

Title	Complementarity between human security and legal frameworks for humanitarian action
Authors	Cubie, Dug
Publication date	2022-10-14
Original Citation	Cubie, D. (2022) 'Complementarity between human security and legal frameworks for humanitarian action', in G. Oberleitner (ed.) Research Handbook on International Law and Human Security. Edward Elgar Publishing, pp. 258–271. https://doi.org/10.4337/9781800376977.00023 .
Type of publication	book-chapter
Link to publisher's version	10.4337/9781800376977.00023
Rights	© The Editor and Contributors severally 2022. This is a draft chapter. The final version is available in Research Handbook on International Law and Human Security, edited by Gerd Oberleitner, published in 2022, Edward Elgar Publishing Ltd. https://doi.org/10.4337/9781800376977.00023 . The material cannot be used for any other purpose without further permission of the publisher, and is for private use only.
Download date	2026-09-24 12:42:12
Item downloaded from	https://hdl.handle.net/10468/14597



UCC

University College Cork, Ireland
Coláiste na hOllscoile Corcaigh

Complementarity Between Human Security and Legal Frameworks for Humanitarian Action

Dr Dug Cubie¹

Abstract (150 words): There are close connections between humanitarian action and human security which arise, in part, from their common focus on the principles of humanity and human dignity. Indeed, the UN Trust Fund for Human Security has argued that a longer-term human security approach complements more immediate humanitarian efforts. Drawing on research elaborating the concept of an *acquis humanitaire* of laws, policies and practices relevant in humanitarian crises, this chapter explores the interconnections between human security and the legal frameworks for humanitarian action. After examining the twin components of humanitarian action, namely material assistance and protection of persons, the chapter argues that adopting a human security lens may be a useful way of operationalising a rights-based approach to humanitarian action, based on protection, empowerment, non-discrimination and accountability.

Key words: humanitarian action, *acquis humanitaire*, protection, empowerment, legal frameworks

1. INTRODUCTION

The human suffering arising from war, disasters and displacement needs no introduction. The loss of life, health, homes, livelihoods and family ties which result from humanitarian crises have been evident throughout history, and we now have unparalleled access to information regarding the challenging situations faced by millions of people across the globe. Countering these forces of destruction are the work of states, humanitarian actors and local communities who attempt to prevent, minimise and alleviate this suffering.² From armed conflicts in countries such as Syria and Yemen, to disaster risks arising from climate change for small-island developing states, and forced displacement due to persecution in places such as Myanmar, there are a wide range of

¹ School of Law, University College Cork, Ireland.

² Barnett and Weiss contrast the forces of destruction with those of production and salvation. See: Michael Barnett and Thomas G. Weiss, *Humanitarianism Contested: Where Angels Fear to Tread* (Routledge 2011) 17-23.

situations where domestic, regional and international actors may be required to provide support to address the expected or actual impacts of such crises. The World Health Organisation consequently developed a broad definition of ‘humanitarian crises’ as:

An event or a series of events representing a critical threat to the health, safety, security and/or well-being of a community or other large group of people, usually over a wide area. Armed conflicts, epidemics, famine, natural disasters and other major emergencies may all involve or lead to a humanitarian crisis.³

Based on this understanding of humanitarian crises, this chapter takes as its starting point a key finding identified by the UN Trust Fund for Human Security, namely the complementarity between human security as a policy approach and the operational frameworks for humanitarian action.⁴ In particular, it will draw on previous research exploring the body of laws, policies and practices relating to material assistance and the protection of persons in humanitarian crises, which I have termed the *acquis humanitaire*.⁵ While commonly referred to as ‘humanitarian assistance,’ this chapter will argue that a broader understanding of the legal and non-legal sources of rights and obligations relating to humanitarian action is required.

There are clearly close connections between the two topics. As Mary Robinson succinctly noted during her tenure as UN High Commissioner for Human Rights: “Whereas human security issues have – to some extent – always been on the UN agenda in all but name ... the commitment to human security underlines much of the United Nations action in the areas of peace and security, *humanitarian assistance*, crime prevention and development, among others.”⁶ However, human security is not the only analytical lens which can be utilised when examining humanitarian action. Humanitarianism has a long history in international law, stretching back to the original 1864

³ UN, *Risk Reduction and Emergency Preparedness: WHO Six-year Strategy for the Health Sector and Community Capacity Development*, World Health Organisation (Geneva, 2007) 7. The terminology of ‘natural’ disasters is now generally avoided, as disasters are a combination of natural hazards and individual or societal vulnerabilities and resilience. See for example: Ksenia Chmutina et al, ‘Why natural disasters aren’t all that natural’ (14 September 2017) *OpenDemocracy*, available at: www.opendemocracy.net/ksenia-chmutina-jason-von-meding-jc-gaillard-lee-bosher/why-natural-disasters-arent-all-that-natural

⁴ UN Trust Fund for Human Security, *Human Security Handbook* (January 2016): “The human security approach ... complements immediate humanitarian efforts by proactively considering the root causes of crises and the long-term solutions needed to prevent their reoccurrence”, 42.

⁵ Dug Cubie, *The International Legal Protection of Persons in Humanitarian Crises: Exploring the Acquis Humanitaire* (Hart Publishing, 2017).

⁶ As quoted in: Gerd Oberleitner, ‘Human Security: A Challenge to International Law?’ (April-June 2005) 11(2) *Global Governance* 185-203, 192 [emphasis added].

Geneva Convention,⁷ and core principles which were developed and adapted over the course of many decades of experience.⁸ Likewise, the extensive body of international human rights law creates binding legal obligations on states and various non-state actors. Conversely, human security is an operational or policy approach, rather than a legal obligation *per se*.⁹ Moreover, the focus of the *acquis humanitaire* on material assistance and protection of persons in humanitarian crises (a ‘law of humanitarian assistance’ so to speak), does not specifically address some of the broader challenges covered by the concept of human security such as peacebuilding and national security issues.¹⁰ This chapter will therefore examine areas of synergy and divergence between human security and humanitarian action; in particular, it will argue that a human security approach may be a useful way of operationalising a rights-based approach to humanitarian action. Consequently, this chapter does not intend to provide an analysis of the development of the concept of human security, as this is ably addressed in other contributions to this volume.¹¹ Instead, it takes the common understanding on human security set out in UN General Assembly Resolution 66/290¹² as the current basis for discussion on human security as a normative framework and as an operational approach.

The chapter will commence with a definition of the humanitarian imperative and what constitutes ‘humanitarian action’, alongside an overview of the *acquis humanitaire* as a body of laws, policies and practices deriving from relevant obligations contained across several branches of international law, including international humanitarian law, human rights law, refugee and forced displacement law, and international disaster law. This will be followed by discussion of a rights-based approach to humanitarian action. The chapter will conclude with a section discussing the principles of humanity and human dignity which underpin both human security and humanitarian

⁷ Convention for the Amelioration of the Condition of the Wounded in Armies in the Field (22 August 1864).

⁸ Daniel Palmieri, ‘An Institution Standing the Test of Time? A Review of 150 Years of the History of the International Committee of the Red Cross’ (Spring 2013) 95(889) *International Review of the Red Cross* 1-26.

⁹ As Churruca has succinctly argued, human security is “best understood as being a goal to be attained.” See: Cristina Churruca Muguruza, ‘Human Security as the Link Between Humanitarian Action and Peacebuilding’ (2015) 31-46, 34 in: Pat Gibbons & Hans-Joachim Heintze (eds), *The Humanitarian Challenge: 20 Years European Network on Humanitarian Action (NOHA)* (Springer 2015).

¹⁰ For a review of Japan’s foreign policy objectives in South Sudan from a human security perspective, see: Maria Thaemar C. Tana, ‘Aid, Peacebuilding, and Human Security: Japan’s Engagement in South Sudan, 2011-2017’ (2021) *Journal of Peacebuilding and Development* 1-14.

¹¹ [Internal cross reference to relevant chapters on history and development of human security]

¹² UN General Assembly Resolution 66/290, *Follow-up to paragraph 143 on human security of the 2005 World Summit Outcome* (25 October 2012) A/RES/66/290. See also: UN General Assembly, *Follow-up to General Assembly resolution 66/290 on human security: Report of the Secretary-General* (23 December 2013) A/68/685.

action, and the potential benefits of utilising a human security approach as an operational tool for humanitarian programming.

2. LEGAL FRAMEWORKS FOR HUMANITARIAN ACTION

2.1 Defining humanitarian action

The fundamental principles of the Red Cross Red Crescent Movement, formally adopted in 1965, identified the ‘humanitarian imperative’ as a defining characteristic of the principle of humanity – namely, “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.”¹³ The humanitarian imperative has since been acknowledged as the motivational basis for actions undertaken by a wide range of governmental, inter-governmental and non-governmental humanitarian actors. Of note, the influential Sphere Handbook’s *Humanitarian Charter* not only affirms the primacy of the humanitarian imperative, but maintains that nothing should override it.¹⁴ In a similar manner, UNICEF has described the humanitarian imperative in the following terms:

Human suffering must be addressed wherever it is found, with particular attention to the most vulnerable in the population, such as children, women, the displaced and the elderly. The dignity and rights of all those in need of humanitarian assistance must be respected and protected. The humanitarian imperative implies a right to receive humanitarian assistance and a right to offer it.¹⁵

The humanitarian imperative may set out the basis for action, but the exact content and limitations of which type of actions fall within the humanitarian sphere are contested. Should humanitarian actors work on the basis of strict neutrality, such as members of the Red Cross Red

¹³ *Proclamation of the Fundamental Principles of the Red Cross*, Resolution VIII, XXth International Conference of the Red Cross, Vienna, 2-9 October 1965. See: ‘Resolutions Adopted by the XXth International Conference of the Red Cross’ (November 1965) 56 *International Review of the Red Cross* 573. The seven fundamental principles are: humanity, impartiality, neutrality, independence, voluntary service, unity and universality. See: www.ifrc.org/en/who-we-are/vision-and-mission/the-seven-fundamental-principles. For detailed discussion of these principles from the perspective of the Red Cross Red Crescent Movement, see: Jérémie Labbé and Pascal Daudin, ‘Applying the Humanitarian Principles: Reflecting on the Experience of the International Committee of the Red Cross’ (2015) 97 (897/898) *International Review of the Red Cross* 183-210.

¹⁴ Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (4th edn, 2018) 28.

¹⁵ UNICEF’s *Humanitarian Principles*, July 2003, available at: www.unicef.org/pathtraining/Documents/Session%204%20Humanitarian%20Principles/Participant%20Manual/4.2%20UNICEF%20Humanitarian%20Principles.doc.

Crescent Movement, or should a more ‘muscular’ approach be taken?¹⁶ When, if ever, are states legally allowed to undertake a humanitarian intervention; and can they use military force to do so?¹⁷ At what point should humanitarian activities hand over to longer-term development work?¹⁸ Questions such as these help refine the contours of the humanitarian imperative, and despite the lack of a common definition of what constitutes ‘humanitarian action’, a central core of activities can be identified. For example, the UN Guiding Principles on Internal Displacement enumerate the basic minimum that competent authorities must provide to internally displaced persons as: essential food and potable water; basic shelter and housing; appropriate clothing; and essential medical services and sanitation.¹⁹

However, the Guiding Principles also recognise that material aid in itself is not sufficient, and clearly elaborate the obligation on national authorities to provide both protection and material assistance to internally displaced persons within their jurisdiction.²⁰ Indeed, Hugo Slim has attacked the commodification of humanitarianism and its subsequent reduction to basic packages of material aid as a “serious heresy which undermines wider humanitarian values.”²¹ A deeper understanding of the humanitarian imperative therefore includes the protection of persons as a central function of humanitarian action. For example, the Swiss government has highlighted the interconnections between material assistance and protection, arguing that:

“Shortage or lack of essentials such as food, water or healthcare is often closely linked to a lack of protection and fulfilment of corresponding human rights. Therefore, humanitarian assistance cannot be regarded exclusively as an action to provide relief to lessen the needs of a civilian population, but also to contribute to the protection and fulfilment of socio-economic human rights.”²²

¹⁶ Anne Orford, ‘Muscular Humanitarianism: Reading the Narratives of the New Interventionism’ (1999) 10(4) *European Journal of International Law* 679-711. See also: Michael Barnett & Thomas G. Weiss, *Humanitarianism in Question: Politics, Power, Ethics* (Cornell University Press 2008).

¹⁷ This chapter will not discuss humanitarian interventions and the Responsibility to Protect doctrine, but for analysis of these issues in the context of disasters, see: Craig Allan & Thérèse O’Donnell, ‘An Offer You Cannot Refuse? Natural Disasters, the Politics of Aid Refusal and Potential Legal Implications’ (2013) 5(1) *Amsterdam Law Forum* 36-63.

¹⁸ UN Trust Fund for Human Security, *Human Security: Bridging the Gap between Humanitarian Assistance and Sustainable Development* (no date).

¹⁹ UN, Commission on Human Rights, *The Guiding Principles on Internal Displacement* (1998) E/CN.4/1998/53/Add.2, Principle 18(2).

²⁰ *Ibid*, Principle 3(1).

²¹ Hugo Slim, ‘Relief Agencies and Moral Standing in War: Principles of Humanity, Neutrality, Impartiality and Solidarity’ (1997) 7(4) *Development in Practice* 342, 345.

²² Swiss Federal Department of Foreign Affairs, *Humanitarian Access in Situations of Armed Conflict: Handbook on the International Normative Framework* (2nd edn, December 2014) 40.

This dual approach of protection and material assistance reflects the binding legal provisions of the 1989 UN Convention on the Rights of the Child, which provides that refugee children shall “receive appropriate protection and humanitarian assistance.”²³ At a regional level, the African Union’s 2009 Kampala Convention created binding obligations on State Parties to provide both protection and material assistance to internally displaced persons.²⁴

Although one can generally identify the basic types of material assistance required in a humanitarian crisis, the precise delineation of protection activities is less clear. In the late 1980s Goodwin-Gill acknowledged that “the word ‘protection’ has become something of a term of art [in refugee law], obscuring the scope of an activity that ought to be fundamentally clear.”²⁵ Reflecting similar concerns from humanitarian practitioners, the International Committee of the Red Cross (ICRC) instituted a series of workshops and consultations between 1996 and 2000, which led to the adoption of an expansive definition of ‘protection’:

[A]ll activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law, i.e. human rights law, international humanitarian law, and refugee law. Human rights and humanitarian organisations must conduct these activities in an impartial manner (not on the basis of race, national or ethnic origin, language or gender).²⁶

The UN Inter-Agency Standing Committee (IASC) subsequently endorsed this definition and developed a tripartite model of protection as an objective, a legal responsibility and an activity.²⁷ Despite providing greater clarity on the types of activities which might fall under the rubric of ‘protection,’ this approach remains open to differential interpretations. Elizabeth Ferris has warned of the dangers of adopting a maximalist perspective as “it stretches the concept of protection so far that it incorporates almost all humanitarian and development work and risks becoming meaningless.”²⁸ Indeed, Ferris highlights that such an approach includes many activities

²³ *Convention on the Rights of the Child* (adopted 20 November 1989, entered into force 2 September 1990) 1577 UTS 3.

²⁴ Art 2(b), African Union, *Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (‘Kampala Convention’) (adopted 22 October 2009, entered into force 6 December 2012).

²⁵ Guy Goodwin-Gill, ‘The Language of Protection’ (1989) 1 *International Journal of Refugee Law* 6-19, 6.

²⁶ Sylvie Gioosi Caverzasio (ed), *Strengthening Protection in War: A Search for Professional Standards: Summary of Discussions among Human Rights and Humanitarian Organizations*, Workshops at the ICRC, 1996-2000, ICRC, (2001), 19.

²⁷ IASC, *Handbook on the Protection of Internally Displaced Persons*, Global Protection Cluster Working Group (2010), 7.

²⁸ Elizabeth Ferris, *The Politics of Protection: The Limits of Humanitarian Action* (Brookings Institution Press 2011), 275.

which should simply be seen as ‘good programming,’ rather than ‘protection activities.’ In the context of human security, the 2003 Commission on Human Security simply defined protection as “strategies ... [to] shield people from menaces.”²⁹ This was expanded upon in 2009 by the Human Security Unit of the UN Office for the Coordination of Humanitarian Affairs (OCHA), which explained that protection implies a top-down approach, and refers to the norms, processes and institutions required to protect people from critical and pervasive threats.³⁰

2.2 Identifying the *acquis humanitaire*

Following this brief discussion of the twin components of humanitarian action, it is instructive to consider the legal frameworks underpinning such humanitarian activities. Due to the range of factual scenarios which may precipitate a humanitarian crisis, it follows that a number of different branches of international law may be triggered, either individually or in combination.³¹ For example, a natural hazard such as flooding or an earthquake may occur in a territory which is in the grip of an armed conflict, or cross-border forced displacement may arise as a result of widespread repression by a government against an opposition movement. It is clear that the international community, and by extension international law, should endeavour to minimise or prevent the attendant human suffering such crises engender. Yet there is no unified ‘law of humanitarian assistance’ covering all such scenarios, and the legal rights and obligations applicable to different types of crisis vary. While both human security and humanitarian action can benefit from adopting a context-specific approach, this can also lead to differential treatment and unjustifiable anomalies.³² For example, the legal right to humanitarian assistance for civilians suffering as a consequence of international armed conflict, set out in Geneva Convention IV³³ and

²⁹ Commission on Human Security, *Human Security Now* (2003), 10.

³⁰ UN Office for the Coordination of Humanitarian Affairs (OCHA), *Human Security in Theory and Practice: Application of the Human Security Concept and the United Nations Trust Fund for Human Security* (New York 2009), 8.

³¹ For discussion of the intersections between different branches of international law, see: John Cerone, ‘Human Dignity in the Line of Fire: The Application of International Human Rights Law During Armed Conflict, Occupation, and Peace Operations’ (2006) 39 *Vanderbilt Journal of Transnational Law* 1447-1510; Stephane Jaquemet, ‘The Cross-Fertilization of International Humanitarian Law and International Refugee Law’ (September 2001) 83(843) *International Review of the Red Cross* 651-674.

³² See for example: CARE International, *The 10 Most Under-Reported Humanitarian Crises of 2020* (January 2021).

³³ *Geneva Convention IV Relative to the Protection of Civilian Persons in Times of War* (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287.

Additional Protocol I,³⁴ is more extensive than the rights which civilians can claim during an internal armed conflict.³⁵ Likewise, as an emerging discipline, international disaster law is still grappling with how best to hold states to account for their obligations to respect, protect and fulfil the rights of persons in disasters.³⁶ As a result of these complexities, the well-rehearsed concerns regarding the fragmentation of international law into separate silos formed the genesis for conceptualising a better understanding of the overlapping and interlinking legal frameworks applicable in humanitarian crises.³⁷

The *acquis humanitaire* therefore refers to the established and emerging body of laws, policies and practices which establish legal obligations and provide operational and normative guidance for state and non-state actors' preparations and responses to a variety of humanitarian challenges, including armed conflicts, forced displacement, and disasters. Within the context of this chapter, it is not possible to explore the wealth of substantive content across different branches of international law which constitutes the *acquis humanitaire*. Specific provisions relating to humanitarian action can be found in well-known sources, such as the four Geneva Conventions of 1949 and their 1977 Additional Protocols, the 1951 Refugee Convention, or foundational texts such as the 1998 Rome Statute of the International Criminal Court.³⁸ Others emanate from texts developed via intergovernmental processes, such as the 2016 International Law Commission (ILC) Draft Articles on the Protection of Persons in the Event of Disasters³⁹ and the Sendai Framework on Disaster Risk Reduction 2015-2030.⁴⁰ Likewise, provisions from relevant non-governmental sources are also incorporated to reflect the important role they play in supporting and regulating the operational activities of humanitarian actors, including those

³⁴ *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts* (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3.

³⁵ Joakim Dungal, 'A Right to Humanitarian Assistance in Internal Armed Conflicts Respecting Sovereignty, Neutrality and Legitimacy: Practical Proposals to Practical Problems' (May 2004) *Journal of Humanitarian Assistance*.

³⁶ See for example: Dug Cubie & Marlies Hesselman, 'Accountability for the Human Rights Implications of Natural Disasters: A Proposal for Systemic International Oversight' (2015) 33(1) *Netherlands Quarterly of Human Rights* 9-41.

³⁷ UN General Assembly, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law: Report of the Study Group of the International Law Commission* (13 April 2006) A/CN.4/L.682.

³⁸ *Rome Statute of the International Criminal Court* (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3.

³⁹ Official Records of the General Assembly, Seventh-first Session, *Supplement No.10* (UN Doc: A/71/10), Chapter IV: Protection of Persons in the Event of Disasters (2016).

⁴⁰ UN, *Sendai Framework for Disaster Risk Reduction 2015-2030* (18 March 2015) A/CONF.224/CRP.1.

contained in the Sphere Handbook and the 1994 Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief.

Consequently, the sources of the *acquis humanitaire* encompass both traditional ‘hard law’ such as international conventions and judicial determinations of competent international courts and tribunals, as well as non-binding ‘soft law’ norms arising from authoritative resolutions, guidelines and minimum standards which aim to improve the delivery of material assistance and the protection of persons in humanitarian crises.⁴¹ While legal positivists may focus their analysis on binding international legal instruments, the role such non-binding norms play in the preparation and response to humanitarian crises necessitates an expanded view of the sources of international law-making.⁴²

The two-fold aim of elaborating such an *acquis humanitaire* is to identify obligations for states, inter-governmental and non-governmental organisations relating to the protection of persons in humanitarian crises, and to draw together the binding and non-binding sources of international law, policy and practice which relate specifically to humanitarian action. The *acquis humanitaire* therefore is not intended to constitute a new body of international law, or unjustifiably conflate different legal regimes. However, from the perspective of policy-makers, practitioners and academics, there are practical benefits to examining the coherence between legal obligations and non-binding norms which influence the actions of states and other humanitarian actors. By grouping potential sources of humanitarian obligations and influences under a broad conceptual framework, the *acquis humanitaire* provides an opportunity to identify the overlaps and gaps in assistance and protection which may exist, and therefore presents an opportunity to expand our understanding and analysis of how best to promote the protection of persons in humanitarian crises.

2.3 A rights-based approach to humanitarian action

Before we turn to examine the complementarity of human security and humanitarian action, there is one key feature of the *acquis humanitaire* which it is important to consider. Humanitarian

⁴¹ For further discussion, see: Dug Cubie, ‘An Analysis of Soft Law Applicable to Humanitarian Assistance: Relative Normativity in Action?’ (2011) 2 *Journal of International Humanitarian Legal Studies* 177-215, 191-200.

⁴² See generally: Stephen Ratner, ‘Does International Law Matter in Preventing Ethnic Conflict?’ (2000) 32 *NYU Journal of International Law and Politics* 591-698.

action is comprised of activities at all stages of a humanitarian crisis (i.e. pre-, during, and post-emergency).⁴³ Walter Kälin, in his role as Representative of the UN Secretary-General on the human rights of internally displaced persons, emphasised the need for a 'cycle of protection' as a means of constantly adapting to challenges and optimising protection to those affected.⁴⁴ This view of protection is firmly rooted in international human rights law and stresses the accountability of duty-bearers and the fundamental role of the affected state, including in preparedness, response, recovery and reconstruction. In a similar manner to the prevention-oriented focus of a human security approach, this understanding of protection requires pre-emergency preventative and risk reduction work to reduce the likelihood of an event occurring in the first place. Such contingency planning can also minimise the impact should a crisis occur, for instance as a result of education activities, stockpiling of material supplies, or the establishment of early warning systems. In many cases, the most visible aspects of humanitarian action are emergency relief operations which occur during and in the immediate aftermath of a crisis. However, at least initially, most emergency responses are undertaken by local or domestic actors. Both from the perspective of humanitarian action and human security, the central role of local actors is fundamental and requires the implementation of comprehensive and meaningful empowerment activities.⁴⁵ Additionally, even as the immediate emergency response activities are taking place, it is important to plan for the post-emergency recovery and reconstruction phase and establish links to broader development plans for the affected populations and localities.⁴⁶

However, as Elizabeth Ferris has convincingly argued, the legal obligations of specified state and non-state actors to provide humanitarian protection must not be conflated with human rights protection or confused with physical protection.⁴⁷ Ferris defines 'humanitarian protection' as access to life-saving assistance, while 'human rights protection' encompasses the full enjoyment

⁴³ See for example, Daniel Farber, 'Legal Scholarship, The Disaster Cycle, and the Fukushima Accident' (2012) 23(1) *Duke Environmental Law and Policy Forum* 1-21; Marlies Hesselman, 'Establishing a Full 'Cycle of Protection' for Disaster Victims: Preparedness, Response and Recovery according to Regional and International Human Rights Supervisory Bodies' (2013) 18 *Tilburg Law Review* 106-132.

⁴⁴ Walter Kälin, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons: Addendum on Protection of Internally Displaced Persons in Situations of Natural Disasters* (5 March 2009) A/HRC/10/13/Add.1, para.21.

⁴⁵ For a comprehensive discussion, see: Shahla F. Ali, *Governing Disasters: Engaging Local Populations in Humanitarian Relief* (Cambridge University Press 2016). See also: Hugo Slim & Andrew Bonwick, *Protection: An ALNAP Guide for Humanitarian Agencies* (August 2005) Overseas Development Institute.

⁴⁶ UN Trust Fund for Human Security, *supra* note 18.

⁴⁷ Elizabeth Ferris, *supra* note 28, 279. See also: IASC, *The Centrality of Protection in Humanitarian Action: Statement by the Inter-Agency Standing Committee (IASC) Principals* (17 December 2013).

of a broader range of rights. Drawing on this distinction, the appropriate terminology in the context of the *acquis humanitaire* is a ‘rights-based approach to humanitarian action.’ A multitude of actions are required in a humanitarian crisis, and affected populations may need different types of protection: physical, humanitarian and/or human rights. Some actors may work towards creating a secure environment, others may undertake a broad range of human rights activities, while some may focus on a narrower band of humanitarian activities.

It is extremely unlikely that any one state or humanitarian actor will be able to fulfil all these urgent and longer-term issues in the midst of a major humanitarian crisis. Therefore, one must consider who has a legal responsibility to undertake particular activities, and how an effective division of labour can be achieved to ensure that all the needs and rights of the affected population are met.⁴⁸ Certain duty-bearers have a legal obligation to respect, protect and fulfil specific rights, such as UNHCR’s mandate to protect the rights of refugees, and the ICRC’s mandate to protect civilians and those *hors de combat* in conflict settings; while other actors may conduct human rights-based advocacy and reporting, such as Médecins Sans Frontières’ policy of *témoignage* or ‘bearing witness.’ Despite these different operational approaches, a rights-based approach to humanitarian action should, at a minimum, include a focus on procedural rights such as the right of access to information, the right to participate in decision-making, and the right of effective access to justice and administrative proceedings.⁴⁹ Such procedural rights are fundamental to promote participation and empowerment of local and affected communities on a non-discriminatory basis. As highlighted in the ICRC’s *Professional Standards for Protection Work*:

Measures to respect, safeguard and promote the dignity of persons at risk are not limited to engaging with them in a respectful manner. These measures also include facilitating their access to accurate and reliable information, ensuring their inclusion and meaningful participation in decision-making processes that affect them, and supporting their independent capacities, notably those of making free and informed choices, and of asserting their rights.⁵⁰

⁴⁸ OCHA has likewise highlighted one of the elements of a human security approach to humanitarian programming is the development of an “interconnected network of diverse stakeholders”. See: UN Office for the Coordination of Humanitarian Affairs, *supra* note 30, 11.

⁴⁹ See: *Rio Declaration on Environment and Development* (12 August 1992) A/CONF.151/26 (Vol. I), Principle 10.

⁵⁰ International Committee of the Red Cross (ICRC), *Professional Standards for Protection Work Carried out by Humanitarian and Human Rights Actors in Armed Conflict and Other Situations of Violence* (3rd edn, February 2018) 28.

One can therefore identify four minimum requirements for such a rights-based approach to humanitarian action, namely: 1) empowerment of rights-holders; 2) participation in decision-making processes; 3) non-discrimination and prioritisation of vulnerable groups; and 4) accountability of duty-bearers to rights-holders.⁵¹ Such an approach is explicitly intended to challenge the out-dated view of aid as ‘charity’ and to place the affected communities at the centre of any decision-making.⁵² Following this brief discussion of humanitarian action and the *acquis humanitaire*, it is now time to explore how a human security approach might be utilised as an operational lens for implementing a rights-based approach to humanitarian action.

3. A COMMON UNDERSTANDING BETWEEN HUMAN SECURITY AND HUMANITARIAN ACTION?

3.1 Humanity and human dignity

As noted in the Introduction, there are close connections between humanitarian action and a human security approach which arise in part from their common focus on the principles of humanity and human dignity. In her analysis of the role that human security plays in the work of the ICRC, Christy Shucksmith has argued: “The human-centric core of each framework means that the two ideas oscillate around a central commonality, that is, the concept of humanity.”⁵³ Indeed, the International Law Commission (ILC) has singled out the principle of humanity as “the cornerstone of the protection of persons in international law” due to its recognition in various branches of international law.⁵⁴ Likewise, the Sphere Handbook notes that the principles set out in its Humanitarian Charter “derive their force ultimately from the fundamental moral principle

⁵¹ Adapted from: International Human Rights Network, *Core Principles* www.ihrnetwork.org/what-are-hr-based-approaches_189.htm; and *Towards Freedom from Fear and Want: Human Rights in the Post-2015 Agenda*, Thematic Think Piece, Office of the High Commissioner for Human Rights, May 2012, produced for the UN System Task Team on the Post-2015 UN Development Agenda, 4.

⁵² For analysis of a recent proposal by Mark Lowcock, head of UN OCHA, for the creation of an Independent Commission for Voices in Crisis, see: Dorothea Hilhorst, ‘More ticking of boxes won’t make aid more accountable’ (4 May 2021) *The New Humanitarian*, available at: www.thenewhumanitarian.org/opinion/2021/5/4/more-ticking-of-boxes-wont-make-aid-accountable.

⁵³ Christy Shucksmith, ‘Building Human Security through Humanitarian Protection and Assistance: The Potential of the International Committee of the Red Cross’ (April 2017) 6(1) *Journal of Conflict Transformation and Security* 56-78, 64.

⁵⁴ Official Records of the General Assembly, *supra* note 39, 33. The ILC also noted that the humanitarian principles of humanity, neutrality and impartiality are “core principles recognised as foundational to humanitarian assistance.”

of humanity.”⁵⁵ Meanwhile, building on the central role played by human dignity in both international humanitarian and human rights law, the synthesis report of global consultations for the 2016 World Humanitarian Summit stressed: “People’s safety and dignity must be considered the primary aim of humanitarian activity, regardless of context or actor.”⁵⁶ As the International Criminal Tribunal for the former Yugoslavia forcefully noted in the Furundzija case:

The essence of the whole corpus of international humanitarian law as well as human rights law lies in the protection of the human dignity of every person, whatever his or her gender. The general principle of respect for human dignity is the basic underpinning and indeed the very *raison d’être* of international humanitarian law and human rights law; indeed in modern times it has become of such paramount importance as to permeate the whole body of international law.⁵⁷

Since its first enunciation in 1994 by Mahbud ul Huq,⁵⁸ the concept of human security has received widespread support, but equally has been subject to a range of critiques – not least due to the difficulties in identifying what is encompassed within a ‘human security approach.’⁵⁹ The distinction between a ‘narrow’ approach based on the freedom from fear in conflict settings, has been contrasted by the ‘broad’ approach which addresses both freedom from fear and freedom from want, which contains an increased focus on human development and peacebuilding.⁶⁰ Considering these differing approaches, the 2012 Common Understanding set out in UN General Assembly Resolution 66/290⁶¹ plays an important role in solidifying core elements of what human security does, and does not, entail. At a normative level, adopting a human security approach is not a legally binding obligation, in the same way that international humanitarian, refugee or human rights law obligations are. As Resolution 66/290 states: “Human security is an approach to assist Member States in identifying and addressing widespread and cross-cutting challenges to

⁵⁵ Sphere Handbook, *supra* note 14, 28. Of note, Jean Pictet, one of the pre-eminent scholars on humanitarian principles, argued that the principles of humanity and impartiality provide the moral ideal and ethical framework for humanitarian action, while the derived principles of neutrality and independence are “within the domain of means and not ends”. See: Jean Pictet, *The Fundamental Principles of the Red Cross: Commentary* (ICRC, Geneva, 1979), available at: www.icrc.org/en/doc/resources/documents/misc/fundamental-principles-commentary-010179.htm

⁵⁶ World Humanitarian Summit secretariat, *Restoring Humanity: Synthesis of the Consultation Process for the World Humanitarian Summit* (New York, United Nations, 2015) 23.

⁵⁷ *Prosecutor v. Furundzija*, Judgement (1T-95-17/1-T) 10 December 1998, para.183.

⁵⁸ UNDP, *Human Development Report 1994* (OUP 1994) 22-46.

⁵⁹ Gerd Oberleitner, *supra* note 6.

⁶⁰ Cristina Churrua Muguruza, ‘Human Security as a Policy Framework: Critics and Challenges’ (2007) *Yearbook on Humanitarian Action and Human Rights* 15-35.

⁶¹ UNGA Resolution 66/290, *supra* note 12.

the survival, livelihood and dignity of their people” (emphasis added).⁶² By implication, it follows that human security is not the *only* approach which one can take from either a theoretical or operational perspective when considering humanitarian action. Conversely, the express references in Resolution 66/290 to the right of people to live in freedom and dignity, with equal opportunity to enjoy all their rights, clearly indicates that the full body of international human rights law must be applied in any human security context.

Despite the common underlying principles of humanity and human dignity, and applicability of human rights law, one area of potential divergence between a human security approach and the *acquis humanitaire* is the temporal focus. In particular, one must be aware of the broader timescale and *ratione materiae* which the concept of human security addresses, including peacebuilding, conflict prevention and national security. So while all seven types of insecurity identified by the UN may be present in a humanitarian crisis, the root causes of these insecurities generally require a more comprehensive and extended timescale to be effectively tackled.⁶³ This does not mean that human security and humanitarian action are incompatible, simply that they should not be viewed as being synonymous. As the UN Trust Fund for Human Security has noted:

Human security complements immediate humanitarian efforts, while helping to shape long-term solutions that put people on the path to sustainable development. It highlights structural, institutional and behavioural changes that can reduce insecurities, while encouraging a process that builds trust, restores vital services and infrastructure, and fosters psychosocial healing as fundamentals for stability and development.⁶⁴

Therefore, the final section of this chapter will present arguments in support of the complementarity of human security and humanitarian action, although in a fairly narrow and specific manner, namely that adopting a human security lens as an operational tool is one means of promoting a rights-based approach to humanitarian action.

⁶² Ibid, para.3(a).

⁶³ UN Trust Fund for Human Security, *supra* note 4, 7. The different types of insecurity are: economic, food, health, environmental, personal, community, and political.

⁶⁴ UN Trust Fund for Human Security, *supra* note 18, 2.

3.2 Human security as an operational tool

The people-centric, comprehensive, context-specific, multisectoral and prevention-oriented approach which forms the basis of the 2012 Common Understanding on human security provides an analytical framework to develop rights-based approaches to humanitarian programmes and operations. As OCHA has noted, “[h]uman security is increasingly being adopted as ... a policy tool for programming in the fields of security, development and humanitarian work.”⁶⁵ Consequently, a variety of toolkits have been published to provide guidance on how to develop and implement programmes from a human security perspective. For example, the UN Human Security Handbook is aimed specifically at practitioners and sets out a step-by-step guide to developing and assessing the impact of human security programming.⁶⁶ In particular, the Handbook highlights that “Empowering people and their communities to articulate and respond to their needs and those of others is crucial.”⁶⁷ The twin components of humanitarian action, material assistance and protection of persons, likewise foreground the importance of focusing on the individual needs and rights of persons affected by a humanitarian crisis. Moreover, a rights-based approach, as elaborated in the *acquis humanitaire*, requires a comparable analytical lens to that utilised in human security programming, namely a focus on empowerment, participation, non-discrimination, and accountability. OCHA has defined the mutually reinforcing requirements of protection and empowerment within human security as representing the ‘top-down’ need for states and other non-governmental actors to protect people in a systematic, comprehensive and preventive way, with ‘bottom up’ empowerment by developing the capacities of individuals and communities to make informed choices and to act on their own behalf.⁶⁸ In explaining the added value of human security as an operational tool, OCHA subsequently identified seven elements of a human security approach which would benefit humanitarian programming, namely that it: i) provides a framework for protection and empowerment; ii) adopts a comprehensive approach to the full scope of human insecurities; iii) utilises a coherent multi-sectoral agenda; iv) elaborates context-specific actions; v) emphasises prevention; vi) focuses on the development of partnerships and collaboration; and vii) provides a mechanism for benchmarking, evaluation and impact assessment.⁶⁹

⁶⁵ UN Office for the Coordination of Humanitarian Affairs, *supra* note 30, 9.

⁶⁶ UN Trust Fund for Human Security, *supra* note 4.

⁶⁷ *Ibid*, 8.

⁶⁸ UN Office for the Coordination of Humanitarian Affairs, *supra* note 30, 8.

⁶⁹ *Ibid*, 10-11.

All these elements can be applied to a rights-based approach to humanitarian action, and the broader focus of human security can help to promote comprehensive and coherent programme development both within a particular organisation and through coordination between local, national and international actors. Interestingly, based on an analysis of the Ogre floods in Latvia in 2013, Bambals has argued that people in crisis situations are more likely to trust themselves, friends and family, than conventional security providers or the local municipality or government.⁷⁰ Over time, there is a risk that this could lead to a reduction of trust in the government and public services. While states have the primary responsibility to provide protection and assistance to persons affected by humanitarian crises on their territory,⁷¹ a multitude of other actors from local communities to major international organisations may also be involved. Applying a human security lens to the implementation of a rights-based approach to humanitarian action may provide a useful point of connection between the obligations of states, other humanitarian actors and ultimately the affected individuals and communities facing insecurity due to a crisis. Moreover, Bambals has noted that human security provides an important analytical tool for measuring the multi-faceted components of security in disaster scenarios in any country, not just in least developed states.⁷² In an age of climate change, this reminds us that all countries may be vulnerable to the effects of global warming and the resultant changes in frequency and severity of natural hazards such as cyclones, flooding and sea level rise.⁷³

The final point to note regarding the complementarity of human security and humanitarian action is that, despite the potential temporal divergence in focus of the two approaches, the prevention-oriented focus of human security can provide an important additional lens for planning and implementing activities at the prevention and preparation stage of humanitarian action. For example, humanitarian actors often undertake activities to promote disaster risk reduction, or to protect people from displacement before it occurs,⁷⁴ or to support conflict prevention and

⁷⁰ Rihards Bambals, 'Human Security: An Analytical Tool for Disaster Perception Research' (2015) 24(2) *Disaster Prevention and Management* 150-165.

⁷¹ See in particular: *Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations*, UNGA Res 46/182, 19 December 1991, Annex, Guiding Principle 4.

⁷² Rihards Bambals, *supra* note 70, 152.

⁷³ See for example: Daniel A. Farber, 'The Intersection of International Disaster Law and Climate Change Law' (2021) 2 *Yearbook of International Disaster Law* 87-115.

⁷⁴ Principle 5 of the UN Guiding Principles on Internal Displacement states "All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons." See: UN Commission on Human Rights, *supra* note 19.

peacebuilding.⁷⁵ As set out in the UN Human Security Handbook: “Uncovering and addressing the root causes of threats and people’s vulnerabilities to these threats are essential to guaranteeing the sustainability of actions taken, and to building on people’s resilience so that today’s progress is not lost on tomorrow’s crises.”⁷⁶

4. CONCLUSION

In both law and practice, one has to be careful not to unjustly conflate concepts or terminology. The close conceptual foundations and substantive objectives of human security and humanitarian action are a case in point. While OCHA’s seven elements of a human security approach mesh well with a rights-based approach to humanitarian action, there are important differences in both the timescale and breadth of activities which each topic addresses. Moreover, we have to be careful to avoid an over-securitisation of the humanitarian imperative.⁷⁷ The *acquis humanitaire* sketched out in this chapter is only intended to cover specific activities relating to the provision of protection and assistance before, during and after a humanitarian crisis. As such, the required actions are more timebound and targeted than the longer timeframes envisaged when one adopts a comprehensive human security approach. However, the 2012 Common Understanding on human security recognises there are interlinkages between peace, development, and human rights which requires a division of labour between different actors. Mary Robinson has likewise emphasised that due to the increasing threat from global climate change, “a new coherent approach is required based on addressing root causes, increasing political diplomacy for prevention and conflict resolution, and bringing humanitarian, development and peacebuilding efforts together.”⁷⁸

⁷⁵ The ICRC President, Peter Maurer, has argued: “Frontline humanitarian action is a vital stabilizing factor in fragmented environments and a building-block for peace.” See: *ICRC president’s address: Peace-building and conflict prevention, High-Level Meeting of the UN General Assembly on Peacebuilding and Sustaining Peace* (25 April 2018), available at: <https://www.icrc.org/en/document/icrc-presidents-address-peacebuilding-and-conflict-prevention>. See also: Cristina Churrua Muguruza, *supra* note 9.

⁷⁶ UN Trust Fund for Human Security, *supra* note 4, 20.

⁷⁷ See for example: Leah Kimathi, ‘The Securitization of Humanitarian Aid: A Case Study of the Dadaab Refugee Camp in Kenya’ 65-80, in Johannes Dragsbaek Schmidt, Leah Kimathi and Michael Omondi Owiso (eds), *Refugees and Forced Migration in the Horn and Eastern Africa: Trends, Challenges and Opportunities* (Springer 2019).

⁷⁸ ‘Inaugural Lecture by H.E. Mary Robinson, Chair of the Elders’, Ireland at Fordham Humanitarian Lecture Series, United Nations, New York (29 April 2019), available at: www.dfa.ie/pmun/newyork/news-and-speeches/speeches/2019/inaugural-ireland-at-fordham-humanitarian-lecture-by-he-mary-robinson-chair-of-the-elders.html

This chapter has argued that there is potential for greater complementarity between human security and humanitarian action; in particular, the underlying principles and elements of a human security approach may provide a useful operational lens by which to develop and implement a rights-based approach to humanitarian programming by both state and non-state actors. Through promoting a common language and understanding based on protection, empowerment, non-discrimination and accountability, this should ultimately benefit those most affected by humanitarian crises, by helping to prevent risk occurring in the first place and responding to a community's needs when a crisis does hit.