sup> Both arguments are also relevant for the disarmament field.

The potential human rights consequences pointed out by Mubiala and Schoiswohl and described in chapter 4 of this study make a strong case for applying a HRBA approach to disarmament from a moral point of view. Introducing a HRBA might for example help to delegitimise the use of nuclear weapons. Ritchie has written an essay on this subject based on David Beetham's theory on the legitimation of power.<sup>312</sup> Delegitimising nuclear weapons can be achieved through three processes. First, 'based on withdrawal of popular consent'. Secondly, by showing that 'nuclear practices and power relations' as they exist today are no longer in line with the beliefs of social society. Lastly, by changing the legal validity.<sup>313</sup> He points out that this changing opinion on nuclear weapons is for example already visible in global surveys and the support for UNGA resolutions condemning nuclear weapons.<sup>314</sup> Because of the shift towards the HINW and focus on human security, nuclear weapons become harder to justify.<sup>315</sup> Human rights would contribute to this process of shifting beliefs and consent of society. It has been argued that a change to human rights language is a first step for 'a true shift in vision'<sup>316</sup>. It is exactly this shift in vision, which might eventually result in deligitimising nuclear weapons.

A HRBA also has the potential to improve sustainable outcomes within the disarmament field (instrumental rationale) due to the following futures:

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<sup>307</sup> Convention on Cluster Munitions, see also ch 3.3.

<sup>308</sup> Schoiswohl (n 113) 131, 143.

<sup>309</sup> Ibid 153.

<sup>310</sup> OHCHR FAQ (n 7) 16.

<sup>311</sup> Ibid.

<sup>312</sup> Ritchie 'Legitimizing and Delegitimizing Nuclear Weapons' (n 91).

<sup>313</sup> Ibid 55.

<sup>314</sup> Ibid 60.

<sup>315</sup> Ibid 75.

<sup>316</sup> Peter Uvin. 'On High Moral Ground: The Incorporation of Human Rights by the Development Enterprise' (2002)17 The Fletcher Journal of Development Studies 1,2.

A HRBA provides a framework with specific attention on vulnerable groups.<sup>317</sup> Because some groups are particularly affected by weapons<sup>318</sup>, a HRBA might be beneficial for disarmament outcomes and their impact on vulnerable groups.

It has furthermore been underlined that a HRBA is able to take a holistic view, linking different levels of society such as families, communities, 'civil society, local and national authorities'.<sup>319</sup> As all these levels have different interests and are affected differently by arms, a HRBA might contribute to a better understanding and a multi-levelled approach to disarmament.

As asserted by both Mubiala and Schoiswohl, a HRBA gives a more solid legal foundation to disarmament initiatives. Human rights are recognised in international instruments and will therefore help to translate disarmament 'goals and standards into time-bound and achievable national results.'<sup>320</sup> This legal foundation can also be used to 'shift the language of the debate'.<sup>321</sup> For example, looking at the Vienna Conference on HINW all the consequences could be discussed in the light of IHRL.<sup>322</sup> Instead of talking about health consequences, the discussion can be framed as implications for the right to health thereby pushing the discussion towards legal obligations.<sup>323</sup>

Throughout this study, the importance of participation has been mentioned. This principle is applicable in both the disarmament and human rights field and increasing awareness of this principle can be found in disarmament processes. A HRBA will help to realise further participation throughout all disarmament processes by demanding a forum in which duty-bearers as well as rights-holders participate.<sup>324</sup> This can eventually lead to more sustainable outcomes of disarmament efforts.

The principle of non-discrimination and its value for disarmament processes has also been mentioned. The principle of non-discrimination does not only add value in the case of victim assistance, but can also be beneficial to disarmament programming. In the OHCHR FAQ, it is stipulated what this principle means for programming in the field of development.<sup>325</sup> Many of these aspects mentioned in the OHCHR FAQ can also be beneficial to the disarmament field. For example, prioritise attention to those suffering discrimination and disadvantage. This can be linked to the effect of weapons on vulnerable groups. Non-

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<sup>317</sup> OHCHR FAQ (n 7) 16.

<sup>318</sup> See ch 4.4

<sup>319</sup> Ibid, 17.

<sup>320</sup> Based on this argument made for HRBAD, Ibid; see also Ernst-Ulrich Petersmann, 'Time for a United Nations 'Global Compact' for Integrating Human Rights into the Law of Worldwide Organizations: Lessons from European Integration' (2002) 13 EJIL 625.

<sup>321</sup> Paul Gready, 'Rights Based Approaches to Development: What is the Added Value?' (2008) 18 Development in Practice 735, 736.

<sup>322</sup> Mubiala (n 295) 6.

<sup>323</sup> Gromilova underlined the benefit of a HRBA to climate change, because of its legal obligations in the following article: Marya Gromilova, 'Revisiting Planned Relocation as a Climate Change Adaptation Strategy: The Added Value of a Human Rights-Based Approach' (2014) 10 Utrecht Law Review 76, 88.

<sup>324</sup> OHCHR FAQ (n 7) 17.

<sup>325</sup> Ibid 24.

discrimination requires that project information is available in accessible formats and minority languages. Such a requirement can be applied in, for example, the case of nuclear testing projects. Information regarding nuclear tests affecting indigenous groups should be made available within their language.

Transparency and accountability are other cross-cutting principles that have a prominent place within human rights mainstreaming. A HRBA 'helps to formulate policy, legislation, regulations and budgets that clearly determine the particular human rights to be addressed' and demands a more transparent process in order to hold duty-bearers accountable if rights are violated.<sup>326</sup> Transparency is still an issue within the disarmament field, especially regarding conventional arms transfers.<sup>327</sup> The reporting duty established by the ATT might improve the transparency, but the time frame has been too short to evaluate the contribution of the ATT in this regard. A HRBA will give further incentive for more transparency within disarmament efforts and arms regulations, especially regarding the sums of money involved in these cases.

A more transparent process will contribute to accountability as well. IHRL provides a framework for citizens to hold States accountable. It has been claimed that a HRBA adds more value to accountability, through 'building the capacity of rights holders to claim rights and the capacity of duty bearers to meet their responsibilities'<sup>328</sup> and to change 'the nature of the ownership of human rights among NGO's'<sup>329</sup>. This means that NGO's have established mechanism to hold their agency accountable. These mechanisms are often not of a legal nature, but focus on social and political processes. The question with regard to the latter is to what extent such a movement can also take place within the disarmament field. Potentially, NGO's assisting weapon victims could follow these examples from the development field.

## **7.2 Drawbacks and Limitations of Human Rights Mainstreaming in the Disarmament Field**

Like the added value of human rights mainstreaming, the analysis of its drawbacks and limitations will be based on literature proposing a HRBA to disarmament or reviewing a HRBA in other UN fields.

A HRBA has received criticism for not making a real difference. For example, Uvin has described a HRBAD as 'rhetorical repackaging'<sup>330</sup> and 'draping oneself in the mantle of human rights to cover the fat belly of the development community'<sup>331</sup>. An

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<sup>326</sup> Ibid 17.

<sup>327</sup> Acheson (n 140) 11.

<sup>328</sup> Gready (n 321) 741.

<sup>329</sup> Ibid.

<sup>330</sup> Peter Uvin 'On High Moral Ground: The Incorporation of Human Rights by the Development Enterprise' (n 316) 5.

<sup>331</sup> Ibid 10.

argument that can be linked to the risk of legal formalism. Once this becomes the goal and not the means, no change will follow in practice.<sup>332</sup> In other words, just changing the language does not necessarily mean a change in practice. Some authors have stressed the lack of real achievements on the ground based on a HRBAD<sup>333</sup>, partly because human rights are vague and not culturally sensitive.<sup>334</sup> Furthermore, a HRBAD has been described as a top-down approach, neglecting the social, political and historical background<sup>335</sup> and not giving any operational guidance.<sup>336</sup>

Some authors have pointed out limitations of a HRBA regarding the accountability and transparency. It has been stressed that no legal instrument exists which establishes an obligation to transparency or the 'accountability of civil servants' in terms of good governance. This lack of a legal instrument results in different practices amongst States with regard to accountability.<sup>337</sup>

Accepting that accountability and transparency are part of human rights as a cross-cutting principle does not solve the limitations of achieving accountability specifically in the disarmament field. Because the responsibility of States for human rights violations is, in most cases, limited to its territory it will in many cases indeed be difficult to identify a duty-bearer. For example, an individual can become a victim of a weapon after or during an armed conflict. In such a situation, the State itself was probably under attack and not primarily responsible for a human rights violation by this weapon (leaving aside the issue of an obligation to protect). In this scenario, it will be very difficult to hold another State accountable, as they have only human rights obligations within their own territory.<sup>338</sup> Under exceptional circumstances, extra-territorial obligations are possible under human rights law, but this is a highly controversial issue.<sup>339</sup> Any extra-territorial obligations for weapon-related human rights violations requires a separate research.

In most circumstances, it will be difficult to hold the State accountable, which raises the question whether there is any obligations on the international community. Within the ICESCR, article 2(1) calls on State Parties to 'take steps, individually and through international assistance co-operation'. However, it is

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<sup>332</sup> Hisayo Katsui, 'Downside of the Human Rights-Based Approach to Disability in Development' (2008) Institute of Development Studies Helsinki University Working Paper 2/2008, 11.

<sup>333</sup> Dzodzi Tsikata, 'The Rights-Based Approach to Development: Potential for Change or More of the Same' (2009) 35 IDS Bulletin 130; Varun Gauri and Siri Gloppen, 'Human Rights Based Approaches to Development. Concepts, Evidence and Policy' (2012) The World Bank Development Research Group Policy Research Working Paper 5938, 11.

<sup>334</sup> Katsui (n 332) 10.

<sup>335</sup> Ibid.

<sup>336</sup> Peter Uvin, *Human Rights and Development* (Kumarian Press 2004) 30-31.

<sup>337</sup> Peter Uvin, 'On High Moral Ground: The Incorporation of Human Rights by the Development Enterprise' (n 316) 5.

<sup>338</sup> Schoiswohl (n 113) 144.

<sup>339</sup> The difficulties regarding accountability has been stressed by Gromilova while examining the possibilities for a HRBA to climate change: Gromilova (n 323) 90.

questionable to what extent this provision will contribute to accountability, as the provision has been described as 'vague and toothless'.<sup>340</sup>

The accountability of non-state actors is even more difficult, because IHRL is directed at States. A distinction can be made between for example *de facto* regimes and other non-state actors involved in some form of conflict on the one side and producers and exporters of weapons. With regard to the former Schoiswohl states that there is increasing attention to accountability of non-state actors for human rights violations within literature<sup>341</sup>, but this issue falls outside the scope of this research.

Producers and exporters cannot be held accountable based on current IHRL either<sup>342</sup>. Human rights obligations of these actors exceed the scope of this study. It is sufficient to note that there is an emerging discourse on human rights responsibilities of businesses. The most well known effort in this regard are the Ruggie principles. These principles were proposed by the Special Representative on business and human rights and endorsed by the UN.<sup>343</sup> If human rights will be mainstreamed within the disarmament field, developments on human rights obligations for corporations should be followed to address the role of manufacturers in the weapons business.

Another challenge for establishing accountability is the required causality.<sup>344</sup> Quite often, the effects of weapons become visible after a long period of time and it cannot be established that certain human rights violations are attributable to the use or testing of weapons.<sup>345</sup> For example nuclear testing. Consequences on health, the environment and food can become visible after a long time. The required causal relationship between the action of a State and its impact on its citizens is then difficult to establish.<sup>346</sup>

One last consideration that needs to be discussed when talking about disarmament is the political context. It is questionable whether some States will ever agree to human rights mainstreaming in this field. Especially regarding debates on nuclear weapons, there is still a division between the nuclear weapon and non-nuclear weapon States. The nuclear weapon States will probably not accept human rights arguments in a disarmament discussion.<sup>347</sup> There is also a risk that disarmament initiatives will become less effective, once human rights are integrated in this field. For example, some States advocate for

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<sup>340</sup> Schoiswohl (n 113) 151.

<sup>341</sup> Ibid 152.

<sup>342</sup> Ibid, 149.

<sup>343</sup> OHCHR, 'Guiding Principles on Business and Human Rights' (2011) UN Doc HR/PUB/11/04.

<sup>344</sup> Schoiswohl (n 113) 149.

<sup>345</sup> Gromilova identified this issue while examining the possibilities for a HRBA to climate change: Gromilova (n 323) 90.

<sup>346</sup> The causality between nuclear tests and human rights violations in Tahiti was for example not accepted by the HRC in the case *Vaihere Bordes and John Temeharo v France* (26 July 1995), Communication No 645/1995, UN Doc CCPR/C/57/D/645/1995

<sup>347</sup> See also in this regard the ICJ *Nuclear Weapons advisory opinion* (n 98).

disarmament initiatives, while they do not have an impressive human rights record. Their active role in the disarmament field will be endangered and they might not accept a HRBA to disarmament either.<sup>348</sup>

The criticism on and limitations of human rights mainstreaming raise the question whether human rights mainstreaming within the field of disarmament has actually got the potential to make a difference. Even if human rights mainstreaming will start with changing the debate to “human rights language” it can still be argued that big changes mostly start small. Within the HRBAD the changes also started on a more conceptual level. The criticism that a HRBAD does not provide any operational guidance and does not make a real change might even be outdated. Especially within the last three years practical tools have been developed to implement the HRBAD. Such practical tools contribute to more substantial changes.<sup>349</sup> When human rights are used to focus more on the humanitarian impact and human security issues of weapons it can potentially contribute to a shift in consent, which helps the explained process of delegitimising nuclear weapons and other weapons. This process takes time and a real difference might not be felt in practice immediately. However, if it eventually leads to change, is it not worth to integrate a human rights perspective in the field of disarmament? To put it in Rydell’s words:

Indeed, there are many new trends in organizing the world community that have the potential to change the way the game of disarmament is played, if not to determine its outcome. They relate to the rule of law, the evolution of international humanitarian law, demands to respect human rights, growing international opposition to claims that nuclear weapons are legal to use, and the democratic revolution.<sup>350</sup>

The identified limitations of accountability for arms cannot be disregarded. Nonetheless, accountability is more than judicial accountability. It can be sought through other means like diplomatic measures and naming and shaming. Even if the cross-cutting principle of accountability does not add that much value in the field of disarmament, other described benefits of the human rights mainstreaming will still make it worth to consider such an approach in the field of disarmament.

As discussed, gender mainstreaming is currently applied within the field of disarmament. This poses the question whether this makes human rights mainstreaming redundant. According the OHCHR, a HRBA and gender mainstreaming are ‘complementary and mutually reinforcing, and can be undertaken without conflict

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<sup>348</sup> Thanks to Susi Snyder from PAX for opening my eyes on this matter.

<sup>349</sup> See ch 5.2.1.

<sup>350</sup> Randy Rydell, ‘The United Nations and a Humanitarian Approach to Nuclear Disarmament’ (2011) 1 Nuclear Abolition Forum 25, 28.

or duplication<sup>351</sup>In chapter 4.4 other groups have also been identified as being vulnerable to the effects of arms. Gender mainstreaming will not be enough to protect all these groups and rights. The fact that gender mainstreaming is already established within the disarmament field makes it even easier to adopt a HRBA. Because both approaches have much in common, 'structures and processes set up to ensure gender mainstreaming' can be adapted to introduce a HRBA.<sup>352</sup>

### **7.3 Recommendations and Conclusions on Mainstreaming Human Rights within the field of Disarmament**

The first part of the study has focused on the connection between IHRL and disarmament, as well formally as conceptually. The second part dealt with the potential of applying human rights mainstreaming within the disarmament field.

It has been demonstrated that there is a formal connection between disarmament and IHRL, but the recognition of the link within the UN is a thin one. It is clear that the link between disarmament and IHRL goes beyond this formal intersection. The concept of human rights mainstreaming has been introduced as a possible tool for reflecting the link in disarmament negotiations, policies and programmes.

The concept of human rights mainstreaming has been ignored within the disarmament field. The shifting paradigm towards human security opens new windows for introducing this concept in this field.

Although there are some drawbacks and limitations, human rights mainstreaming is a valuable tool to integrate human rights concerns within the disarmament field. Human rights mainstreaming has not been clearly defined by the SG reports and fields within the UN have given different interpretations to the call for mainstreaming human rights within their activities. This means that there is no "one size fits all" approach to start mainstreaming within a new field, such as the disarmament field. Due to all the complexities involved, a complete proposal on a methodology for human rights mainstreaming into disarmament activities requires further research. Based on the analyses within this research and suggestions made by some scholars, the following recommendations can be made for integrating human rights within the disarmament field:

- Although there is a formally recognised link between IHRL and disarmament, the relationship between both fields goes much further than this formal acknowledgement.<sup>353</sup> A good way of starting a HRBA is to further explore and acknowledge the

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<sup>351</sup> OHCHR FAQ (n 7) 18.

<sup>352</sup> Ibid.

<sup>353</sup> Chs 3 and 4.

relationship between IHRL and disarmament in order to start a dialogue between the fields concerned. For example, Rydell has suggested to ask a recommendation on the status of nuclear weapons under IHRL by the International Law Commission.<sup>354</sup> With the aim of mainstreaming human rights within the disarmament field, this study could also encompass a broader recommendation on the relationship between arms and human rights. Rydell has also suggested a joint Resolution between the first UNGA committee, responsible for security and disarmament issues, and the third UNGA committee, responsible for human rights issues, on disarmament and human rights.<sup>355</sup> This would definitely be an important signal to open the dialogue between both fields.

- After the first step of further exploring and mainly formally acknowledging the link between human rights and disarmament, the examples of other fields could be followed by adopting a policy document or a plan of action on human rights mainstreaming. As UNODA is the overseeing body for disarmament and they have experience with gender mainstreaming, they would be best placed to develop such a document. This plan of action could be accompanied by a formal declaration on the co-operation between both fields. Further exploring the linkage between the two fields can be part of an action plan.<sup>356</sup>
- This co-operation can start within existing forums and frameworks. For example, it has been suggested to use the country reviews of the UN treaty committees or the Universal Periodical Review of the Human Rights Council as a forum to discuss military spending and arms stockpiling in relation to human rights. This way military expenditure can be compared with expenditures on development and economic, social and cultural rights.<sup>357</sup> There are increasing forums to discuss the human security dimension of arms, such as the HINW conferences. The first focus for human rights mainstreaming could be on these forums. Instead of only addressing the humanitarian consequences, specific attention could be paid to human rights consequences<sup>358</sup> and consequences on vulnerable groups in the case of exposure to nuclear weapons.
- The tools introduced in the disarmament field for gender mainstreaming, can be used as a starting point for the integration of human rights. There is for example a focus on participation in the gender mainstreaming action plan.<sup>359</sup> Those initiatives can eventually be expanded in order to ensure participations from all levels of civil society with specific attention to vulnerable groups.

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<sup>354</sup> Rydell (n 350) 29.

<sup>355</sup> Ibid 33.

<sup>356</sup> This is for example the case in UNODA's action plan on gender mainstreaming: UNODA 'Gender Mainstreaming Action Plan. Update 2014' (n 111) 4.

<sup>357</sup> Acheson (n 140) 10-11; de Zayas (n 78) para 53.

<sup>358</sup> Mubiala (n 295) 4.

<sup>359</sup> UNODA 'Gender Mainstreaming Action Plan. Update 2014' (n 111).

- All changes should start from within. UNODA accepted such an approach in gender mainstreaming, by affirming the importance of strengthening its 'internal capacity to ensure the ongoing incorporation'.<sup>360</sup> Looking at the examples of human rights mainstreaming it is clear that a change can only be achieved by starting the mainstreaming within the bodies concerned. In other words, the bodies working on disarmament issues should work on their internal capacity for mainstreaming human rights. This goal should definitely be included in any action plan on human rights mainstreaming.
- Human rights mainstreaming does not only require an outcome focused on human rights, but human rights standards and its principles should be implemented throughout all disarmament negotiations, policies, programmes and processes. Inspiration can be drawn from the words of Acheson: 'all disarmament and non-proliferation negotiations and processes should include a human security aim, drawn from principles in human rights treaties'<sup>361</sup>. An example is the relocation of indigenous communities in the case of nuclear testing. Based on Gromilova's proposition of a HRBA to relocation resulting from climate change, it can be said that the whole process should be influenced by human rights concerns.<sup>362</sup> From the information stage to the actual implementation, affected people should be informed and involved in discussions and planning. An impact analysis should be made, including the accessibility to human rights at the place of relocation and the availability of compensation in the case of cultural and societal loss.<sup>363</sup> This is just one example, but it shows how human rights mainstreaming can influence the entire disarmament and non-proliferation process.
- The action plan can establish the intention to develop practical tools on operationalising a HRBA to disarmament. The development of such tools requires time and practice and this will therefore probably be a later step within the process. A planned evaluation within the action plan would contribute to this commitment. A first tool that might be useful is a guide with an overview of human rights bodies and documents of the UN relevant with aspects relevant for disarmament, as has been done by the UNDP for development.<sup>364</sup> Practical tools on questions that should be answered from a human rights perspective throughout the analysis phase of disarmament policies and programmes are also important to ensure a HRBA throughout the whole process. Inspiration can be drawn from the UNDP checklist and problem analysis tool.<sup>365</sup> Indicators are another practical tool for analysing and monitoring human

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<sup>360</sup> Ibid 4.

<sup>361</sup> Acheson (n 140) 11.

<sup>362</sup> Gromilova (n 323) 93.

<sup>363</sup> Ibid.

<sup>364</sup> UNDP 'Mainstreaming Human Rights in Development Policies and Programming: UNDP Experiences' (n 194).

<sup>365</sup> Ibid.

rights implications of disarmament. The indicators guide published by the OHCHR might help in developing indicators for the disarmament field. Frey's report<sup>366</sup> on human rights consequences of SALW provide some useful ideas on indicators as well.

As discussed, these recommendations are a starting point. Further research is needed to create a complete methodology for mainstreaming human rights in the disarmament field.

Finally, one remark should be made regarding the explained limitations of accountability in the field of disarmament. For people affected by arms it would be a major achievement if one day judicial accountability could be realised. Until that day, human rights mainstreaming can contribute to increase political pressure and calling States' attention to the consequences of arms for the realisation of human rights.

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<sup>366</sup> Frey, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, 'Prevention of human rights violations committed with small arms and light weapons' (n 74).

# Supplement A

## Human Rights Overview

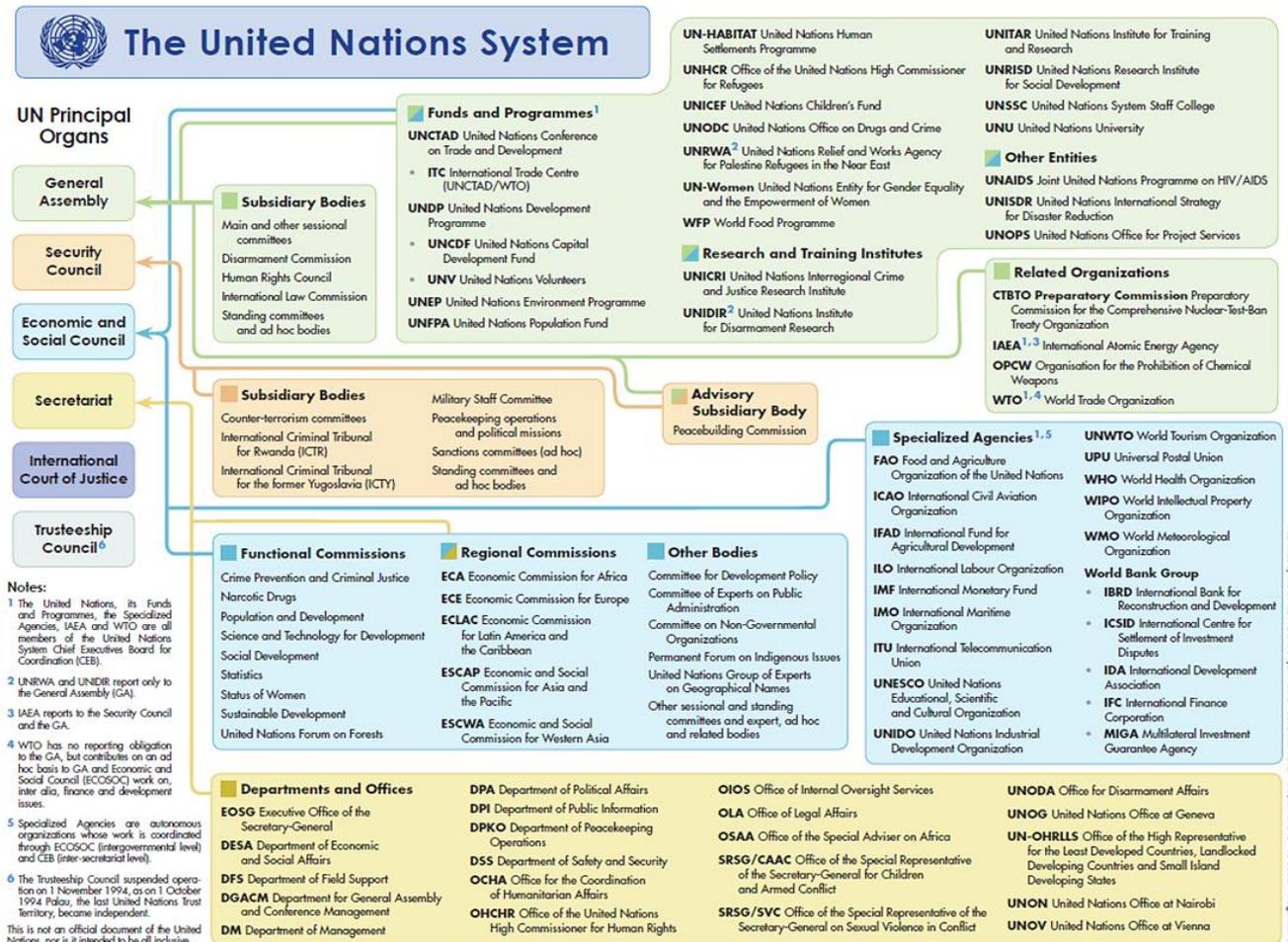
<p><b>1. Civil and Political Rights</b>          Assembly          Association          Asylum          Child          Dignity, Honour, Reputation          Disabled          Discrimination          Life          Name          Nationality          Political and Public Service          Property          Religion          Speech          Territory, Movement in Women</p>	<p><b>2. Legal Rights</b>          Appeal          Arrest          Bail          Compensation          Contract Inability          Courts/Tribunals          Death Penalty          Detention          Double Jeopardy          Due Process          Equal Protection of the Law          Ex Post Facto Law          Habeas Corpus          Innocence Presumption          Judgement and Sentencing          Juvenile Due Process          Legal Assistance          Person Before the Law          Privacy          Punishment          Security of Person          Self-Incrimination          Torture          Trial          Trial Procedure</p>
<p><b>3. Economic, Social and Cultural Rights</b>          Author          Culture          Education          Family          Food          Health          Science          Social Security          Work, Right to          Work. Conditions          Work, Trade Unions          Work, Trade Union Rights</p>	<p><b>4. Collective Rights</b>          Aliens          Apartheid          Genocide          Migrant Workers          Minorities          Refugees          Peoples, Self-Determination          Peoples, Natural Resources          Slavery          Stateless</p>

\*John S. Gibson, *Dictionary of International Human Rights Law* (Scarecrow Press 1996) 37-38. Cited by Green (n 31) 1069.

Legal rights are part of civil and political rights. The author has included disabled rights. The overview includes rights from the UDHR and International Legal Treaties and does therefore not include all human rights that are not legally binding, such as the right to development and the right to peace.

# Supplement B

## Organisational Chart UN System



\* UN System Organisational Chart. Available at:

<[http://www.un.org/en/aboutun/structure/org\\_chart.shtml](http://www.un.org/en/aboutun/structure/org_chart.shtml)> accessed 26 May 2015.

# Supplement C

## **The Human Rights Based Approach to Development Cooperation. Towards a Common Understanding Among UN Agencies**

(Second Inter-Agency Workshop, Stamford, United States of America, May 2003)

### **Introduction**

The United Nations is founded on the principles of peace, justice, freedom and human rights. The Universal Declaration of Human Rights recognizes human rights as the foundation of freedom, justice and peace. The unanimously adopted Vienna Declaration and Programme of Action states that democracy, development, and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing.

In the UN Programme for Reform that was launched in 1997, the Secretary-General called on all entities of the UN system to mainstream human rights into their various activities and programmes within the framework of their respective mandates.

Since then a number of UN agencies have adopted a human rights-based approach to their development cooperation and have gained experiences in its operationalization. But each agency has tended to have its own interpretation of approach and how it should be operationalized. However, UN interagency collaboration at global and regional levels, and especially at the country level in relation to the CCA and UNDAF processes, requires a common understanding of this approach and its implications for development programming. What follows is an attempt to arrive at such an understanding on the basis of those aspects of the human rights-based approach that are common to the policy and practice of the UN bodies that participated in the Interagency Workshop on a Human Rights based Approach in the context of UN reform 3-5 May, 2003.

This Statement of Common Understanding specifically refers to a human rights based approach to the development cooperation and development programming by UN agencies.

### **Common Understanding**

1. All programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.

2. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.
3. Development cooperation contributes to the development of the capacities of 'duty-bearers' to meet their obligations and/or of 'rights-holders' to claim their rights.

1. All programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.

A set of programme activities that only incidentally contributes to the realization of human rights does not necessarily constitute a human rights-based approach to programming. In a human rights-based approach to programming and development cooperation, the aim of all activities is to contribute directly to the realization of one or several human rights.

2. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.

Human Rights principles guide programming in all sectors, such as: health, education, governance, nutrition, water and sanitation, HIV/AIDS, employment and labour relations and social and economic security. This includes all development cooperation directed towards the achievement of the Millennium Development Goals and the Millennium Declaration. Consequently, human rights standards and principles guide both the Common Country Assessment and the UN Development Assistance Framework.

Human rights principles guide all programming in all phases of the programming process, including assessment and analysis, programme planning and design (including setting of goals, objectives and strategies); implementation, monitoring and evaluation.

Among these human rights principles are: universality and inalienability; indivisibility; interdependence and inter-relatedness; non-discrimination and equality; participation and inclusion; accountability and the rule of law. These principles are explained below.

- *Universality and inalienability:* Human rights are universal and inalienable. All people everywhere in the world are entitled to them. The human person in whom they inhere cannot voluntarily give them up. Nor can others take them

away from him or her. As stated in Article 1 of the UDHR, "All human beings are born free and equal in dignity and rights".

- *Indivisibility*: Human rights are indivisible. Whether of a civil, cultural, economic, political or social nature, they are all inherent to the dignity of every human person. Consequently, they all have equal status as rights, and cannot be ranked, a priori, in a hierarchical order.
- *Inter-dependence and Inter-relatedness*. The realization of one right often depends, wholly or in part, upon the realization of others. For instance, realization of the right to health may depend, in certain circumstances, on realization of the right to education or of the right to information.
- *Equality and Non-discrimination*: All individuals are equal as human beings and by virtue of the inherent dignity of each human person. All human beings are entitled to their human rights without discrimination of any kind, such as race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status as explained by the human rights treaty bodies.
- *Participation and Inclusion*: Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realized.
- *Accountability and Rule of Law*: States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.

3. Programmes of development cooperation contribute to the development of the capacities of duty-bearers to meet their obligations and of 'rights-holders' to claim their rights.

In a HRBA human rights determine the relationship between individuals and groups with valid claims (rights-holders) and State and non-state actors with correlative obligations (duty-bearers).

It identifies *rights-holders* (and their entitlements) and corresponding *duty-bearers* (and their obligations) and works towards strengthening the capacities of rights-holders to make their claims, and of duty-bearers to meet their obligations.

## **Implications of A Human Rights Based Approach to Development Programming of UN Agencies**

*Experience has shown that the use of a human rights-based approach requires the use of good programming practices. However, the application of "good programming practices" does not by itself constitute a human rights-based approach, and requires additional elements.*

*The following elements are necessary, specific, and unique to a human rights-based approach:*

- a) Assessment and analysis in order to identify the human rights claims of rights-holders and the corresponding human rights obligations of duty-bearers as well as the immediate, underlying, and structural causes of the non-realization of rights.*
- b) Programmes assess the capacity of rights-holders to claim their rights, and of dutybearers to fulfill their obligations. They then develop strategies to build these capacities.*
- c) Programmes monitor and evaluate both outcomes and processes guided by human rights standards and principles.*
- d) Programming is informed by the recommendations of international human rights bodies and mechanisms.*

*Other elements of good programming practices that are also essential under a HRBA, include:*

- 1. People are recognized as key actors in their own development, rather than passive recipients of commodities and services.*
- 2. Participation is both a means and a goal.*
- 3. Strategies are empowering, not disempowering.*
- 4. Both outcomes and processes are monitored and evaluated.*
- 5. Analysis includes all stakeholders.*
- 6. Programmes focus on marginalized, disadvantaged, and excluded groups.*
- 7. The development process is locally owned.*
- 8. Programmes aim to reduce disparity.*
- 9. Both top-down and bottom-up approaches are used in synergy.*
- 10. Situation analysis is used to identify immediate, underlying, and basic causes of development problems.*
- 11. Measurable goals and targets are important in programming.*
- 12. Strategic partnerships are developed and sustained. Programmes support accountability to all stakeholders.*
- 13. Programmes support accountability to all stakeholders.*

## Supplement D

### **66/290. Follow-up to paragraph 143 on human security of the 2005 World Summit Outcome**

*The General Assembly,*

*Reaffirming its commitment* to the purposes and principles of the Charter of the United Nations, and international law,

*Recalling* the 2005 World Summit Outcome,<sup>367</sup> especially paragraph 143 thereof, and its resolution 64/291 of 16 July 2010,

*Recognizing* that development, human rights and peace and security, which are the three pillars of the United Nations, are interlinked and mutually reinforcing,

1. *Takes note with appreciation* of the report of the Secretary-General on follow-up to General Assembly resolution 64/291 on human security;<sup>368</sup>

2. *Takes note* of the formal debate on human security organized by the President of the General Assembly, held on 4 June 2012;

3. *Agrees* that human security is an approach to assist Member States in identifying and addressing widespread and cross-cutting challenges to the survival, livelihood and dignity of their people. Based on this, a common understanding on the notion of human security includes the following:

(a) The right of people to live in freedom and dignity, free from poverty and despair. All individuals, in particular vulnerable people, are entitled to freedom from fear and freedom from want, with an equal opportunity to enjoy all their rights and fully develop their human potential;

(b) Human security calls for people-centred, comprehensive, context-specific and prevention-oriented responses that strengthen the protection and empowerment of all people and all communities;

(c) Human security recognizes the interlinkages between peace, development and human rights, and equally considers civil, political, economic, social and cultural rights;

(d) The notion of human security is distinct from the responsibility to protect and its implementation;

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<sup>367</sup> See resolution 60/1.

<sup>368</sup> A/66/763.

(e) Human security does not entail the threat or the use of force or coercive measures. Human security does not replace State security;

(f) Human security is based on national ownership. Since the political, economic, social and cultural conditions for human security vary significantly across and within countries, and at different points in time, human security strengthens national solutions which are compatible with local realities;

(g) Governments retain the primary role and responsibility for ensuring the survival, livelihood and dignity of their citizens. The role of the international community is to complement and provide the necessary support to Governments, upon their request, so as to strengthen their capacity to respond to current and emerging threats. Human security requires greater collaboration and partnership among Governments, international and regional organizations and civil society;

(h) Human security must be implemented with full respect for the purposes and principles enshrined in the Charter of the United Nations, including full respect for the sovereignty of States, territorial integrity and non-interference in matters that are essentially within the domestic jurisdiction of States. Human security does not entail additional legal obligations on the part of States;

4. *Recognizes* that while development, peace and security and human rights are the pillars of the United Nations and are interlinked and mutually reinforcing, achieving development is a central goal in itself and the advancement of human security should contribute to realizing sustainable development as well as the internationally agreed development goals, including the Millennium Development Goals;

5. *Acknowledges* the contributions made so far by the United Nations Trust Fund for Human Security, and invites Member States to consider voluntary contributions to the Trust Fund;

6. *Affirms* that projects funded by the Trust Fund should receive the consent of the recipient State and be in line with national strategies and priorities in order to ensure national ownership;

7. *Decides* to continue its discussion on human security in accordance with the provisions of the present resolution;

8. *Requests* the Secretary-General to submit to the General Assembly at its sixty-eighth session a report on the implementation of the present resolution, seeking the views of Member States in that regard for inclusion in the report, and on the lessons learned on the human security experiences at the international, regional and national levels.

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