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The Need for Policy Coherence  
and New Partnerships



**The Human Rights Imperative for  
Policy Coherence**

**Deficits and Transformation**

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## Abstract

The purpose of the article is to identify the contribution of human rights based approaches to development as a mechanism through which different policy objectives can be prioritised in analysing policy incoherence in the context of global governance. The human-centred concept of security, capable of reflecting the process of human development, visualises a probable shift towards a 'system of human security' in international law.

There is an established certainty on the 'mutual reinforcing nature' of both disciplines, implications linked to such reinforcement yet seem unexplored. Both convergence and dichotomy between the two distinct concepts are worth being looked at more closely in order to single out features of their interrelationship and detecting the role of human development as a model for human rights.

In doing so, two main obstacles begin to materialise, ie the limited scope of normativity and the on-going localisation and individualisation processes in reaction to globalisation. Human security, as used in this paper, can arguably be introduced as missing link to redefine the relationship - simultaneously strengthening the indivisibility and interdisciplinarity of the human rights regime - and adjust international law to new realities encompassing progressive erosion of states, the manifest role of civil society in globalised contexts or handling diversities and threats. The thesis of a structured interface between human development, human rights and human security reflects what the dictum on human rights and development already signals: Mutual reinforcement necessitates mutual transformation.

Starting from the perception of constructive normative 'Ummantelung' of the human being through human rights, it becomes apparent that a breakdown into respective single human rights duties of the subject is a valuable method of mapping development processes ('method of constructive mosaic'). Unlike human rights based approaches to poverty reduction indicate so far, this assumption reveals systematic factual and positivistic dilemmas questioning the comprehensiveness and holistic potential of human rights pointing to limited causality and lack of result-orientation, failed interdisciplinary outreach and inherent normative fragmentation. A development-driven human-centred concept of security through its focus on individual capabilities of the human being outweighs these deficits.

The paradigm's impact on human rights can be summarised in:

- individualising (cross-applicability/verticalisation),
- horizontalising (extended values approach/hierarchisation) and thereby,
- constitutionalising (establishing global governance).

Thus, human security proves key for locating mechanisms that impose a universal values model for decision making in global governance.

Making use of the 'broadening of the human rights basis' one has to acknowledge an imperative for policy coherence emanating from individualised, horizontalised constitutional human rights as part of the *ius cogens* corpus in international law with emerging effects on sovereignty, self-determination, the use-of-force and non-intervention. For the sake of predictable prioritisation, dynamics of threats – as original and inexhaustible sources of human security - are positively perceived as capability limits: The realisation of societal justice through universal cross-application of human rights and the process-oriented guiding human rights principles – self-determination, participation and inclusion, equality, non-discrimination and responsibility/accountability as well as the rule of law - are instrumental to achieve a coherent approach to human development. The findings will fertilize a new universalism debate.

It follows that human security serves more than as an organisational 'Leitmotiv' in international relations removing barriers between human rights policy, development cooperation and traditional security policies. Its potential also goes beyond a limited interpretation mode that offers arbitrary points of reference for good governance. The concept of human security works as a normative doctrine for policy coherence relying on the capabilities analysis of development and the transformation of human rights. Thereby, a normative perception of human security becomes operable leading to a more far-reaching paradigm shift in international law ('Normative Theory of Human Development').

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## Introduction

Since 1993<sup>1</sup> the concept of human rights as a model for human development has known an ever growing acceptance throughout international lawyers, human rights practitioners and development experts. A persistent search for integrating human rights into poverty reduction strategies during the last decade led to a vivid manifestation of human rights-based approaches (HRBAs) in most donor agencies<sup>2</sup> with the preliminary effect of splitting the community into two worlds, those who lend their standards from human rights and those who do not, for various reasons<sup>3</sup>. However, despite compelling results of a 2006 study commissioned by the OECD/DAC<sup>4</sup> on emerging practice in the field the overall perception of a stand still in HRBA conceptualisation dominates the *status quo*<sup>5</sup>: There is an established certainty on the 'mutual reinforcing nature' of human rights and human development<sup>6</sup>, implications linked to such reinforcement yet seem unexplored.

The reasons for this lasting unease<sup>7</sup> call for systematic review: Both convergence and dichotomy between the two distinct concepts of human rights and human development are worth being looked at more closely in order to single out features of their interrelationship, carving the converse picture: the role of human development as a model for human rights. In doing so, two main obstacles begin to materialise, ie limited scope of normativity<sup>8</sup> and

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<sup>1</sup> Vienna Declaration and Programme of Action, A/CONF.157/23 (1993); Nowak Manfred, Introduction to the International Human Rights Regime, The Raoul Wallenberg Institute for Human Rights, Library Vol 14; Leiden/Boston (2003)

<sup>2</sup> OECD/DAC Network on Governance, Integrating Human Rights into Development – Rationale and Elements for an Action-Oriented DAC Policy Paper; DCD/DAC/GOVNET(2006)4 and DCD/DAC(2007)15 as of 15 February 2007

<sup>3</sup> Windmeisser Anette, Der Menschenrechtsansatz in der Entwicklungszusammenarbeit, Studies of the Ludwig Boltzmann Institute Vol 11 Vienna (2002) 161, 169

<sup>4</sup> Piron Laure-Hélène/O'Neil Tammie, Piron/O'Neill, Integrating Human Rights into Development: Donor approaches, experiences and challenges, OECD/DAC Paris (2006)

<sup>5</sup> Uvin Peter, On High Moral Ground: The Incorporation of Human Rights by the Development Enterprise, in: The Fletcher Journal of Development Studies (2002) Vol XVII, <http://fletcher.tufts.edu/praxis/html/pastxvii.htm>

<sup>6</sup> Alston Philip/Robinson Mary (eds), Human Rights and Development: Towards Mutual Reinforcement, Oxford University Press Oxford (2005)

<sup>7</sup> Sano Hans-Otto, Development and Human Rights: The Necessary, but Partial Integration of Human Rights and Development, in: Human Rights Quarterly 22 (2000) 734-752

<sup>8</sup> Werther-Pietsch Ursula, EU-Strategie für Entwicklung auf Grundlage der Menschenrechte und Demokratisierung, ÖFSE Vienna (2001) 123

widespread on-going localisation processes<sup>9</sup>. This is all the more relevant given the unsolved globalisation pressure which general international law has been unable to cope with until now. Human security, with its special emphasis on human beings<sup>10,11</sup>, can arguably be introduced as the missing link for adjustment of norms to new realities encompassing the progressive erosion of states, the manifest role of civil society in decision-making or handling of diversities and threats<sup>12</sup>.

These observations produce a concrete impact on the actual on policy coherence debate in multilateral fora and academia, it adds a normative element. The thesis of a structured interface between human development, human rights and human security takes further what the above cited dictum on human rights and development already signals: Mutual reinforcement necessitates mutual transformation.

The purpose of this paper is to better understand the enabling role of a development-driven human security concept for redesigning policy coherence. The concept proves helpful in setting a frame for distinctly modified rules: 'Globalising human rights' through human security results in a new universalism debate rethinking both poverty reduction and elements of the international order from the angle of the poorest<sup>13</sup>.

## **1 The human development-human rights nexus**

The 2007 OECD/DAC Action-Oriented Policy Paper on Human Rights and Development is the most recent document on the state of play regarding the degree of integration of human rights into development as 'an internationally

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<sup>9</sup> Nowak Manfred, The Interdependence of Development, Human Rights and Human Security, in: Margot Salomon, Wouter Vandenhoe and Arne Tostensen (eds), *Casting the Net Wider: Human Rights, Development and New Duty-Bearers*, Intersentia/Antwerpen, forthcoming

<sup>10</sup> Sen Amartya, *Development as Freedom*, Oxford, Oxford University Press 1999; Osmani Siddiqur Rahman, Poverty and human rights: Building on the capability approach, in: *Journal of Human Development* 2005 6(2), 205-220; Rioux Jean-Francois (ed), *La sécurité humaine – une nouvelle conception des relations internationales*, Paris (2001) 353 - conclusion

<sup>11</sup> Representing others Werthes Sascha, *Human Security – Ein Konzept für die Zukunft?*, in: Ulbert Cornelia/Werthes Sascha (eds), *Human Security – Der Stein der Weisen für globale und regionale Verantwortung?* Nomos, Baden-Baden (2007)

<sup>12</sup> A more secure world: our shared responsibility, Report of the High-level Panel on Threats, Challenges and Change, A/59/565 of 2 December 2004, in: *Die Friedens-Warte*, 80 (2005) 1-2, 152-159

<sup>13</sup> Pogge Thomas, Recognized and violated by International Law: Human Rights of the Global Poor, in: *Leiden Journal of International Law*, Vol 18 No 4 (2005) 717-745

shared and universally accepted, consensual normative framework reflecting global moral and political values'<sup>14</sup>. The paper's abundant dedication to HRBAs makes explicit the specific merits of the human rights perspective for poverty reduction<sup>15</sup>.

It belongs to common understanding that there are striking structural similarities between human rights and development<sup>16</sup> to be shortly exemplified at this stage: Human rights 'translations' into codes of development theory introduce a clear concept for poverty reduction strategies, they concretise hierarchy for action. ESC and CP rights together form the basis of the approach preventing possible trade-offs between different poverty reduction goals<sup>17</sup>. With a special emphasis on participatory processes and political dialogue HRBAs are successful even in the highly sensitive and socially fragmented environment of states in fragility or post conflict rehabilitation<sup>18</sup>. Human rights awareness and training unfold important effects especially on working in and on conflict, in post conflict situations and building up sustainable and peaceful societies<sup>19</sup>. Finally, HRBAs pursue specific needs analyses regarding vulnerable groups. Thus, human rights provide an indispensable constructiveness to human development<sup>20</sup>.

Accordingly, guiding documents in both policy fields such as the 2005 Paris Declaration on Aid Effectiveness and the 2006 OHCHR Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies

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<sup>14</sup> AOPP *supra* 2, para 1

<sup>15</sup> OHCHR Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies, Geneva (2006), <http://www.ohchr.org/english/issues/poverty/guidelines.htm>, para 15-28 (legitimacy, empowerment, ownership, governance, monitoring)

<sup>16</sup> Eide Asbjörn, Making Human Rights Universal in the Age of Economic Globalisation, in: v Schorlemer Sabine, Praxishandbuch der UNO, Heidelberg 2003, 241-262; Pippan Christian, Die Förderung der Menschenrechte und der Demokratie als Aufgabe der Entwicklungszusammenarbeit der Europäischen Union, Europäische Hochschulschriften, Series II Law Vol 3460, Frankfurt/Main 2002, 131-175; Werther-Pietsch Ursula, AKP-EU-Beziehungen, in: Fischer Peter/Köck Heribert Franz/Karollus Margit Maria (eds), Europarecht, 4<sup>th</sup> edition, Vienna 2002, 994-1002

<sup>17</sup> Vienna Declaration and Programme of Action, A/CONF.157/23 (1993) para 5

<sup>18</sup> Eide Kai, The need to strengthen respect for the rule of law after conflict, International Security and the Rule of Law, International Conference, Post-conflict peace-building and the Rule of Law, Vienna Diplomatic Academy, 31 January 2006

<sup>19</sup> Bloomfield David/Barnes Teresa/Huyse Luc (eds), Reconciliation After Violent Conflict: A Handbook, IDEA, Stockholm 2003; Oeter Stefan (Universität Hamburg), *Post-Conflict Peacebuilding – Völkerrechtliche Aspekte der Friedenskonsolidierung in Nachkriegsgesellschaften*, in: Die Friedens-Warte 80 (2005) 1-2, 41-59

<sup>20</sup> See for example 2003 HSN Strategy for Children affected by Armed Conflict, <http://www.bmeia.gv.at>

highlight comparable sets of principles for intervening in the development context<sup>21,22</sup>. Both approaches can be characterised by an individualised methodology. This high degree of comparability visualises a common profile.

In parallel, the needs of individuals gained *momentum* in international law theory<sup>23</sup> through the multi-faceted but versatile 1989 'pax humana' producing positive and negative cross-border phenomena as well as the final breakthrough of human rights instruments to be guaranteed by the international community<sup>24</sup>. This fact partly blurred well established rules of international law<sup>25</sup>. It followed that the underlying question of ethics and values had progressively to be answered in a new fashion<sup>26</sup>.

Therefore, a process of normativisation of development cooperation<sup>27</sup> fostering the integration of human rights into development largely contributed to the

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<sup>21</sup> The notion of self-determination, participation and inclusion, equality and non-discrimination, responsibility and the rule of law (OHCHR, Human Rights and Poverty Reduction, A Conceptual Framework, New York/Geneva 2004, <http://www.ohchr.org/english/issues/poverty/docs/poverty/E.pdf>, 6, 13-32) versus ownership, alignment, harmonisation, managing for results and mutual accountability (2006 Paris Declaration on Aid Effectiveness, <http://www.oecd.org/dataoecd/11/41/34428351.pdf>, para 3 and 14-50)

<sup>22</sup> Overseas Development Institute, Aid effectiveness and human rights: strengthening the implementation of the Paris Declaration, London (October 2006); ECPDM Maastricht/ICEI Madrid, EU mechanisms that promote policy coherence for development, Scoping study, Maastricht (July 2005); The Netherlands Ministry of Foreign Affairs, Policy Unit DGIS Coherence Unit, Kluglist Jan (ed), Policy coherence for development, June 2006, <http://www.minbuza.nl>; Werther-Pietsch Ursula, Menschenrechtsansatz und Politikkohärenz, Austrian Institute for International Politics, Paper no 56 (2007)

<sup>23</sup> UN HRC, First session, Geneva, 19-30 June 2006, High-Level Segment, Statement by H E Dr Ursula Plassnik, Federal Minister for Foreign Affairs of Austria on behalf of the European Union, <http://www.bmeia.gv.at>

<sup>24</sup> Nyama-Musembi Celestine/Cornwall Andrea, What is the 'Rights-based Approach' All About? Perspectives from International Development Agencies. IDS Working Paper No 234, Brighton: Institute of Development Studies at the University of Sussex (2004)

<sup>25</sup> Meron Theodor, The Humanization of International Law, The Hague Academy of International Law (2006) 5; UN CHR, 59<sup>th</sup> session, Geneva, 17 March 2003, High-Level Segment, Statement by H E Dr Benita Ferrero-Waldner, Federal Minister for Foreign Affairs of Austria on behalf of the Human Security Network, <http://www.bmeia.gv.at>; Benedek Wolfgang/European Training and Research Centre on Human Rights and Democracy (eds), Understanding Human Rights, Manual on Human Rights Education, 2<sup>nd</sup> edition, Graz (2006) Freedom from poverty, 81-100 (85); 2003 HSN Graz Declaration on Principles of Human Rights Education and Human Security, [http://www.etc-graz.at/typo3/fileadmin/user\\_upload/ETC-Hauptseite/human\\_security/declaration.pdf](http://www.etc-graz.at/typo3/fileadmin/user_upload/ETC-Hauptseite/human_security/declaration.pdf)

<sup>26</sup> UN-GS Kofi Annan, The Secretary-General Statement to the General Assembly, Speech delivered to the UN-GA, New York, 21 March 2005; Ku Charlotte/Diehl Paul F (eds), Filling In the Gaps: Extrasystemic Mechanisms for Addressing Imbalances Between the International Legal Operating System and the Normative System, in: Global Governance, April-June 2006 Vol 12 No 2, 161-184; Nowak Manfred, *supra* 10, forthcoming

<sup>27</sup> Freudenschuss-Reichl Irene, Verrechtlichung der Entwicklungszusammenarbeit, 30. Österreichischer Völkerrechtstag, Goldegg/Salzburg, 2-4 June 2005

'symbiosis of the two worlds'<sup>28</sup> (coherence shift). Increasing political weight of poverty reduction as an independent stand-alone policy field in a globalised environment<sup>29</sup> - the architecture of which had been created successively by UN World Conferences and fragmented international law regimes along the global public goods theory<sup>30</sup> - induced an ever greater impact of development thinking on argumentation in human rights fora. Regarding effective response of international law in terms of its ability to resolve major global challenges of today such as climate change, allocation of resources, organised crime, pandemiae etc, the multi-dimensional dynamics of human development could offer guiding analysis.

### 1.1 Structured interface – facts of convergence

Following this argumentation one can resume that human development, in normative terms, is oriented towards individual dignity and human rights fulfilment, to be covered by the notion of 'self-determination'. The common goal lies in the objective to be achieved, namely a higher level of individual well-being, the realisation of capabilities and choices<sup>31</sup>. This vision is originally derived from the right to development debate and finally fertilised the 2005 European Development Consensus<sup>32</sup>.

Indeed, Amartya Sen's conceptualisation of protecting and promoting capabilities of the individual might also serve as a working definition of human rights. In the applied context, capabilities are 'translated' through human rights in such a way that each of them is attributable to specific capabilities enabling individuals to live the life they are worshipping<sup>33</sup>. The sum of established CP and ESC rights, be it equal access to justice, political participation, the right to

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<sup>28</sup> 'New wine in old bottles' quoted from Uvin Peter, *supra* 5

<sup>29</sup> Messner Dirk, Herausforderungen für die zukünftige Global Governance-Forschung, Dimensionen einer zweiten Phase eines jungen Diskurses (2003), [http://www.diegdi.de/die\\_homapge.nsf/56a1abebb4eded3dc1256bd9003101ea/5b49c0a4bbf5f198c1256dce002f1911?OpenDocument](http://www.diegdi.de/die_homapge.nsf/56a1abebb4eded3dc1256bd9003101ea/5b49c0a4bbf5f198c1256dce002f1911?OpenDocument)

<sup>30</sup> Kaul Inge/Grunberg Isabelle/Stern Marc A (eds), Global Public Goods, International Cooperation in the 21<sup>st</sup> century, UNDP/New York (1999)

<sup>31</sup> See for example <http://www.unhchr.ch/development/hurist.html>

<sup>32</sup> EU-AU Summit of 1 December 2007, documentation forthcoming; Our Common Interest, Report of the Commission for Africa, London March 2006, chapter 4 - Getting systems right: governance and capacity-building, 133

<sup>33</sup> Nowak Manfred, Ein Menschenrechtsansatz für die Armutsbekämpfung, in: Hammer Stefan/Somek Alexander/Stelzer Manfred/Weichselbaum Barbara (eds), Demokratie und sozialer Rechtsstaat in Europa, Festschrift für Theo Öhlinger, Vienna (2004) 550-572

hold governments accountable, to appear in public without shame or the right to food, health, education and personal integrity, builds a normatively recognised indivisible *corpus*<sup>34</sup>. It appertains to the unsolved questions of the 'old universalism debate' that this balance is but a programmatic one facing empiric asymmetry<sup>35</sup>.

From the overall argument follows the understanding of human rights as an axiomatic normative construction ('Ummantelung', coverage) of the individuum. Thus, under the premise of an anthropocentric approach to development, a holistic normative perspective becomes applicable throughout the whole process. Thereby, a distinct individualisation of international law emerges. How to make this vision work?

The 'constructive method of mosaic' along the broadly accepted splitting of obligations enshrined in human rights doctrine into three types of duties offers a reasonable model. Bruno Simma comments on these obligations as follows: 'The trias comprises the duty to respect of positions which means not to intervene on these, the duty to protect the right against violation by others and the duty to realise or fulfil (to enable the realisation of) the right by means of positive performance'<sup>36</sup>. Through fragmentation into respective single duties of the subject allowing for an appropriate monitoring the 'constructive mosaic' can be applied for technical planning in development cooperation. In other words, human rights and human development prove to be corresponding nets. And vice versa, by virtue of normative definition the notion of development becomes itself an autonomous object of cognition in law.

However, a high degree of convergence does not in itself mean full identity. The following analysis of systemic gaps shall corroborate this thesis.

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<sup>34</sup> Kaufmann Daniel, Human Rights, Governance and Development – An empirical perspective, in: World Bank Institute, Development Outreach, Oct 2006, 15-20 (15); Alston Philip, Nature and Scope of Obligations ICESCR, Human Rights Quarterly 9 (1987) 186; Habermas Jürgen, Faktizität und Geltung, Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats, Frankfurt/Main (1992) 155

<sup>35</sup> Representing others Donnelly Jack, The Relative Universality of Human Rights, in: Human Rights Quarterly Vol 29 No 2 (May 2007) 281-306

<sup>36</sup> Simma Bruno/Mosler Hermann/Paulus Andreas/Chaitidou Eleni (eds), The Charter of the United Nations: A Commentary, 2<sup>nd</sup> edition, Oxford: Oxford University Press (2002); Fukuda-Parr Sakiko, Proposed outline of conceptual approach, in: UNDP Informal Consultation: Human Rights and Poverty Reduction Strategies, 29 September 2006, The New School, New York

## 1.2 Dilemmas of human rights in development

In fact, human rights translations show limited potential from a development point of view<sup>37</sup>. Bearing in mind the normative basis of HRBAs deficits lie in the specific *données* of the human rights system itself.

Two sets of deficiencies are to be distinguished: factual as well as positivistic limits, the first related to the fact that human development remains over-additive when compared to human rights in its origin and sources, the second conflicting with the static apparatus of international human rights law pointing to restricted power in handling dynamics comprehensively.

Factual limits of normativity shall briefly be described in the following. The constitutive role of human rights in understanding poverty<sup>38</sup> concerns *sine qua non* conditions for development. Their non-realisation *constitutes* poverty. Comprising essential standards of life such as personal integrity, the right to food, health, education and shelter<sup>39</sup> we are confronted here with intercultural basic categories. In this sense, the concept of 'core human rights poverty indicators' meets the 'vital core of life' approach taken by the Human Security Commission<sup>40</sup>. Instrumental meaning on the other hand involves the momentum of a concrete case. The non-realisation of instrumental human rights *may* entail poverty<sup>41</sup>. This gap between constitutive and instrumental human rights reveals that development must exceed the descriptive potential thereof (1).

The non-realisation scenario is also a relevant situative *constat* in the view of the poor; people are 'concerned not violated'. In contrast to that observation a special feature of the established human rights system, for mainly historical reasons, refer to the control of institutional power and lies in the prosecution of

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<sup>37</sup> Werther-Pietsch Ursula, Defizite des Menschenrechtsansatzes im Entwicklungskontext – Konvergenz und Dilemmas, Studies of the Ludwig Boltzmann Institute, Vienna (2007) Vol 16

<sup>38</sup> See contribution of Borg Liv Silje/Core Lindsay/Rusten Hilde/Bye Bene Sofie, Poverty and Human Rights (non-paper), <http://www.undp.org>

<sup>39</sup> Strohal Christian, Die Entwicklung des internationalen Menschenrechtssystems durch die VN, in: Cede Franz/Sucharipa-Behrmann Lilly (eds), Die VN, Recht und Praxis, Vienna 1999, 143-162 (145)

<sup>40</sup> See Commission on Human Security, Human Security Now, New York 2003 versus Human Security Report 2005 – War and Peace in the 21<sup>st</sup> Century, Human Security Centre, The University of British Columbia, Canada; Oxford: Oxford University Press 2005

<sup>41</sup> Sen Amartya, Poverty and Famines, Oxford: Oxford Press, 1981

violations by state authorities<sup>42</sup>. Furthermore, the dictum of poverty as a 'deprivation of human rights'<sup>43</sup> does in itself assume an action taken by a legal person. Judging facts from the situative point of view - the poor's perspective - however, is independent of such differentiation. For instance, 'duties to fulfil' of states and non-state actors alike seem to be activated in non-man made disasters like the Tsunami of 25 December 2004. The capabilities analysis – as seen by the poor – happens in a result-oriented way of human rights application, unconditional of whom or what has caused its failure (2).

A second look should clarify on positivistic limits. It would be premature to conclude that overlapping targets of both international law and development agenda are identical, each pursuing in fact its own terminology. Apparent inconsistencies in conceptualisation nevertheless illustrate failed interdisciplinary outreach (3). An illustrating example is the notion of self-determination: Whereas in development cooperation it has a clearly individual connotation<sup>44</sup>, the principle of collective self-determination in international law – despite grounded on the catalytic framework of human rights as well<sup>45</sup> - guarantees the realisation of capabilities and choices of people<sup>46</sup>.

Certain dysfunctionalities of positivistic normativity may be attributed to the overall rigidity and axiomatic fragmentation of a normative system in general (4). Formal jurisprudence denying traditional forms of justice, the concept of subjective public rights and the strictly applied principle of indivisibility for instance may provoke major problems to developing societies when absorbing

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<sup>42</sup> Hummer Waldemar/Kriebaum Ursula, Der internationale Menschenrechtsschutz, in: Neuhold Hanspeter/Hummer Waldemar/Schreuer Christoph (eds), Österreichisches Handbuch des Völkerrechts, 4<sup>th</sup> edition, Vienna (2004) 258-264

<sup>43</sup> UNHCHR Louise Arbour, <http://www.ohchr.org/english/events/day2006/hrd2006.htm> as of 10 December 2006

<sup>44</sup> UNDP Human Development Report 2000: 'The promotion of human development and the fulfilment of human rights share a common vision. The combination of the two perspectives gives us something that neither can provide alone'.

<sup>45</sup> Hilpold Peter, Reforming the United Nations: New Proposals in a Long-Lasting Endeavour, in: Netherlands International Law Review, LII: 389-431, 2005; Doehring Karl, Art 1 (Self-Determination), in Simma Bruno (ed), The UN-Charter – A Commentary, 2<sup>nd</sup> edition (2005); Thürer Daniel, Self-determination, in: Encyclopedia Public International Law (EPIL) 1985-1998, 364-374; Nowak Manfred, UN Covenant on Civil and Political Rights – Commentary, 2<sup>nd</sup> revised edition, Kehl 2005, Art 1 para 15-17

<sup>46</sup> Franck Thomas M, The Empowered Self, Law and Society in the Age of Individualism, Oxford, Oxford University Press (1999)

human rights in their national legislation and societies<sup>47</sup>. As a consequence information acquisition, methodology and monitoring mechanisms in development cooperation and the human rights field remain still inhomogeneous in practice<sup>48</sup>.

Deficit analysis - lack of individualism and result-orientation, failed interdisciplinary outreach and positivistic fragmentation of human rights norms - reveals that human rights in their actual normative shape are not sufficiently equipped to satisfy the needs of the poor<sup>49</sup>. In the following, this article gives reasons why human security might be the reconciling element, thereby pleading for a normative classification of the concept.

### **1.3 Human Security as the missing link**

Dilemmas as identified in the preceding chapter call for bridging the theoretical gap. In order to remedy detected incoherences a radical perspective of individualisation is proposed. Human security shall serve as the missing link between human rights and development based on the same motivation, reasons, analysis and normative background<sup>50, 51</sup>. The old universalism theorem, ie the culturally sensitive application of human rights to all human beings, will be further developed by this approach.

A preliminary, though still valid descriptive definition resumes the notion of human security as characterised by a holistic, multi-faceted, flexible and near-to-practice concept. Its focus lies in preventive access and action as well as inclusive, ie participative processes of policy making and accountability. Similar to HRBAs human security is rule of law-oriented, thereby conceivable as a just and equitable basis of law. The significance encompasses the holistic and exclusive orientation on the human being and the interconnected

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<sup>47</sup> Mastronardi Philippe, *Recht und Kultur: Kulturelle Bedingtheit und universaler Anspruch des juristischen Denkens*. In: *ZaöRV* 61/1, 61-83

<sup>48</sup> Oberleitner Gerd, *Human Security: A Challenge to International Law?*, in: *Global Governance* Vol 11 (2005) 2

<sup>49</sup> Delbrück Jost, 'Prospects for a World (Internal) Law?': *Legal Developments in a Changing International System*, *Indiana Journal of Global Legal Studies* 9 (2002) 401

<sup>50</sup> EADI and Deutsches Institut für Entwicklungspolitik, *11th General Conference, Insecurity and Development, Regional issues and policies for an interdependent world*, Conference Report, Bonn, 21-24 September 2005

<sup>51</sup> Khan Ali, *Universal Democracy* (2003) 81-112

individualisation of international law<sup>52</sup>. The emphasis of the concept on the individual based on human rights alters substance and structure of international law in favour of the human person. Human security evolves as a teleological and operational principle for reform.

Literature up-to-now predominantly points to failures of the human security concept in its role of provoking a paradigm shift in international law<sup>53</sup>. Against the background of human development as specified above, however, human rights and human security operationalise each other:

- On the one hand human rights are the conceptual basis of human security<sup>54</sup>. Human rights shape human security by way of normative foundation.
- On the other hand, human rights dilemmas in human development are compensated by a radical turn to the individual. This is the way human security shapes human rights<sup>55</sup>.

The specific conceptualisation of human security has, of course, to prove its interpretative reach. Coherence of a development-driven human security remains to be tested against existing principles in international law.

## **2 Normative constructiveness and its implications for policy coherence**

### **2.1 Transformative power of human security**

Starting from the outcome document of the 2005 UN Reform Summit recognition of 'development, peace and security, and human rights as mutually reinforcing' is the mandate of modelling the notion of human security by UN

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<sup>52</sup> Benedek Wolfgang, Human Rights and Human Security: Challenges and Prospects, Colloquium of the Marangopoulos Foundation for Human Rights, The Current State of Human Rights in the World: Challenges and Prospects, Athens, 13-15 May 2004

<sup>53</sup> Amouyel Alexandra, What is Human Security?, in: Human Security Journal – Issue 1 – April 2006, 10-21

<sup>54</sup> Ramcharan Bertram G (ed), Human Rights and Human Security, Geneva (2003)

<sup>55</sup> Benedek Wolfgang/Kettemann Matthias C, Menschliche Sicherheit und Menschenrechte, in: Stiftung Entwicklung und Frieden, Reihe EINE Welt – Band 21, forthcoming

members<sup>56</sup>. Since the elements are interlinked, transforming one would affect the others. Notwithstanding this particularity, the four elements appear to differ from the very beginning insofar as they obviously start from a narrow perception of security by syntactically subordinating it to the term 'peace'. In the proposed concept human security plays a much more decisive role.

Human security extends human rights values in opening up the established formal structure of the human rights system. It thereby completes the well established multilateral working definition of human security - freedom from fear and freedom from want - by 'freedom to individual self-determination' comprising enabling standards such as freedom of expression and belief as a consequence of the approach<sup>57</sup>. Freedom from want, freedom from fear and freedom to self-determination, to 'life in dignity' – in the words of UN-Secretary General Kofi Annan - embrace all dimensions of global governance, as stimulated by political sciences' evidence<sup>58</sup>

Thus, security interests must no longer be apart from or in contradiction to development needs<sup>59</sup>. The latter can be considered from the superior level of realisation of individual capabilities materialised through (transformed) human rights entitlements. In promoting acknowledgement of these interactions policy coherence for development, integrating interconnected policy fields systematically becomes a leading characteristic of donor intervention today<sup>60</sup>.

A new universalism debate might seek to filter out from existing universally accepted human rights treaties some substantial communalities that are inherent to the human rights body. Denominating a set of common features of human rights when applied to poverty reduction ("core human rights poverty

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<sup>56</sup>UN, Outcome Document of the 2005 UN World Summit 2005, A/Res/60/1 as of 24 October 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement>, para 143.

<sup>57</sup> See In larger Freedom, <http://www.un.org/largerfreedom/>

<sup>58</sup> Nuscheler Franz/Messner Dirk, Konzept der Global Governance; Tagung des Instituts für Umwelt, Friede und Entwicklung, Vienna, 25-26 June 2007

<sup>59</sup> Tercinet Josiane, Aspects multilatéraux: Le conseil de Sécurité et la sécurité humaine, in: Rioux Jean-Francois (ed), La sécurité humaine – une nouvelle conception des relations internationales, Paris 2001, 159-179

<sup>60</sup> EU Report on Policy Coherence for Development, COM(2007)545 final as of 20 September 2007

indicators“)<sup>61</sup> is a first revolutionary step. The 2006 OHCHR Principles and Guidelines summarised such guiding human rights principles each equipped with an element of process-orientation: self-determination, translated into participation, equality and responsibility as well as the rule of law. Here, results of human security thinking meet Herdegen's far-reaching thesis of the prevalence of human rights over peace and security<sup>62</sup>.

Impact of the new mode of human security thinking drawn from the above presented human development theorem is threefold. The following conclusions are suggested:

- Individualisation: The recommended shift towards a situative analysis induced by the perspective of the poor is a consequence of radicalised individualisation. Human rights values and duties must reign relations between individuals ('cross-application' of human rights).
- Horizontalisation: Reflecting the dynamics of development guiding process-oriented human rights principles are able to penetrate non-normative dimensions of development such as economy, nature or philosophy/religion (extended values approach).
- Constitutionalisation: Necessary prioritising of action lines in the context of poverty reduction is derived from the capabilities' perspective<sup>63</sup>. The system progresses towards a substantive 'constitutionalisation'<sup>64</sup> in character (universalism, not fragmentation).

The paradigm's impact can be summarised in individualising, horizontalising and constitutionalising human rights and international law. Consequences of this broadening of the human rights basis on policy coherence are outlined in the following.

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<sup>61</sup> See chapter 1.2

<sup>62</sup> Herdegen Matthias, Asymmetrien in der Staatenwelt und die Herausforderungen des ‚konstruktiven Völkerrechts‘, in: ZaöRV 64 (2004) 571-582

<sup>63</sup> Tams Christian J, Enforcing Obligations Erga Omnes in International Law, in: Cambridge Studies in International Law, No 44/2003.

<sup>64</sup> Kadelbach Stefan, Ethik des Völkerrechts unter Bedingungen der Globalisierung, in: ZaöRV 64 (2004) 1-20

## 2.2 The revised universalism thesis

The new universalism debate emphasises the principles of indivisibility and interdisciplinarity.

Firstly, it has already been stated that ESC and CP rights equally contribute to human development. This consistency argument invigorates assumed consequences of human security on human rights in both individualising and horizontalising dimensions: Advocated 'cross-application' is a major step towards coherence. Otherwise marginalisation of relevant actors would continue to undermine established application standards and lead to further discrimination in substance. Human rights ought to be seen 'effective all-round' as Manfred Nowak has put it<sup>65</sup>.

On the basis of the given analysis the often criticised over-flexibility of the human security perspective is no longer valid, the term being ready to normative appraisal<sup>66</sup>: Adapting human rights to development on the basis of human security questions the exclusiveness of states as central actors in international law to the same extent to which global insecurity factors amplify the erosion effect thereof<sup>67</sup>. This shift coincides the observation of a slow change of coordinative international law towards a subordinative structure under the efficiency maxim (verticalisation)<sup>68,69</sup>.

Secondly, in remedying positivistic limits through the extended values approach, the consistent interdisciplinary functioning of human rights will be enhanced. When dealing with development one should always consider its diverse facets some of which remain of non-normative character. By

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<sup>65</sup> Nowak Manfred, *supra* 1, 11

<sup>66</sup> Rioux Jean-Francois (ed), *La sécurité humaine – une nouvelle conception des relations internationales*, Paris (2001) 14

<sup>67</sup> 'State security is impossible today. With the advance of globalization, it is becoming impossible to protect people through state security alone. It is important to combine the bottom-up approach, meaning the empowerment of people, and the top-down approach, meaning the establishment of judicial and other systems, to realize human security. State sovereignty is no longer the answer to the problems facing the international community'; 'Human rights takes precedence over state security'; Sadako Ogata, in: Human Security Commission, *Security now*, New York 2003

<sup>68</sup> Herdegen Matthias, *Völkerrecht*, 6<sup>th</sup> edition (2007) 138

<sup>69</sup> Werthes Sascha, *supra* 11

horizontalising process-oriented human rights principles shaped by human rights universal parameters of legitimacy are established.

Interdisciplinarity as such presupposes a universal role of values within the normative framework. It follows that the principles - extracted from the universally accepted human rights treaties - arguably should form part of the general principles of international law (*opinio iuris*, followed by successive state practice). In their normative constructiveness - which is in the middle of the human security paradigm – they substantially adhere to the basic functional *corpus*<sup>70</sup> of modern international law<sup>71</sup>.

### 2.3 Conceptual shifting towards coherence

As enshrined in the traces of old universalism, the human being - a holistic bundle of capabilities - is indivisible (and unique) in its appearance and needs. Thus, the given simultaneousness of CP and ESC rights performance favours the manifestation of a multitude of individual affiliations recognised in the concept as scaled forms of self-determination. The nationality *criterion* in international law, for instance, turns out to be too narrow to describe new identities. Reflecting those affiliations of individuals which are not exclusively linked to citizenship would be a major contribution of international law to the understanding of development and should advance becoming the framework for a new security architecture<sup>72</sup>. To proceed along this evolutionary openness, coherent values - like the guiding process-oriented human rights principles - not positivistic fragmentation are decisive<sup>73</sup>. Such transformation

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<sup>70</sup> Frowein Jochen, *Ius Cogens*, in: Encyclopedia Public International Law (EPIL) III 65

<sup>71</sup> Tams Christian J, *Enforcing Obligations Erga Omnes in International Law*, in: Cambridge Studies in International Law, No 44/2003

<sup>72</sup> OECD/DAC-FSG (Fragile States Group), *Making Progress in Fragile States*, DCD/DAC(2006)11/Rev 1 dated 7 March 2006; OECD/DAC Implementation Framework for Security System Reform (IF-SSR), Key Policy and operational Commitments, DAC High-Level Meeting, 3-4 April 2007, DCD/DAC(2007)30 as of 20 March 2007

<sup>73</sup> As a direct consequence of this approach, the principle of self-determination - beyond the recognised colonial context – outweighs the principle of sovereignty, an observation that implies the necessity of additional institutions at multilateral level to deal with conflicting scenarios. Limited extension of entities of international law is a necessary corollary. Prohibition of the use-of-force - as a *contrarius actus* to the broadening of the relevant self-determined entities – ought to be reviewed in the light of the indivisibility theorem and existing different thresholds in order to establish a 'human right of peace'. In reaction to this shift stringent multilateralism including humanitarian intervention dematerialising the non-intervention principle should be stepped up – on the whole a probable shift towards a future 'system of human security'.

provides also a distinctly new access for development theory. It replaces the poverty reduction goal by a positive target defined in the framework of human security realisation.

As demonstrated the approach entails a conceptual shifting towards coherence, it comprises the following presumptions:

- Human development strives ultimately for the highest attainable degree of self-determination of the human being. It is thus defined by human security with the aid of the broadening of the human rights system. Human rights entitlements are the driving force and catalysts for achieving human development.
- There is an on-going interactive evolution of international law on the basis of the demonstrated human rights-human security nexus:
  - Human security in realising human development operates as a vertical tool for integrative societal justice (cross-application of human rights, extended values approach).
  - In consequence, guiding principles of international law will be transformed moving forward to a new 'human security system' targeted at UN reform fertilizing universalism of human rights values.

The new universalism debate therefore looks at establishing a fundamental normative *corpus* out of the human rights body. Human security as promoter of adapting human rights to development serves as a mediating translation mode and teleological source in this process.

## **Conclusio**

International development law as an exceptional category today loses its mission.<sup>74</sup> Contrary to the process of decolonisation the era of globalisation generates an adverse effect; it rather provokes substantive integration, fertilisation and, perhaps, guidance from the development context for

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<sup>74</sup> Chatterjee S K, International law of development, in: Encyclopedia Public International Law (EPIL) 1985-1998, 1247-1251

international law. Taking into account the development perspective therefore can be crucial for the renewal of international law<sup>75</sup>.

Basic findings of the human rights-human development nexus in the light of human security are:

- Human development cannot be equated with the fulfilment of human rights.
- Human security is designed by a broadening of human rights in order to be consistent with human development processes and goals.
- Thereby, a normative perception of human security becomes operable leading to a more far-reaching paradigm shift in international law.

Today, human development in its multi-faceted dimensions should be recognised as the central political *prisma* for change<sup>76</sup>. Development processes are increasingly interlinked with human rights and *vice versa*: By virtue of normative definition, human development figures as an autonomous cognitive object and frame for international law.

Starting from the perception of constructive normative 'Ummantelung' of the human being through human rights, it becomes apparent that a breakdown into respective single duties of the subject is a valuable method of reflecting development on the whole (constructive method of mosaic; normative constructivism).

In doing so, it can be established that the congruence between development and human rights suffers from systematic dilemmas questioning the comprehensiveness and holistic potential of the latter. That is why it can be further argued that given the actual shape of the human rights regime poverty means more than human rights violations and, equally important, development remains more than the progressive realisation of human rights. Human security through its focus on capabilities of the human being presents itself as

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<sup>75</sup> Meng Werner, Völkerrecht als wirtschaftlicher Ordnungsfaktor und entwicklungspolitisches Steuerungsinstrument, in: Meng Werner/Magnus Ulrich/Schlemmer-Schulte Sabine/Cottier Thomas/Stoll Peter-Tobias/Epiney Astrid, Das internationale Recht im Nord-Süd-Verhältnis, Heidelberg 2005, special edition 1-76

<sup>76</sup> Werthes Sascha/Debiel Tobias, Human Security on Foreign Policy Agendas: Introduction to Changes, Concepts and Cases, in: Debiel Tobias/Werthes Sascha (eds), Human Security on Foreign Policy Agendas, INEF-Report 80

the missing link to redefine the relationship, a solution simultaneously strengthening the indivisibility and interdisciplinarity of the human rights regime. This leads to a development-driven human-centred concept of security.

It follows that human security is more than an organisational '*Leitmotiv*' in international relations removing barriers between human rights policy, development cooperation and the traditional security sector<sup>77</sup>. Its potential also goes beyond a limited interpretation mode that offers arbitrary points of reference for decision making<sup>78</sup>. The concept of human security works as a normative doctrine for coherence, its transformative power relying on the conceptual transformation human rights.

This view holds human security as the teleological goal of human development because its inspiration and roots lie there. For the sake of predictable prioritisation, dynamics of threats - the original and inexhaustible source of human security thinking<sup>79</sup> - are equally perceived as capability limits: The realisation of universal cross-applicable human rights as well as the process-oriented guiding human rights principles – ie self-determination, participation, equality and responsibility as well as the rule of law - are instrumental to achieve the holistic human security agenda in development<sup>80</sup>.

Applying those findings helps to establish a 'system of human security' consistent in values and adapted to a globalised framework: The human security approach culminates in individualising, horizontalising and constitutionalising human rights and international law. At the same time

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<sup>77</sup> Oberleitner Gerd, *supra* 18, 2; Werthes Sascha, *supra* 11

<sup>78</sup> Paris Roland, Human Security: Paradigm Shift or Hot Air? in: *International Security* 26 no 2 (2001) 97-102

<sup>79</sup> Alkire Sabina, A Conceptual Framework for Human Security, Working Paper 2, Centre for Research on Inequality, Human Security and Ethnicity (CRISE), University of Oxford 2002, [http://www.fas.harvard.edu/~acgei/Publications/Alkire/Alkire\\_Human\\_Security\\_Concept\\_CRISE\\_WP2.pdf](http://www.fas.harvard.edu/~acgei/Publications/Alkire/Alkire_Human_Security_Concept_CRISE_WP2.pdf); Hampson Fen Osler/Hay John B, Human Security. A Review of the Scholarly Literature (2002), [http://www.humansecuritybulletin.info/archive/en\\_vli2/\\_articles/Ren\\_fulldocument.pdf](http://www.humansecuritybulletin.info/archive/en_vli2/_articles/Ren_fulldocument.pdf)

<sup>80</sup> Opening address by the Minister for Foreign Affairs of the Republic of Austria, H E Dr Benita Ferrero-Waldner, at the Opening session of the Human Security Network, Graz, May 8, 2003, <http://www.bmeia.gv.at>

designing normatively a new balance between elements of the system including a redesign of basic premises is a major coherence endeavour. Absorbing lessons from the poverty context human rights can thus be considered as a normative doctrine for policy coherence.

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