

# Humanity: What is it and how does it influence international law?

by

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People refer to humanity in different ways. It can mean human beings collectively, but at the same time it carries notions of philanthropy and altruism. The laws of humanity and crimes against humanity are referred to in international treaties, and humanity is cited as a source of international law.<sup>1</sup> Humanity implies a moral force; whether or how this constrains inhumanity — which invariably involves acts of armed violence — is unclear. Users of the words “humanity” and “humanitarian” are often perceived as placing themselves on a moral high ground. It is unclear whether humanity has been usurped by or become integrated into contemporary concepts such as human rights, development, humanitarian intervention and human security.

The last 150 years have seen remarkable advances in every aspect of human existence, from manufacturing technology, commerce and communications to politics, welfare and weapons, to name but a few (although the benefits have not reached all.) Simultaneously, there has been an increase in the population of the planet in the context of a world organized into nation-States.<sup>2</sup> That these phenomena have

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come about in the same brief period of human history points to their being connected. It is proposed here that the connection lies in the evolved abilities of humans to make and use weapons and, in parallel, to restrain the use thereof.

The ability of societies to defend themselves or to take what they want from elsewhere by force has given them the means to advance. Keegan's argument that nation-States have arisen from armed conflict is convincing.<sup>3</sup> Within a society or nation, enforcement of law and order in a just manner may ultimately involve the use of armed force by designated bearers of weapons. Whilst we recognize the recent advances in human existence, we do not recognize so readily that they are inextricably linked to the capacity of groups of humans to employ armed violence both outside and within the group. As a result of the advances noted above, the costs of settling disputes by armed conflict have become high and States have increasingly entered into treaties to avoid war with other States. During this period of history, effective international law prohibiting acts of aggression by States has developed.<sup>4</sup> This is not a coincidence.

Armed violence or the ultimate threat thereof are the means by which confrontations between groups of humans on any

<sup>1</sup> The "laws of humanity" are referred to in the St Petersburg Declaration of 1868, and in what is now known as the *Martens Clause* derived from the preamble to Convention (IV) respecting the Laws and Customs of War on Land, adopted by the 1907 International Peace Conference at The Hague. Legal recognition of crimes against humanity originated in the jurisprudence of the Nuremberg Tribunal; such acts also constitute a category of crime in the 1998 Rome Statute of the International Criminal Court. — Brownlie states that humanity is a source of international law. He cites as a classic reference the judgment in the *Corfu Channel* case (I.C.J. Reports 1949, p. 22): the court relied on certain "general and well recognised principles", including "elementary considerations of humanity, even more exacting in peace than

in war". I. Brownlie, *Principles of Public International Law*, Clarendon Press, Oxford, 1998, p. 28.

<sup>2</sup> See generally J. Diamond, *Guns, Germs and Steel: a Short History of Everybody for the Last 13,000 Years*, Vintage, London, 1998; *The Economist*, Special Millennium Edition, 31 December 1999, pp. 10-14; B. Ehrenreich, *Blood Rites*, Metropolitan Books, New York, 1998, pp. 175-193.

<sup>3</sup> J. Keegan, *A History of Warfare*, Pimlico, London, 1993, pp. 386-392.

<sup>4</sup> Chapter I of the UN Charter. See also B. Boutros-Ghali, "The United Nations at fifty", *Melbourne University Law Review*, vol. 20, 1995, pp. 9-13. T. Farer, "International Law: The Critics are Wrong", *Foreign Policy*, 1988, pp. 22-45.

scale are played out. As a result, a central feature of human existence has been the making of, threatening with or use of weapons.<sup>5</sup> In practical terms, the purpose of a weapon is to help its user to overcome his or her physical or psychological limits when dealing with an adversary; it creates a differential of physical power. Armed violence and threats of armed violence based on this power differential between groups or individuals are the critical factors leading to aggression between States and acts of inhumanity such as massacres, persecution, forced displacement, arrests, attacks on civilians, excessive use of force by police and denial of freedom or of self-determination.<sup>6</sup> These acts are all executed ultimately by, for example, air-delivered explosive munitions, artillery, mortars, assault rifles, handguns or batons; however, such weapons are originally designed to be used either for national defence or for policing a nation's populace. What this means is that the only difference between war or inhumanity, on the one hand, and the legitimate use or threat of armed force creating the conditions for social advances, on the other hand, is restraint as to how, when and where weapons are used. When the capacity for armed violence slips or might slip the leash of restraint, rules are invoked. At the international level, these rules constitute an important part of international law.

It is argued in this paper that the status of humanity with respect to international law is ambiguous. Humanity will consequently be interpreted in terms of people's security and well-being. Based on this interpretation, a universally applicable and objective definition of humanity is proposed that helps to clarify the complex relationships between humanity, inhumanity, the capacity for armed violence, the restraint of armed violence, and international law.

<sup>5</sup> *Op. cit.* (note 3).

<sup>6</sup> The definition of violence adopted by the World Health Organization is: "[T]he intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a likelihood to result in

injury, death, psychological harm, maldevelopment or deprivation." From J. Koplan *et al.* *Violence Prevention: A Public Health Policy*, Atlanta, Centers for Disease Control, 1998. See also R. Coupland, "Armed violence", *Medicine and Global Survival*, vol. 7, 2001, pp. 33-37.

### The status of humanity in relation to international law

Clarifying what is meant by “humanity” or “humanitarian” when they are used in international law is not a purely academic pursuit. The words carry increasing importance in international legal and political discourse when armed violence, its effects or its regulation are under discussion.

There are alternative definitions of humanity. One is “the human race; mankind; human beings collectively;” another is “the character or quality of being humane; behaviour or disposition towards others such as befits a human being.”<sup>7</sup> Most people would acknowledge that the word humanity carries these two meanings and would also recognize a link between the definitions. However, the nature of that link is not obvious, given that collective human existence is not necessarily associated with humane behaviour of individuals. For the purposes of this paper, the notion of humanity as being the collective existence of human beings is referred to as “humanity-humankind” and the notion of humanity as being a form of behaviour or disposition is referred to as “humanity-sentiment.”

In 1956, Jean Pictet wrote that “[t]he principle of humanity stands out on its own in the doctrine of the Red Cross, and all other principles hang from it.” He never gives a definition and even says it is “something understood but not actually expressed.” Quoting a *Litttré* dictionary definition of it as “a sentiment of active goodwill”, he goes on to describe it as “a complex motive in which kindred elements such as kindness, pity, gentleness, generosity, patience, and mercy are present in varying degrees.” In further attempting to define humanity, he says that “humanity is born of man’s love for his fellow-men”, but acknowledges that this is “a further example of the poverty of language.” He describes humanitarianism as “simply this attitude of humanity laid down as a social doctrine and extended to mankind as a whole.”<sup>8</sup> The 20th International Conference of the Red Cross (Vienna, 1965) proclaimed seven Fundamental Principles of the Red

<sup>7</sup> Oxford English Dictionary, 2nd ed., Clarendon Press, Oxford, 1989.

<sup>8</sup> J. Pictet, *Red Cross Principles*, ICRC, Geneva, 1956, pp. 14-31.

Cross and Red Crescent Movement. Humanity is the first principle, but again there is no definition; instead the Conference gave the following description of what the Red Cross wants to do in the light of humanity:

“*Humanity* — The Red Cross, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours — in its international and national capacity — to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, co-operation and lasting peace amongst all peoples.”<sup>9</sup>

Both Pictet and the Red Cross Conference were referring to humanity-sentiment, but both imply a link to humanity-humankind. In 1983, Pictet still did not dissociate humanity-sentiment from humanity-humankind and recognized that international humanitarian law was linked to “the formidable struggle which has been carried on from the very beginning of human society between those who wish to preserve, unite and liberate mankind and those who seek to dominate, destroy or enslave it.”<sup>10</sup>

Given the ambiguity of the meaning of humanity in the latter half of the twentieth century, it is surprising that the “laws of humanity” were evoked in the St Petersburg Declaration of 1868 which prohibited the use of bullets that would explode on impact with a soldier’s body.<sup>11</sup> At first sight, one would assume that reference was being made to humanity-sentiment. But is it possible that government lawyers and diplomats drew up a treaty invoking laws about something that remained undefined a century later? Such people were and are unlikely to allow the creation of laws that constrain their

<sup>9</sup> A. Durand, *The International Committee of the Red Cross, ICRC, Geneva, 1981*, p. 54.

<sup>10</sup> J. Pictet, *Development and Principles of International Humanitarian Law*, Martinus Nijhoff/Henry Dunant Institute, Dordrecht, 1983, p. 5.

<sup>11</sup> In the 1868 St Petersburg Declaration, the use of explosive projectiles of less than 400g in weight is deemed to be contrary to the “progress of civilization” and the “laws of humanity” because they would “uselessly aggravate the sufferings of disabled men, or render their death inevitable”.

country's military force without knowing exactly to what those laws pertain. Or were the laws of humanity referred to actually the laws of humanity-humankind more in keeping with the laws of nature?<sup>12</sup> Grotius's *De Jure Belli ac Pacis* published in 1625 was among the first to postulate that natural law provided a source of international law.<sup>13</sup> Grotius described the attitude to war in the Christian world at the time, saying that "when arms were once taken up no reverence [was] left for divine or human law."<sup>14</sup> However we interpret earlier references to natural or human law and the laws of humanity, it is important to note that the laws of humanity were first evoked in the St Petersburg Declaration in response to the development of a new weapon because it was contrary to the "progress of civilization."

At the Hague Peace Conference of 1899 a Russian diplomat, Fyodor Fyodorovich Martens, successfully introduced a clause into the preamble of the Hague Convention (II) with Respect to the Laws and Customs of War on Land which was retained almost verbatim in the latter's revised version, adopted as the Hague Convention (IV) by the Peace Conference of 1907. It reads in part:

"the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of public conscience."<sup>15</sup>

The "Martens Clause" has been carried over to the 1977 Additional Protocol I.<sup>16</sup> However, in 1977 the term "laws" was

<sup>12</sup> P. Lauren, *The Evolution of Human Rights*, University of Pennsylvania Press, Philadelphia, 1998, pp. 4-36. See also Selim Abou, "Natural and philosophical foundations of ethics", *Diogenes*, vol. 43, 1995, pp. 35-54.

<sup>13</sup> B. Kingsbury/A. Roberts, "Introduction: Grotian thought in international relations", in H. Bull/B. Kingsbury/A. Roberts (eds), *Hugo Grotius and International Relations*, Clarendon Press, Oxford, 1990, pp. 1-64.

<sup>14</sup> Quoted in C. Greenwood, in D. Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflicts*, Oxford University Press, Oxford, 1995, para. 112.

<sup>15</sup> 1907 Hague Convention (IV) respecting the Laws and Customs of War on Land, preambular paragraph.

<sup>16</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

replaced by “principles.”<sup>17</sup> This moves the notion of humanity towards Pictet’s description of it and the resulting Red Cross principle; both are more in keeping with humanity-sentiment.

In his analysis of the Martens Clause, Ticehurst claims that States’ lawyers have had difficulty in applying belief in natural law to international humanitarian law because natural law lacks objectivity, but that the Martens Clause provides the objectivity, namely “dictates of public conscience”. He also claims that the clause provides a moral code that stands outside positive international legal codes.<sup>18</sup> If the Martens Clause had read: “the dictates of *human* conscience”, how would this be distinguished from humanity-sentiment or even morality?

It appears that the earlier legal attempts to restrain armed violence at an international level were based on concerns arising *from* humanity-sentiment together with concerns *for* humanity-humankind. The ambiguity surrounding the “laws of humanity” became apparent in the report of a commission to the 1919 Preliminary Peace Conference; the commission found that the Central Powers had committed acts “in violation of the established laws and customs of war and the elementary laws of humanity.”<sup>19</sup> However, two members of the commission dismissed the concept of the laws of humanity as being a question of “moral law” which lacked any “fixed and universal standard”.<sup>20</sup>

Humanity-sentiment as a principle with a unique influence in international law seems to have been championed by Pictet and the Red Cross. The question arises whether the introduction of humanity as a principle is simply a result of the poverty of language to which Pictet referred, or a means to maintain considerations of

<sup>17</sup> Art. 1(2) of Protocol I reads: “In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.”

<sup>18</sup> R. Ticehurst, “The Martens Clause and the Laws of Armed Conflict”, *IRRC*, No. 317, March-April 1997, pp. 125-134.

<sup>19</sup> *Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties*, Report Presented to the Preliminary Peace Conference, 29 March 1919, reprinted in *AJIL*, 1920, No. 95, p. 115.

<sup>20</sup> *Op. cit.* (note 18), p. 144.

humanity at a time when States' lawyers wanted to avoid reference to natural law. Nevertheless, specific and more recent reference to humanity–humankind has been made in international law. The President of the International Court of Justice, in the judgment in *Nicaragua v. United States of America (Merits)* referred to the principle of non-intervention as “the very cornerstone of the human effort to promote peace”, pointing out that this key doctrine is “so vital for peace and progress of the international community” and that its “non-observance could lead to disastrous consequences causing untold misery to humanity”.<sup>21</sup>

The adoption of the 1998 Rome Statute of the International Criminal Court is seen as a major milestone in the development of international law. The second preambular paragraph reads “[m]indful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity”. When the Statute enters into force, the Court will have jurisdiction over crimes of aggression, war crimes and genocide,<sup>22</sup> all of which would involve the use of weapons or the threat thereof. It will also have jurisdiction over crimes against humanity. This class of international crime, defined in Article 7, paragraph 1, of the Statute (murder, extermination, enslavement, deportation, unlawful imprisonment, torture, and persecution) cannot be committed without a group or an individual having greater power over others; this power differential is invariably but not necessarily brought about by the possession and threatened or actual use of weapons.<sup>23</sup> Moreover, crimes against humanity have a special status as international crimes. Robertson points out that the Nuremberg

<sup>21</sup> Separate Opinion of President Nagendra Singh, Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. the United States of America*), Merits, I.C.J. Reports 1986, pp. 143 and 146 respectively.

<sup>22</sup> Statute of the International Criminal Court, Art. 5.

<sup>23</sup> The obvious exception is the crimes cited in Art. 7(1)(g): rape, sexual slavery,

enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity. Whilst this category of crime could clearly be committed without weapons, the power differential required to commit them is given by weapons and also by the difference in physical build between most men and women.

Charter identified a class of crimes "which is so peculiarly horrific that the very fact that educated, rational and otherwise respected rulers of men were capable of conceiving and committing it must diminish whatever value there is in being human." He goes on to say: "Jurisdiction over ordinary crimes depends on a link, usually territorial, between the state of trial and the crime itself, but in the case of crimes against humanity that link may be found in the simple fact that we are all human beings."<sup>24</sup> It is not clear which notion of humanity is referred to in this mention of crimes committed against it. Whilst the conscience of humanity is invoked, thus implying humanity-sentiment, Robertson's comments resonate more with the laws of humanity found in the St Petersburg Declaration and the Martens Clause.

Everyday news clearly reveals a duality in collective human psychology which is not reflected by the duality of the meaning of humanity: *inhumanity* comes into play. This duality can be retraced to the origins of our thoughts about humanity. Blondel has written that "the concept of *humanitas* goes back to the Greek sophists who believed that the use of reason was mankind's distinguishing feature. This belief was adopted by the Roman stoics, particularly Cicero, who contrasted *homo romanus* with *homo humanus*, the cultured and moral human being. For Cicero, the contrast was no longer between Romans and Barbarians, but between humanity and inhumanity."<sup>25</sup> Recently, Gilbert has reminded us that recognition of this duality is important for the future of humanity-humankind; he tells us that "humankind is a living paradox, combining a sublime capacity for rationality, charity and self-sacrificing nobility with a breathtaking capacity for cruelty, egotism, irrationality and prejudice. These two contending and essentially moral coordinates form a matrix in which the denouement of life on earth will be determined, certainly in the next millennium, perhaps the next century."<sup>26</sup>

<sup>24</sup> G. Robertson, *Crimes against Humanity: the Struggle for Global Justice*. Ringwood, Penguin Books Australia, 2000, p. 239.

<sup>25</sup> J. L. Blondel, "The meaning of the word "humanitarian" in relation to the Fundamen-

tal Principles of the Red Cross and Red Crescent, *IRRC*, No. 273, November-December 1989, pp. 507-515.

<sup>26</sup> A. Gilbert, *Betting on the Better Angels*, The Inaugural Henry Dunant Lecture, Australian Red Cross, Melbourne, 1999.

The definition of inhumanity can be taken as the converse of humanity-sentiment.<sup>27</sup> Humanity-sentiment and inhumanity correspond to the duality recognized as being an inherent aspect of humanity-humankind. Furthermore, the balance between the two elements of that duality can be viewed as the degree to which capacity for armed violence is restrained. This helps us to comprehend better the nexus of humanity-humankind and humanity-sentiment. Whilst humanity-humankind and humanity-sentiment are intimately linked with restraining armed violence, armed violence lacking restraint — inhumanity — has a direct counterbalance that is humanity-sentiment. In brief, humanity-sentiment seems to come into play against inhumanity to determine the status of humanity-humankind. Crimes against humanity then are crimes against humanity-humankind carried out by acts of inhumanity. Glover describes many acts of inhumanity using armed violence in the last century. He concludes that avoiding repetition involves addressing the psychology of inhumanity and that such a repetition must be avoided for the sake of humanity-humankind. It is worthy of note that his book, entitled *Humanity*, is subtitled *A Moral History of the Twentieth Century*.<sup>28</sup>

It seems that humanity-sentiment, limiting inhumanity, a collective human conscience, respecting human rights, the restraint of armed violence and, as Blondel, Gilbert, Glover and Ticehurst would argue,<sup>29</sup> morality are so closely knit within our psychology that they may only bear different names because of the poverty of language alluded to by Pictet. This may to some extent clarify what is meant by humanity, but it does not provide us with a workable definition of humanity in the context of international law.

### Interpreting humanity in terms of security and health

It can be seen from the above that those who create rules, norms and laws pertaining to armed violence recognize that restraints

<sup>27</sup> "The quality of being inhuman or inhumane; want of human feeling and compassion; brutality, barbarous cruelty", *op. cit.* (note 7).

<sup>28</sup> J. Glover. *Humanity: A Moral History of the Twentieth Century*, Jonathan, Cape, London, 1999, pp. 411-413.

<sup>29</sup> *Op. cit.* (notes 17, 25, 26 and 28, respectively).

on the capacity for armed violence act as a force for social cohesion and collective human well-being. Whilst there may be ambiguity about the status of humanity in relation to international law, humanity-humankind has been extensively studied by scientific disciplines such as biology, anatomy, physiology, psychology, anthropology and sociology. Health sciences in particular have given us numerous ways to measure humanity-humankind's well-being or lack of it. Acts of inhumanity or crimes against humanity are all too objective in terms of results, however emotional our reactions to them may be. Such results can, however, be measured in terms of the impact that armed violence or the threat of it have on health.<sup>30</sup> Humanity-humankind and inhumanity can therefore be moved from the ambiguous area where humanity is now situated to the domain of health.<sup>31</sup> This would make humanity amenable to objective analysis and to the discipline imposed by the requirement for a base of evidence.

The following section therefore examines armed violence, humanity-humankind, humanity-sentiment and inhumanity in terms of their lowest common denominator, namely, how security serves as a prerequisite for health.

Jackson has described security as "a foundation value in human relations", saying that the "human quest for security is our self-protecting response to what we believe is a world that contains menacing people who must somehow be kept in check". He emphasizes the difference between personal security and national security: "Personal security is a basic value because it is an essential requirement, or condition, of a successful and fulfilling existence: it liberates people (both physically and mentally) to get on with the business of building their lives without undue fear of those around them. (...) It is also peace of mind: liberation from the anxiety and apprehension associated with fear of those who are in a position to harm us."<sup>32</sup>

<sup>30</sup> Coupland, *op. cit.* (note 6).

<sup>31</sup> The definition of health as given in the World Health Organization's mission statement is: "A state of complete physical, mental and social well-being and not merely the

absence of disease or infirmity." WHO website.

<sup>32</sup> R. Jackson, *The Global Covenant: Human Conduct in a World of States*, Oxford University Press, Oxford, 2000, pp. 185-215.

This description implies the existence of a link between security and health that becomes evident from considering their definitions.<sup>33</sup> However, the nature of the link is complex, given that security can be considered at both national and personal levels. It becomes more complex if we consider that weapons and the potential for armed violence are not only a means to assure security at both levels but also the means to erode it, and more complex still given the all-encompassing concept of health. In relation to victims of armed conflict, Perrin states that a public health approach to the well-being of populations “can be effective only in as much as the security of victims of armed conflict is guaranteed. Security embraces the sustainable satisfaction of needs and respects basic rights of human beings.”<sup>34</sup> This concept does not apply exclusively to victims of armed conflict. As a principle it would also apply, for instance, to people subject to use of force by police. The concept that personal security serves as a prerequisite for health has been advanced further by Meddings in the framework of human security.<sup>35</sup> However, this concept is not entirely new.

In 1651, Hobbes wrote that without security “there is no place for industry ... no arts; no letters; no society; and which is worst of all, continual fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish and short.”<sup>36</sup> He argued for collective security arrangements to ensure the security of individuals but to which the individual gave little consent. Locke was the first political philosopher to argue for government by popular consent as a means to achieve collective security. In 1690, he wrote about security and well-being as a function of government; in addition, he combined this with the notion that humans had rights. He wrote: “Men, by nature all free,

<sup>33</sup> See note 31. The definition of security is “the state of being or feeling secure”, and of secure: “certain to remain safe and unthreatened; protected against attack or other criminal activity; feeling free from fear and anxiety”, *op. cit.* (note 7).

<sup>34</sup> P. Perrin, “War and public health: Extending the concept of public health for the victims of armed conflict”, Editorial, *Health in*

*Emergencies*, issue 3, WHO, Geneva, 1998, p. 1.

<sup>35</sup> D. Meddings, “Human security as a prerequisite for health”, *British Medical Journal*, vol. 322, 2001, p. 1553.

<sup>36</sup> T. Hobbes, *Leviathan*, Ed. R. Tuck, Cambridge University Press, Cambridge, 1996, p. 89.

equal and independent, no-one can be put out of this estate and subjected to the political power of another without his own consent. The only way whereby anyone divests himself of his natural liberty and puts on the bonds of civil society is by agreeing with other men to join and unite into a community for their comfortable, safe and peaceable living one among another, in a secure enjoyment of their properties..."<sup>37</sup> He also said that anybody who transgresses the law of nature "declares himself to live by another rule than that of reason and common equity ... and so becomes dangerous to mankind."<sup>38</sup> The arguments of Hobbes and Locke can both be related to humanity-humankind and the definition of health;<sup>39</sup> they are pertinent today in relation to security in a world of States and international law.

Governments do not necessarily give primary consideration to personal security or to individuals' physical, mental and social well-being. A government's security policies ensure that the State is defended from aggressive acts committed by other States and from threats that arise from within its own populace, the latter being deemed, at present, the concerns only of the State in question.<sup>40</sup> The assumption is easily made that State security means security for the people in that State, but as the history of the twentieth century has amply shown, especially during the Cold War era, State security does not automatically so translate. There is frequently a trade-off between personal security and State security.

The United Nations has introduced — as its primary purpose — a third security consideration: international or global peace and security.<sup>41</sup> International security depends on the community of nations and means peace, order and lawfulness within that community. Whilst State security may be subordinated to international security, it is only when personal insecurity within a State is of such magnitude that it poses a threat to international security that forceful intervention

<sup>37</sup> J. Locke, *Second Treatise of Government: Of the Beginning of Political Societies* (1690), Blackwell, Oxford, 1976, p. 49.

<sup>38</sup> *Ibid.*, p. 6.

<sup>39</sup> See note 31.

<sup>40</sup> UN Charter, Art. 2(7).

<sup>41</sup> UN Charter, Art. 1(1).

by other States can be justified under the UN Charter.<sup>42</sup> Such intervention has been labelled “humanitarian.”<sup>43</sup>

Alongside recognition of the benefits for all resulting from international security, there is a growing interest in the international arena in promoting personal security. The ascendance of human rights is one aspect. There is also the emerging concept of “human security”, which is a term coined in 1994 by the United Nations Development Programme.<sup>44</sup> The definition of human security given in the UNDP report has two main aspects: “[s]afety from such chronic threats as hunger, disease and repression [and] protection from sudden and hurtful disruptions in the patterns of daily life”. Here personal security and health are clearly linked. Although human rights are only mentioned directly within the context of political security, the whole document is written in the language of human rights. An example is: “There have always been two major components of human security: freedom from fear and freedom from want.”<sup>45</sup> Interestingly, and perhaps to avoid more controversial issues, the report emphasizes that “[h]uman security is not a concern with weapons.” It is contended here that such a dismissal is illogical because weapons are the principal means by which personal security is eroded and therefore must be recognized as both security and health issues.

The Commission on Global Governance, in 1995, recommended that as global society has changed, so too should thinking about global security.<sup>46</sup> The report states: “Global security must be broadened from its traditional focus on the security of states to include the security of people and the planet.” It further explains: “The

<sup>42</sup> UN Charter, Art. 40.

<sup>43</sup> See F. Teson, “Collective humanitarian intervention”, *Michigan Journal of International Law*, vol. 17, 1996, pp. 323-371; M. Glennon, “The new interventionism”, *Foreign Affairs*, 1999, pp. 2-7. B. Simma, “NATO, the UN and the use of force: Legal aspects”, *EJIL*, 1999, vol. 10, pp. 1-22; N. Chomsky, *The New Military Humanism: Lessons Learnt from Kosovo*, Pluto Press, London, 1999.

<sup>44</sup> *Human Development Report*, UNDP, New York, 1994, pp. 22-40.

<sup>45</sup> This is a reference to Franklin D. Roosevelt’s “Fundamental Freedoms” speech of 1941. The four freedoms are: freedom from fear, freedom from want, freedom of speech and freedom of worship.

<sup>46</sup> Commission on Global Governance, *Our Global Neighbourhood*, Oxford University Press, Oxford, 1995.

security of people recognises that global security extends beyond the protection of borders, ruling elites and exclusive state interests to include the protection of people.” The report, like the UNDP report, is also founded on human rights. As the first proposed principle of security for a new era it proposes: “All people, no less than all states, have a right to a secure existence, and all states have an obligation to protect these rights.” It strongly recommends a re-examination of Chapter VII of the Charter of the United Nations.

In 1999 the governments of Canada and Norway adopted human security as a new paradigm for foreign policy. The Canadian Foreign Minister declared: “In essence, human security means safety for people from both violent and non-violent threats. It is a condition or state of being characterised by freedom from persuasive threats to people’s rights, their safety or even their lives.”<sup>47</sup>

None of the above reports that propose new security concepts make explicit the fact that security is a prerequisite for health. However, three important points emerge: first, that new thinking about personal security is permeating the international community; second, those who are promoting the notion of human security are promoting human rights and the inextricable link between personal security and health; and third, that health and human rights are being taken beyond the right to health, perceived widely as a collection of economic and social rights, to the domain of civil and political rights.<sup>48</sup>

It appears, then, that for some time security has been recognized as a prerequisite for a peaceable, constructive and collective existence in which individuals can live in a state of complete physical, psychological and social well-being; this recognition has simply been expressed in different ways. The required security can be, and for many has been, achieved by an interplay of international, national and

**47** *Human Security: Safety for People in a Changing World*, Department of Foreign Affairs and International Trade, Ottawa, April 1999.

**48** The right to health arises from Art. 25 of the 1948 Universal Declaration of Human

Rights, Art. 12 of the International Covenant of Economic, Social and Cultural Rights, Art. 12 of the Convention on the Elimination of All Forms of Discrimination Against Women, and Art. 24 of the Convention on the Rights of the Child.

personal security measures, many of which constitute obligations of States under international law.

But do not personal security and health represent the ultimate goal of humanity, human rights and humanitarian intervention? Can we not interpret “humanity” as the promotion of security and health? This interpretation would encompass both humanity-sentiment and humanity-humankind. It enables crimes against humanity to be viewed as shocking crimes liable to erode people’s security and health to the point that collective human existence is in jeopardy. An act of humanity and therefore humanitarianism may comprise: first, preventing certain effects of armed violence on security and health (which often involves invoking the law); and second, assisting people suffering the effects of use of weapons or the threat thereof. Humanity accordingly limits, to the greatest extent possible, the effects of armed violence on people’s security and health. Importantly, it extends to restraining the capacity for armed violence so that humans can live in a peaceable, constructive society in which, for instance, family life, education and commerce, i.e., humanity-humankind, can flourish.

Interpreting humanity in these terms has the advantage that many objective indicators of insecurity are, at the same time, indicators of a decline in health which are measurable at the level of either individuals or groups. Examples are numerous and include the number of people shot by firearms and their mortality rate, the number of detainees beaten or tortured, the number of people who have to leave their homes at gunpoint, and the number of people denied access to clean drinking water through destruction of water supplies.<sup>49</sup> Falling literacy rates and rising infant mortality could be examples of less direct indicators of widespread insecurity that results in social disruption. In this way, degradation of personal security and therefore of people’s health can be identified, analysed and commented upon in objective terms before any moral, political or legal judgment is made of the context. Furthermore, the degree to which humanity is degraded in response to events such as wars, elections and natural disasters is an indicator of the civil and political stability of a society.

<sup>49</sup> Coupland, *op. cit.* (note 6).

Does an objective interpretation of humanity in terms of security and health imply that considerations of humanity in international law are universal considerations? Whatever the state of development of any human group, the individuals within it have striven for the improvement if not maintenance of their security and health or, in the terms of this paper, to uphold their humanity. Societies have developed because there is greater security in living in a group. However, one group can impact on the security of the individuals in another; this implies the need for collective security arrangements and reflects the origins of militarism. Alternatively, the security of individuals within a group may be eroded by others of the same group, especially by the leader of the group or people acting on the leader's behalf. When security is eroded to the point that living in such a situation becomes intolerable, i.e., individuals are threatened by or ultimately subject to armed violence, they react with one of four identifiable patterns of behaviour that are exhibited in any aggressive situation: they fight; they flee; they submit; or they posture.<sup>50</sup> This suggests first, that humanity is a universal human aspiration; second, that humanity is both the result and right of living in groups; and third, that our reactions to any erosion of humanity are driven by our biology. Further evidence for the universality of humanity comes from the relatively new discipline of evolutionary psychology.<sup>51</sup> Culture, behaviour within our particular culture and the ability to impart and receive knowledge are all manifestations of the evolution of *homo sapiens*. They derive in part from our genetic make-up and in part from environmental influences. In brief, we are born with an ability to behave in certain ways and learn certain things. This means that employing violence for gain or defence, reacting to aggression and both creating and enforcing rules are, in part, driven by our evolved biology. This speaks for the genuine universality of international law. Appropriately,

<sup>50</sup> D. Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society*, Little Brown, Boston, 1995, pp. 5-16.

<sup>51</sup> H. Plotkin, *Evolution in Mind: An Introduction to Evolutionary Psychology*,

Penguin, London, 1997. See also R. Trivers, "The evolution of reciprocal altruism", *Quarterly Review of Biology*, vol. 46, 1971, pp. 35-57.

D'Amato has used Darwinian terms to describe the evolution of customary international law.<sup>52</sup>

If we interpret humanity-humankind as people living together in a state of security and health, there is near total overlap of meaning with development, human security and even civilization. Achieving this state requires an aspect of our psychology which is found in the collection of synonyms for humanity-sentiment. Humanity-sentiment and humanity-humankind are co-dependent; the former has evolved as an essential component of the latter.

### **How does humanity, interpreted in terms of security and health, influence international law?**

Two bodies of international law are traditionally associated with humanity, as shown by their names: international humanitarian law and human rights law. By interpreting humanity in terms of security and health, it becomes apparent that other bodies of international law restrain armed violence and so serve also to promote humanity.

There are customary law rules which give States a right to self-defence and which prohibit international aggression.<sup>53</sup> These, together with laws pertaining to the pacific settlement of international disputes and ensuring international peace and security, are formalized in the Charter of the United Nations.<sup>54</sup>

The international law of arms control and disarmament is negotiated either on a bilateral or multilateral basis by States with national security as the highest priority.<sup>55</sup> This body of law diminishes the likelihood of war, the extent of suffering and damage in the event of war, and expenditure on weapons, and provides a framework for negotiation between opposing sides and reducing suspicion.<sup>56</sup> In this

<sup>52</sup> A. D'Amato, "Trashing customary international law", *AJIL*, vol. 81, 1987, pp. 101-105.

<sup>53</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. the United States of America), Merits, Judgment*, I.C.J. Reports 1986, paras. 187 to 201.

<sup>54</sup> UN Charter, Arts 1(1) and (2), and Art. 51.

<sup>55</sup> Examples are the 1968 Nuclear Non-Proliferation Treaty, the 1972 Biological

Weapons Convention and the 1993 Chemical Weapons Convention.

<sup>56</sup> R. Matthews/T. McCormack, "The relationship between international humanitarian law and arms control.", in H. Durham/T. McCormack (eds), *The Changing Face of Conflict and the Efficacy of International Humanitarian Law*, Kluwer, The Hague, 1999, pp. 65-98.

way, and like the UN Charter, it forms part of international law that promotes humanity by restraining armed violence. However, in arms control and disarmament negotiations there is some influence brought by "humanitarian" principles and therefore by personal security considerations.<sup>57</sup> In contrast, human rights law gives priority to personal security.<sup>58</sup> Full accordance with human rights can be equated with the greatest possible security and health of a population. International humanitarian law stands in the middle; it fits the paradigm because its principle objective is to promote personal security and health when national security is being determined by recourse to armed violence, but also overlaps with international law governing arms control and disarmament.<sup>59</sup> These bodies of law all ultimately serve to restrain armed violence or to limit its effects on security and health and thereby promote humanity. The difference lies in the level of security that is the main objective of those negotiating or implementing the treaties.

The nexus of armed violence, humanity and international law can be explained in practical terms by considering the four situations in which governments and their designated bearers of weapons, namely the armed forces or the police, may use weapons without violating international law. They are: defence of the nation; suppression of armed insurrection, i.e., fighting against an armed faction within the State's own borders and which comprises its own nationals; peace-enforcement missions authorized by the UN Security Council; and domestic law enforcement. These situations are compatible with promoting humanity. Broadly speaking, one or more of the international

**57** R. Matthews,/T. McCormack, "The influence of humanitarian principles in the negotiation of arms control treaties", *IRRC*, No. 834, June 1999, pp. 331-352.

**58** Art. 1(3) of the UN Charter addresses States' obligations to uphold human rights. The 1948 Universal Declaration of Human Rights, the 1976 International Covenant on Civil and Political Rights and the 1976 International Covenant on Economic, Social and Cultural Rights together are seen as an

international bill of rights from which have flowed other human rights instruments.

**59** The principle treaties of international humanitarian law are the 1949 Geneva Conventions for the protection of war victims and the 1977 Additional Protocols thereto. Some other treaties are considered part of international humanitarian law, such as the 1980 UN Convention on Conventional Weapons and the 1997 Ottawa Anti-personnel Mines Treaty.

laws cited above are violated if armed violence or the threat thereof is either unrestrained within or employed outside these situations.

Humanity is the lowest common denominator of most, if not all, international law and thus continues to influence a much wider spectrum of international law than is traditionally thought.

### **Conclusions**

At present, the meaning of humanity is ambiguous. It is currently perceived as little more than a source of international law with tenuous links to natural law. This ambiguity has led to a failure to recognize humanity as a continuing and powerful influence on international law and as the only valid objective of that law. It is therefore denied a place in legal dialogue.

This paper has postulated that a fundamental and objective relationship exists between humanity, armed violence and international law and that this relationship has long been recognized. The supporting evidence is eclectic; it indicates that the different notions of humanity are co-dependent and that international law pertaining to the differential of power brought about by the possession of weapons, their use and the threat thereof is the cause and effect of any collective human advancement. A definition of humanity is proposed, namely that humanity arises from and signifies restraining the capacity for armed violence and limiting its effects on security and health. Humanity interpreted in these terms encompasses humanitarianism, morality, development, human rights and human security. Does this not provide an objective basis for the “humanised version of ethics” demanded by Glover and the value system that Alston recommends for the practice of international law in the face of globalization?<sup>60</sup>

Humanity is not solely the domain of “humanitarian” agencies or international lawyers. Other disciplines, especially those

<sup>60</sup> *Op. cit.* (note 28), p. 410. P. Alston, “The myopia of handmaidens: International lawyers and globalization”, *EJIL*, vol. 3, 1997, pp. 435-448.

based on life sciences, can be brought to bear.<sup>61</sup> Slim argues that humanity is a universal ethic and should be shared between all people involved with the process of going to war.<sup>62</sup> The author of this paper concurs and goes further by proposing that because of humans' predisposition to make and use weapons, humanity and international law go hand in hand as universal necessities for human existence.



## Résumé

### **Humanité : qu'est-elle et comment influence-t-elle le droit international ?**

par ROBIN COUPLAND

*Pour l'auteur, le principe de l'humanité inclut la possibilité et la volonté de réduire la capacité de se livrer à la violence armée et d'en limiter les effets sur la sécurité et la santé. L'humanité ainsi interprétée englobe l'humanitarisme, la moralité, le développement, les droits de l'homme et la sécurité humaine. À ce titre, elle est une des principales sources du droit international en général et du droit international humanitaire en particulier. Dans cet article, l'auteur décrit les conséquences du lien étroit qui existe entre humanité et droit international.*

**61** To coincide with the 50th anniversary of the 1949 Geneva Conventions, the *British Medical Journal* published a special theme issue on 14 August 1999 entitled "Medicine and international law." It examined the role of health professionals in the upholding of

human rights and international humanitarian law.

**62** H. Slim, "Sharing a Universal Ethic: the Principle of Humanity in War", *International Journal of Human Rights*, vol. 2, 1998, pp. 28-48.