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## The Dark Lawmaking of Human Security

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# The Dark Lawmaking of Human Security

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## Abstract

It may conceivably be argued that human security constitutes a lawmaking facet of international security but has been largely cast in shadow whilst the primary international security focus has been directed toward State security. In that sense, it may be indicated that State security – akin to matter – has been a visible lawmaking component of international security; whereas human security – akin to 'dark matter' – has been essentially non-visible and thus largely a 'dark' lawmaking component of international security. Hence, if the existence of 'dark matter' can be demonstrated because visible matter does not have sufficient gravitational muster to hold galaxies together, then the existence of human security as a 'dark' lawmaking component of international security may feasibly be determined because State security evidently does not have sufficient lawmaking gravity to effectively maintain contemporary international security. It may thus conceivably be posited that State security cannot hold the 'international security galaxies' together – they would tear themselves apart. Hence, something that cannot be detected directly gives these international legal regimes extra mass, generating the extra 'lawmaking gravity' they need to stay intact: 'dark' human security. Accordingly, it may be argued that contemporary international security cannot effectively operate or be maintained without the 'dark' lawmaking of human security. Hence, the present study will examine the function of human security as a 'dark' lawmaking connector within and between three intersecting regimes or 'galaxies' of international law closely concerned with international security, namely: the jus ad bellum; the jus in bello; and the jus post bellum, represented in this study principally by international criminal law.

## Keywords

Human security; lawmaking; international security; the international law on the use of force; international humanitarian law; international criminal law

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## 1. Opening Reflections

Galaxies in our universe seem to be achieving an impossible feat. They are rotating with such speed that the gravity generated by their observable matter could not possibly hold them together; they should have torn themselves apart long ago. The same is true of galaxies in clusters, which leads scientists to believe that something we cannot see is at work. They think something we have yet to detect directly is giving these galaxies extra mass, generating the extra gravity they need to stay intact. This strange and unknown matter was called 'dark matter' since it is not visible.[1]

'Dark matter' is thus an invisible substance that permeates space; researchers have been able to infer the existence of dark matter only from the gravitational effect it seems to have on visible matter. Astronomers were able to work out where dark matter is because it distorts light from distant stars; the greater the distortion, the greater the concentration of dark matter. An international team of researchers has recently created the largest and most detailed map of the distribution of dark matter in the Universe; presenting 'remarkable results because the map demonstrates how dark matter sprawls across the Universe and show that it is more spread out than the current best theories predict. The bright areas on this map are where dark matter is concentrated – called 'halos' because right in the centre is 'where our reality exists'. In their midst are galaxies like our own Milky Way, 'shining brightly like tiny gems on a vast cosmic web.'[2] The map clearly shows that galaxies are part of a larger invisible structure: 'No one in the history of humanity has been able to look out into space and see where dark matter is to such an extent. Astronomers have been able to build pictures of small patches, but we have unveiled vast new swathes which show much more of its structure. For the first time we can see the Universe in a different way.'[3]

It may conceivably be argued that human security constitutes a lawmaking facet of international security but has been largely cast in shadow whilst the primary international

[1] CERN: 'Dark matter', available at: https://home.cern/science/physics/dark-matter; (site visited 26 October 2021).
[2] BBC: 'New dark matter map reveals cosmic mystery', Pallab Ghosh, BBC Science correspondent, 27 May 2021, available at: https://www.bbc.com/news/science-environment-57244708 (site visited 26 October 2021).
[3] BBC: 'New dark matter map reveals cosmic mystery' (n 2).

security focus has been directed toward State security. In that sense, it may be indicated that State security – akin to matter – has been a 'visible' lawmaking component of international security; whereas human security – akin to 'dark matter' – has been essentially 'non-visible' and thus mainly a 'dark' lawmaking component of international security. Hence, human security may be regarded as an essential and complementary counterpart of State security, rather than as a contrasting international security concern. Accordingly, it may moreover plausibly be argued that contemporary international security cannot effectively operate or be maintained without the 'dark lawmaking' of human security. It is an examination of this 'dark lawmaking' of human security that constitutes the central research focus of the present study. Prior research has mapped patches of human security across the Universe of international law[4], but the aim of the present study is to consider another perception of human security and map part of the 'intergalactic' features of international security. Hence, the present study will consider the function of human security as a 'dark' lawmaking connector within and between three intersecting regimes or 'galaxies' of international law closely concerned with international security, namely: the jus ad bellum; the jus in bello; and the jus post bellum, represented in this perspective principally by international criminal law. The primary objective of the present study is thus to examine human security as a 'dark intergalactic' connector, giving these international security galaxies extra normative mass and generating the extra 'dark' lawmaking gravity needed to maintain contemporary international security.

Methodologically, the study will combine contextual coherence and consistency in the examination of legal patterns of human security connectivity through the theoretical lens of international security. With further regard to the methodological premises, human security has been perceived as, for instance, a concept, a concept framework, a discourse, an agenda, or an approach.[5] However, the present study presents an alternative perception: human security as a lawmaking connector between international legal structures and regimes. Hence, the methodological aim of the present study is not to define or redefine human security concept(s), but to consider its function in international law, from the perspective of international security. This is, however, not to claim that human security should be regarded as a 'dark' lawmaking connector only; but merely that it may be perceived as a connector in addition to a concept, a concept framework, a discourse, an agenda, or an approach; thus augmenting rather than diminishing its legal significance and international societal import. It should also be noted in this regard that human security may have other functions within the realms of international law in addition to a function as a 'dark' lawmaking connector between international security structures and regimes. A closer consideration of complementary normative functions and frameworks of human security within and beyond these legal realms must, however, be pursued elsewhere so as not to expand the argument construct and thereby dilute the central examination in the present study.

[4] See, e.g.: Bertie G. Ramcharan, *Human Rights and Human Security* (Brill 2002); Mary Kaldor, *Human Security* (Polity Press 2007); Rhoda E. Howard-Hassmann, 'Human Security: Understanding Human Rights', *Human Rights Quarterly*, vol. 34, no. 1 (2012) 88; Shahrbanou Tadjbakhsh and Anuradha Chenoy, *Human Security: Concepts and Implications* (Routledge 2007); Hisashi Owada, 'Human Security and International Law', in Ulrich Fastenrath, Rudolf Geiger, Daniel-Erasmus Khan, Andreas Paulus, Sabine von Schorlemer, and Christoph Vedder (eds.), *From Bilateralism to Community Interest: Essays in Honour of Bruno Simma* (Oxford University Press 2011); Hitoshi Nasu, 'The Place of Human Security in Collective Security', *Journal of Conflict & Security Law* (2013), Vol. 18 No. 1, 95; David Andersen-Rodgers and Kerry F. Crawford, *Human Security: Theory and Action* (Rowman & Littlefield 2018); Christopher K. Penny, 'Human Security', in Thomas G. Weiss and Sam Daws (eds.), *The Oxford Handbook on the United Nations*, 2 ed. (Oxford University Press 2018).

[5] See, e.g.: Barbara von Tigerstrom, *Human Security and International Law* (Hart Publishing 2007) 7–58.

With regard to structure, the present study will first concisely chart the background landscapes of the examination by concisely contemplating the interaction between State security and human security from the perspective of contemporary international security, as well as briefly reflecting on the normative backdrop provided by international human rights. The focus will thereafter be directed toward mapping certain distributions of human security in three legal international security regimes or 'galaxies' concerned with international security: the contemporary jus ad bellum; the contemporary jus in bello; and the contemporary jus post bellum, represented in the present context principally by international criminal law. Thereafter, the function of human security as a 'dark' intergalactic lawmaking connector of contemporary international security will be contemplated. The study will end with brief final reflections.

## 2. Charting the Background Landscapes of Human Security

*Security* is defined in the Oxford Dictionary of English as the 'state of being free from danger or threat'. Security may therefore in a general sense refer to 'freedom of danger'; or in a subjective sense to 'freedom of fear'. Security may moreover be classified in three main dimensions: the referent object; the nature of the threat from which the object is being secured; and the means of seeking security. *Human security* was developed as a 'complement to human development' – albeit they would seem to be interdependent, human development 'focuses on creating and enhancing opportunities and capabilities', whereas human security is 'more concerned with protection against risks and reduction of vulnerability'.[6]

Human security may thus be generally viewed as orienting the pursuit of security by placing humans at the centre of security concern, as contrasted with other security concerns, for instance State security. International law has traditionally been concerned primarily with regulating the relationships and interactions between States. Yet, at the core of human security lies a 'human-centred' focus, which would seem to give normative priority to the security of peoples over the security of States.[7] It would thus seem that State security and human security may be depicted as conflicting opposites, perhaps even as mutually exclusive security concerns from the perspective of international security. This polarity narrative would, however, seem to warrant some further reflection.

According to Article 1 of the Montevideo Convention[8], the four fundamental elements of statehood are a permanent population, a defined territory, government, and capacity to enter into relations with the other States. According to the Oxford Dictionary of English, 'population' refers to 'all the inhabitants of a particular place' or 'a particular group or type of people living in a place'. If a State is composed of a 'people' from the perspective of international law, in the present sense referring to humans (rather than animals or plants), then there plausibly cannot

[6] von Tigerstrom (n 5) 39. See also: UNDP, Human Development Report 1994, available at: http://www.hdr.undp.org/en/content/human-development-report-1994 (site visited 10 June 2021). For more on the evolution and scope of the notion of human security, see e.g.: Christine Chinkin and Mary Kaldor, *International Law and New Wars* (Cambridge University Press 2017) 481–494. It may moreover be noted that, as developed by the Copenhagen School, the notion of 'securitisation' implies that by designating something a 'security issue' certain responses are thereby justified. *Ibid* 511. See also, e.g.: Andersen-Rodgers and Crawford (n 4); Penny (n 4).

[7] von Tigerstrom (n 5) 8, 62; Mary Kaldor, Mary Martin and Narcís Serra, *National, European and Human Security: From Co-Existence to Convergence* (Routledge 2013). See also, generally: UN General Assembly Resolutions and Debates, and Reports of the Secretary-General on Human Security, and particularly the Report of the Commission on Human Security: 'Human Security Now' (2003), available at: https://www.un.org/humansecurity/reports-resolutions/ (site visited 15 June 2021). See also, e.g.: Gary King and Christopher JL Murray, 'Rethinking Human Security' 116 *Political Science Quarterly* 585.

[8] Convention on the Rights and Duties of States (Montevideo, 26 December 1933).

– elementally or existentially – normatively be a State without humans to populate it. Hence, it may plausibly be argued that State security is fundamentally and normatively anchored to human security since, without pursuing the security of humans there is arguably no 'state' to secure. Indeed, as stated in the 2003 Report of the Commission on Human Security, 'human security reinforces state security but does not replace it'.[9]

It would thus seem to follow that there is a normative oscillation and co-dependency between State security and human security, which would seem to contradict a polarity narrative where human security is perceived as a contrasting international security concern to State security. Rather, human security and State security should conceivably be perceived as complementary and co-dependent components of contemporary international security.

When charting the background landscapes of human security, the international human rights law discourse would seem to provide a compelling normative backdrop to the 'connector' construct presented and developed in the present study. Logically, if human security orients the pursuit of security by placing humans at the centre of security concerns, then significant parallels are discernible between the pursuit of human security and the legal recognition and protection of human rights in international law. This international legal regime of protection of human rights may be said to reflect the recognition of humans as the 'ultimate referent object of law' and the need to consider humans as comprising the 'collectivity of the state'. However, it may be noted that arguments have been presented that human security simply represents a 'repackaging' of human rights, rather than a substantially new conceptual phenomenon. Then, human security would at best be marginal or even redundant. Another perspective may arguably be provided by considering human rights and human security as partly 'overlapping and mutually supportive, sharing a common normative foundation'. It may even be argued that a legal tradition that builds on human rights may be evolving 'in a direction that is consistent with the underlying rationale of a human security approach, towards a 'more inclusive interpretation' of threats to international security. Then, human security may be linked to human rights by seeing 'the protection of human rights as ensuring human security, and human security as a goal or objective of human rights protection'.[10] It has indeed been posited that the 'historical trajectory of human security tracks to some extent that of human rights'.[11] It follows that a 'human-centred' focus or orientation is the essential foundation of the international human rights regime, with the notion of human worth and dignity at its core – providing a normative backdrop of the human security discourse in international law.[12]

Advancing from an argument that human security and State security are complementary and co-dependent components of contemporary international security against the normative backdrop of international human rights law, it may potentially be misconstrued to perceive human security as simply a redefinition of State security – or simply as a competing international security concern.[13] Such an oversimplifying position would perhaps distort, rather than clarify, the very necessary normative oscillation between equally essential international

[9] Human Security Now (n 7) 5.

[10] von Tigerstrom (n 5) 39–41, 88, 204. See also, generally: UNGA, Universal Declaration of Human Rights (10 December 1948); International Covenant on Economic, Social and Cultural Rights (16 December 1966); International Covenant on Civil and Political Rights (16 December 1966); UNGA, Vienna Declaration and Programme of Action (12 July 1993). See also, e.g.: Howard-Hassmann (n 4).

[11] Chinkin and Kaldor (n 6) 484.

[12] von Tigerstrom (n 5) 65–66. The Preamble of the Charter of the United Nations (26 June 1945) expresses a foundational determination of 'we the peoples of the United Nations to 'reaffirm faith in fundamental human rights, in the dignity and worth of the human person'.

[13] See, e.g.: von Tigerstrom (n 5) 56.

security concerns. If State security and human security are viewed as non-aligned and contrasting conceptual referent objects or contained conceptual centres of international security concern, then normative priority must presumably be given to one or the other, which would seem to be contextually incongruous with any sincere pursuit of 'genuine' or 'true' international security. It has indeed been suggested that the 'ability to link diverse issues and encourage a coordinated approach constitutes the most important contribution of a human security approach.[14] It may therefore be contextually coherent and legally consistent to perceive human security as equally essential and complementary to State security, thus moving normatively away from a polarity narrative where international security concerns would seem to be competing or even mutually exclusive.

Perceptions of international lawmaking often revolve around its formality or informality. *Formal* international lawmaking may succinctly be described as involving certain formalities traditionally linked to the formation of international legal norms, focusing on formal international lawmaking actors and processes. Conversely, *informal* international lawmaking may succinctly be portrayed as diverging from or expanding these traditional formal international lawmaking actors or processes.[15]

In the context of the present examination, international lawmaking is not primarily considered on this formal-informal alignment, but contemplates whether the international lawmaking of human security may be perceived as direct or indirect – examining the normative or 'lawmaking gravitational' effect indirect human security perceptions seem to have on international legal structures and between international legal regimes concerned with international security. Where the indirect perceptions of human security conceivably present compelling connections of normative 'gravitation' between international legal structures and regimes, a 'lawmaking function' would presumably be indicated. Hence, a perception of the international lawmaking of human security would in accordance with this line of reasoning reside in its connecting lawmaking function, rather than in definitions or redefinitions of lawmaking concept(s), concept framework(s), discourse(s), agenda(s), or approach(es).

This international lawmaking function is depicted in the argument construct of the present study as 'dark' because its normative effect would seem to be observable where distributions of mostly indirect or non-visible human security perceptions form normative connections within international legal structures and between international legal regimes concerned with international security, essentially by distorting legal light from distant international security 'stars', like State security; and the greater the distortion, the greater the lawmaking function of 'dark' human security.

[14] von Tigerstrom (n 5) 46.

[15] See, e.g.: Joost Pauwelyn, Ramses Wessel and Jan Wouters, *Informal International Lawmaking* (Oxford University Press 2012); Catherine Brölmann and Yannick Radi (eds.), *Research Handbook on the Theory and Practice of International Lawmaking* (Edward Elgar Publishing 2016); Jean d'Aspremont and Samantha Besson (eds.), *The Oxford Handbook of the Sources of International Law* (Oxford University Press 2018); Joost Pauwelyn, Ramses Wessel and Jan Wouters,'When Structures Become Shackles: Stagnation and Dynamics in International Lawmaking' (2014) 25(3) *European Journal of International Law* 733; Jean d'Aspremont, *Formalism and the Sources of International Law: A Theory of the Ascertainment of Legal Rules* (Oxford University Press 2013); Laura Pedraza-Farina, 'Conceptions of Civil Society in International Lawmaking and Implementation: A Theoretical Framework' (2013) 34 *Michigan Journal of International Law* 605.

## 3. The Dark Lawmaking of Human Security

### *3.1. Mapping the Distribution of Human Security in Three Legal International Security Galaxies*

International security may be perceived as principally regulated in three international legal regimes or 'galaxies', conceivably forming an overlapping and normatively oscillating *jus contra bellum* constellation in the Universe of international law.[16] Manifestations of human security may often be detectable particularly in the context of violent conflicts, which would today seem to increasingly blur the boundaries between 'international' and 'non-international' armed conflicts. Traditionally, international law distinguishes two categories of armed conflicts, namely: 'international' armed conflicts, opposing two or more States; and 'non-international' armed conflicts between governmental forces and non-governmental armed groups, or between such groups only. From a legal perspective, no other type of armed conflict currently exists but a situation may evolve from one category to another, depending on factual circumstances. International law may sometimes be perceived as constraining certain actions aimed at ensuring human security; however international law may conversely play a significant role as a means of advancing human security.[17]

Certain distributions of human security will next be mapped within the three international security regimes forming the overlapping and normatively oscillating *jus contra bellum* 'galaxy cluster': the *jus ad bellum*, the *jus in bello* and the *jus post bellum*, represented in the present context principally by international criminal law. It should be noted in this regard that the aim of this examination is not to present a comprehensive or fully detailed map of human security manifestations in said international legal regimes, but merely to draw attention to certain particularly 'bright areas' – or 'halos' – where human security seems to be distinctly concentrated. Naturally, other halos and distributions of human security may be found within these three international legal regimes and beyond, but a cursory examination of certain (particularly bright) concentrations of human security will suffice for the purposes of the present study and the central argument construct.

Mapping the distribution of human security within the international security galaxy of the *jus ad bellum*, the international law on the use of force has traditionally been primarily focused on State security, yet with indications of an evolving 'new security consensus':

> The United Nations was created in 1945 above all else to save succeeding generations from the scourge of war — to ensure that the horrors of the World Wars were never repeated. Sixty years later, we know all too well that the biggest security threats we face now, and in the decades ahead, go far beyond States

[16] Johanna Friman, Revisiting the Concept of Defence in the Jus Ad Bellum - The Dual Face of Defence (Hart Publishing 2017) 10.

[17] Chinkin and Kaldor (n 6) 501, 546; von Tigerstrom (n 5) 59. See also: Common Articles 2 and 3 to the Geneva Conventions; Article 1 of Additional Protocol I; and Article 1 of Additional Protocol II. Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva, 12 August 1949); Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Geneva,12 August 1949); Convention (III) relative to the Treatment of Prisoners of War (Geneva, 12 August 1949); Convention (IV) relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August 1949); 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); and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II, 8 June 1977).

> waging aggressive war. They extend to poverty, infectious disease and environmental degradation; war and violence within States; the spread and possible use of nuclear, radiological, chemical and biological weapons; terrorism; and transnational organized crime. The threats are from non-State actors as well as States, and to human security as well as State security.[18]

Even earlier, it was indicated in he 2003 Report of the Commission on Human Security that:

> The objective of the international system, designed after World War II, was to help protect states – and the people, institutions and values inside their boundaries – from threats beyond their borders. The international peace and security system maintained 'collective security' by limiting the rights of states to use force to self-defence after an attack, following a UN Security Council resolution. By stopping aggression, the drafters of the UN Charter envisaged that wars would belong to the past – that wars would no longer be an acceptable method for resolving international disputes. But the existing international security system is not designed to prevent and deal effectively with the new types of security threats. New multilateral strategies are required that focus on the shared responsibility to protect people.[19]

An understanding of international security may thus be evolving that comprises human security concerns as well as State security concerns, as a movement towards a 'human-centred interpretation of the Charter's provisions'.[20] According to the Preamble of the Charter, the 'peoples of the United Nations' are determined to:

> save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind; and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small; and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom.[21]

Albeit the Preamble of the Charter does not explicitly mention or expressly refer to 'human security' *per se*, it reaffirms 'faith in fundamental human rights', as well as the 'dignity and worth of the human person'. With regard to treaty interpretation, a treaty shall be 'interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose'; and the context for the purpose of the interpretation of a treaty shall comprise the text, 'including its preamble'.[22] Hence, although it should be noted that preambular paragraphs of a treaty cannot always necessarily be fully equated with operational provisions or articles with regard to legal significance, the preamble

[18] Report of the High-Level Panel on Threats, Challenges and Changes, UNGA Res 565, UN Doc A/59/565 (2 December 2004) 11 (Synopsis).
[19] Human Security Now (n 7) 23.
[20] von Tigerstrom (n 5) 71.
[21] Charter of the United Nations (n 12) Preamble.
[22] Vienna Convention on the Law of Treaties (Vienna, 23 May 1969), Article 31.

nevertheless conceivably plays a significant role as providing a guiding contextual light permeating the interpretation of the treaty as a whole.

Another halo where human security would seem to be concentrated in the international security galaxy of the *jus ad bellum* is conceivably the much-debated doctrine of humanitarian intervention. Humanitarian crises are not beyond the reach of the international community under the regime of the contemporary *jus ad bellum*; the United Nations Security Council may determine that a humanitarian crisis constitutes a 'threat to the peace', or potentially even a 'breach of the peace', under the collective security system regulated in Chapter VII of the Charter, which constitutes the primary exception to the prohibition on force in Article 2(4) of the Charter.[23] However, 'humanitarian intervention' traditionally refers to the use of armed force for humanitarian purposes – in the absence of the authorisation of the Security Council, in other words the unilateral (individual or collective) use of force to intervene in another State to prevent or end a humanitarian crisis.[24] Indeed, it has been reasoned that:

> Contextually, it must surely have been unthinkable that the drafters of the UN Charter could have expected that, after the Nazi-perpetrated genocides, the world would again have to stand by if widespread atrocities were being committed behind the veil of national sovereignty. The world could not have unlearned the lesson so soon. In any event, if it was not the case at first, since it has come to be accepted that there is now not only a right, but a responsibility to protect against the major atrocities that scarred the conscience of the world, it is unconscionable to leave the fate of populations to the will of the Security Council, especially when that will is determined by a veto that may be cast for reasons having nothing to do with the clarity of the call and the need for rescue of those in danger.[25]

'Genuine' humanitarian intervention has been described as 'illegal, but legitimate'[26], manifestly implying a concentration of human security within this doctrine, given that the ultimate raison d'être of a 'genuine' humanitarian intervention is to protect civilians where a 'substantive threshold of gravity' is met, for instance in situations of genocide, ethnic cleansing, crimes

[23] See, e.g.: Christian Henderson, *The Use of Force and International Law* (Cambridge University Press 2018) 381; Johanna Friman, 'Deblurring the Concept of a Breach of the Peace as a Component of Contemporary International Collective Security' (2019) 6 *Journal on the Use of Force and International Law* 12.

[24] See, e.g.: Nigel Rodley, 'Humanitarian Intervention' in Marc Weller (ed), *The Oxford Handbook of the Use of Force in International Law* (Oxford University Press 2015); Chinkin and Kaldor (n 6) 175–194; Henderson (n 32) 379; Daphne Richemond, 'Normativity in International Law: The Case of Unilateral Humanitarian Intervention' (2003) 6 *Yale Human Rights & Development Law Journal* 45. The second, and secondary, exception to the prohibition on force in the contemporary *jus ad bellum* is the right of unilateral (individual or collective) self-defence, regulated in Article 51 of the Charter. For more on the right of self-defence, see e.g.: Tom Ruys, *'Armed Attack' and Article 51 of the UN Charter – Evolutions in Customary Law and Practice* (Cambridge University Press 2010); Friman (n 16).

[25] Rodley (n 24) 779. Concerning the responsibility to protect, which expresses a global concern to respond to 'massive violations of human rights', see also, e.g.: Chinkin and Kaldor (n 6) 195–225; Henderson (n 23) 401–402.

[26] Tom Ruys, 'Criminalizing Aggression: How the Future of the Law on the Use of Force Rests in the Hands of the ICC' (2018) 29 *European Journal of International Law* 887, 896. See also: Independent International Commission on Kosovo, The Kosovo Report (2000), where the Commission concludes that the NATO military intervention was illegal 'because it did not receive prior approval from the United Nations Security Council', yet legitimate because 'all diplomatic avenues had been exhausted and because the intervention had the effect of liberating the majority population of Kosovo from a long period of oppression under Serbian rule'.

against humanity, or war crimes.[27] There would seem to be an interesting entanglement between human security, the concept of humanitarian intervention and the doctrine of the responsibility to protect (R2P). The core principle of the R2P doctrine indicates that 'State sovereignty implies responsibility', and the primary responsibility for the protection of its people therefore 'lies with the state itself'. Yet, where a population is suffering serious harm and the State in question is 'unwilling or unable to halt or avert it', that responsibility 'must be borne by the broader community of states'.[28] Member States committed to the principle of the responsibility to protect by including it into the outcome document of the 2005 high-level UN World Summit meeting:

> Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.[29]

It would thereby seem to follow that, in line with the present argument construct, a distribution of human security may be inferred from the Preamble of the Charter and potentially also from the doctrine of humanitarian intervention entangled with the doctrine of the responsibility to protect, permeating the contemporary *jus ad bellum* by constituting halos of human security within and across this international security galaxy.[30]

International humanitarian law, as visibly demonstrated by its designation as 'humanitarian', is 'human-centred' at its core and principally focused on humanitarian concerns, balancing military necessity against 'human' necessity. Mapping the distribution of human security in the international security galaxy of the *jus in bello*, as stated in he 2003 Report of the Commission on Human Security:

> Protecting human rights and upholding humanitarian law are essential to human

[27] Rodley (n 24) 788; Ruys (n 26) 902–906. For more on the concept of humanitarian intervention, see also, e.g.: Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambrdge University Press 2003); Thomas G. Weiss, *Humanitarian Intervention* (Polity, 3rd edition, 2016); Simon Chesterman, *Just War or Just Peace?: Humanitarian Intervention and International Law* (Oxford University Press 2001).

[28] The Responsibility To Protect, Report of the International Commission on Intervention and State Sovereignty (December 2001) VIII and XI.

[29] A/RES/60/1, 138.

[30] The entanglement between the concept of humanitarian intervention and the doctrine of the responsibility to protect is too intricate to be examined in sufficient depth here. It may, however, be noted that the developments and dimensions of the responsibility to protect have certain human security reflections, which certainly merits further and deeper consideration. For more on the responsibility to protect, see, e.g.: Anne Orford, *International Authority and the Responsibility to Protect* (Cambridge University Press 2011); Ramesh Thakur, *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect* (Cambridge University Press; 2nd edition 2017); Carsten Stahn, 'Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?', in Koen De Feyter (ed.), *Globalization and Common Responsibilities of States* (Routledge 2017) Chapter 7; Ramesh Thakur, 'The Responsibility to Protect at 15' (2016) 92(2) *International Affairs* 415; Alex J. Bellamy and Tim Dunne, *The Oxford Handbook of the Responsibility to Protect* (Oxford University Press 2016); Cecilia Jacob and Martin Mennecke, Implementing the Responsibility to Protect: A Future Agenda (Routledge 2019); Noele Crossley, 'Is R2P Still Controversial? Continuity and Change in the Debate on "Humanitarian Intervention"' (2018) 31(5) *Cambridge Review of International Affairs* 415.

> security in conflict situations. Like most international law, the protection of human rights has been approached mainly from a state-centric perspective – the obligations and duties of states towards individuals. So the focus of human rights has been on monitoring violations by governments. Human security examines human rights not only in relation to states, which have the primary obligation to uphold them, but also in relation to other actors, such as armed non-government elements and corporations. Equally, human security focuses on enforcing humanitarian law for all parties to the conflict, including armed non-state actors such as warlords and rebel groups.[31]

It may thus be posited that human security permeates the entire background of the regime of the *jus in bello*, due to its fundamental focus on humanitarian concerns and necessities, as balanced against military (State) necessities. However, a halo where human security would seem to be particularly concentrated in international humanitarian law is common Article 3 of the 1949 Geneva Conventions[32], according to which each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

> (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.
> To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
> (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
> (b) taking of hostages;
> (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
> (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
> (2) The wounded and sick shall be collected and cared for.

Again, the wording of common Article 3 does not explicitly mention or expressly refer to 'human security' *per se*, but it does stipulate that 'violence to life and person' and 'outrages upon personal dignity' are and shall remain 'prohibited at any time and in any place whatsoever'. Human security would thus seem to be manifestly concentrated in common Article 3, constituting a halo of human security in the contemporary *jus in bello*.
Another halo where human security would seem to be concentrated in the international security galaxy of the *jus in bello* is the cardinal rule triad comprising the rule of distinction, the rule of proportionality and the rule of precaution. According to the rule of distinction, parties to an armed conflict are required to distinguish between civilians and combatants, as well as between civilian objects and military objectives. Attacks may only be directed against combatants and military objectives. Attacks must not be directed against civilians or civilian

[31] Human Security Now (n 7) 28.
[32] Geneva Conventions (n 17) Article 3.

objects. In case of doubt, a person or object is to be considered civilian.[33] According to the rule of proportion, launching an attack which 'may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited'.[34] And finally, according to the rule of precaution, in the 'conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.'[35] Even as reference to human security may not be detectable directly, it would not seem incongruous to infer a distribution of human security across this cardinal rule triad forming the inviolable 'humanity-centric' core of international humanitarian law, as all three rules together aim at protecting humans and minimising the injurious humanitarian effects of armed conflicts. Hence, another bright concentration of human security may conceivably be mapped across the cardinal rule triad of international humanitarian law.

Another halo of human security in the contemporary *jus in bello* that may deserve mention here is represented by the 'Martens clause'. The contemporary form of the Martens clause reads as follows: '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'.[36] Since there is no authoritative interpretation of the Martens Clause, both narrow and expansive interpretations have been presented:

> At its most restricted, the Clause serves as a reminder that customary international law continues to apply after the adoption of a treaty norm. A wider interpretation is that, as few international treaties relating to the laws of armed conflict are ever complete, the Clause provides that something which is not explicitly prohibited by a treaty is not *ipso facto* permitted. The widest interpretation is that conduct in armed conflicts is not only judged according to treaties and custom but also to the principles of international law referred to by the Clause.[37]

Even as no explicit reference to human security is visible in the contemporary wording of the Martens clause, the indirect confirmation that humans (civilians and combatants) remain under the protection and authority of the principles of international law derived from established custom and the 'principles of humanity' would nevertheless seem to support an argument that a concentration of human security may be inferred from the Martens clause, permeating the entire background of the regime of international humanitarian law. Hence, in line with the present argument construct, a distribution of human security may be detectable across several fundamental provisions of international humanitarian law, permeating the contemporary *jus in*

[33] Additional Protocol I (n 17) Articles 48, 50 and 52. This dual rule of distinction has been established as forming part of customary international law applicable in both international and non-international armed conflict. Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law, Volume 1: Rules* (Cambridge University Press 2005) 3–36.

[34] Additional Protocol I (n 17) Article 51(5b); Henckaerts and Doswald-Beck (n 33) 46-50.

[35] Additional Protocol I (n 17) Article 57; Henckaerts and Doswald-Beck (n 33) 51-67.

[36] Additional Protocol I (n 17) Article 1(2).

[37] Rupert Ticehurst, 'The Martens Clause and the Laws of Armed Conflict' (1997*) International Review of the Red Cross* 125, 126. See also: ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, para 78.

*bello* by constituting halos of human security within and across this international security galaxy.

Mapping the distribution of human security in the international security galaxy of the *jus post bellum*[38], the rule of law and legal accountability may be regarded as 'essential components' of human security.[39] Indeed, a 'humanitarian' perception or understanding of human security based on the rule of law and anchored in human rights would seem to provide a basis for responding primarily to atrocity crimes such as genocide and crimes against humanity under international criminal law, protecting the 'vital core of all human lives'. It may thus be implied from the perspective of international security that one of the most significant examples of the way international law can be 'used as an instrument for ensuring human security is the establishment of international criminal tribunals and especially the International Criminal Court'.[40] Hence, it may be posited that international criminal law, as codified and regulated in the Rome Statute of the International Criminal Court (ICC Rome Statute)[41], constitutes a central regulatory core of the contemporary *jus post bellum*.

In the Preamble of the ICC Rome Statute, the State Parties declare themselves conscious that 'all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time'. The Preamble further declare the State Parties mindful that 'during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity'; and recognise that 'such grave crimes threaten the peace, security and well-being of the world'.[42] Reflecting back on the mapping of the distribution of human security in the *jus ad bellum* above, a halo of human security may conceivably be inferred from the Preamble of the ICC Rome Statute , permeating the entire regime of international criminal law, as a principal part of the contemporary *jus post bellum*.

This distribution of human security within the international security galaxy of the *jus post bellum* may be regarded as being concentrated particularly in the provisions regarding 'atrocity crimes'[43], principally genocide as regulated in Article 6 of the ICC Rome Statute and crimes against humanity regulated in Article 7 of the ICC Rome Statute; but there would certainly also seem to be certain 'bright areas' of human security within war crimes, as regulated in Article 8 of the ICC Rome Statute. However, the concentration of human security within the atrocity crimes constellation of genocide and crimes against humanity would seem to be exceptionally bright, as the principal focus of these international core crimes are on principles of humanity

[38] It may be noted in this regard that the present author perceives a '*jus post bellum*' legal regime as primarily concerned with international accountability for international crimes and acts related to or committed during armed conflicts, and not as primarily linked to 'just war' doctrines. Albeit the present examination is principally focused on concentrations of human security reflections in international criminal law, the international security galaxy of the *jus post bellum* could be construed as conceivably encompassing also other, partly intersecting, international legal regimes such as the international law of State responsibility. However, such *jus post bellum* intersections must be further explored and considered elsewhere in order to preserve the clarity and focus of the present examination.

[39] von Tigerstrom (n 5) 59.

[40] Chinkin and Kaldor (n 6) 487–488; von Tigerstrom (n 5) 61.

[41] Rome Statute of the International Criminal Court (Rome, 17 July 1998).

[42] ICC Rome Statute (n 41) Preamble.

[43] With regard to 'atrocity' or 'atrocities' as related to international crimes, see, e.g.: William A. Schabas (ed.), *The Cambridge Companion to International Criminal Law* (Cambridge University Press 2016); David Scheffer, 'Genocide and Atrocity Crimes' (2006) 1(3) *Genocide Studies and Prevention* 229; United Nations, *Framework of Analysis for Atrocity Crimes, A Tool for Prevention* (2014); Roger O'Keefe, *International Criminal Law* (Oxford University Press 2015); Ilias Bantekas and Susan Nash, *International Criminal Law* (3rd edition, Routledge-Cavendish 2007; the ICC Rome Statute (n 41) Preamble.

and central human-centred concerns. Genocide and crimes against humanity constitute 'attacks on the most fundamental aspects of human dignity'; they do not constitute 'isolated events but are instead always part of a larger context'; and although they do not need to be perpetrated by state officials, they are usually carried out with at least the 'toleration or acquiescence of the authorities'.[44]

Article 6 of the ICC Rome Statute stipulates that genocide means any of the listed acts 'committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group'[45]; and Article 7 of the ICC Rome Statute stipulates that a crime against humanity means any of the listed acts when 'committed as part of a widespread or systematic attack directed against any civilian population'[46]. Even though not expressly mentioned in said provisions, human security would seem to be concentrated within the international core crimes of genocide and crimes against humanity – permeating the contemporary *jus post bellum* by constituting halos of human security within and across this international security galaxy.

Building on this map of certain distributions of human security within and across the international security 'galaxy cluster' of the *jus ad bellum*, the *jus in bello* and the *jus post bellum*, human security as a 'dark' intergalactic lawmaking connector of contemporary international security will next be contemplated.

### *3.2. Considering Human Security as a Dark Intergalactic Lawmaking Connector of Contemporary International Security*

In line with the central argument construct of the present study, the international legal regimes of the *jus ad bellum*, the *jus in bello* and the *jus post bellum* may conceivably be perceived as forming a 'galaxy cluster' centrally concerned with international security. The 'legal gravity' generated by visible State security would not seem sufficient to hold this international security galaxy cluster together – wherefore something non-visible that cannot be detected directly is giving these galaxies extra 'lawmaking mass'. It may therefore be posited that instead of focusing on consistencies, convergences and agreements or, as the case may be, inconsistencies, divergences and disagreements, of human security manifestations within these international legal regimes[47], alternative perceptions of human security lawmaking may be considered. Hence, the lawmaking of human security within and across the international

[44] See, e.g.: Antonio Cassese and others (eds), *Cassese's International Criminal Law* (3rd edn, Oxford University Press 2013) 127–128; Friman (n 23) 28. See also, e.g.: Claus Kreß, 'The Crime of Genocide under International Law' (2006) 6 *International Criminal Law Review* 461; Claus Kreß and Sevane Garibian, 'Laying the Foundations for a Convention on Crimes Against Humanity' (2018) 16 *Journal of International Criminal Justice* 909.

[45] Article 6 of the ICC Rome Statute lists the following acts: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group. ICC Rome Statute (n 41) Article 6. See also: Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) Article 4; Statute of the International Criminal Tribunal of Rwanda (ICTR) Article 2.

[46] Article 7 of the ICC Rome Statute lists the following acts: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. ICC Rome Statute (n 41) Article 7. See also: ICTY Statute (n 45) Article 5; ICTR Statute (n 45) Article 3.

[47] Chinkin and Kaldor (n 6) 546.

security galaxy cluster may be inferred from the 'gravitational normative effect' it seems to have on international legal regimes. Human security may therefore be regarded as a 'dark' lawmaking connector of contemporary international security within, across and between legal structures and international legal regimes. Naturally, this is only a complementary way of perceiving the lawmaking facets of human security in international law, and the connector argument construct in the present study should therefore not be construed as dictating a new direction of the human security scholarly discourse in stark contradiction to other perceptions of human security.

If human security is perceived as a 'dark' intergalactic lawmaking connector of contemporary international security – rather than merely as a contained and observable concept, concept framework, discourse, agenda, or approach of international security – then certain dilemmas would seem to be to some extent diverted without dimming the significance of human security as a lawmaking facet of contemporary international security. The evident 'definitional dilemma' is, for instance, diminished if human security is considered as a lawmaking 'connector' and not only as a lawmaking 'concept' because a legal concept would seem to need to be provided with a sufficiently precise definition in order to invest it with legal certainty and compliance pull.[48] The 'definitional dilemma' related to human security will be further explored next by examining its fairly wide content and scope, as conceivably indicating certain predicaments from the perspective of the requirement of clarity and precision presumably linked to legal determinacy. In line with this reasoning, insufficient clarity or precision of legal content may conceivably lead to a 'definitional dilemma' due to legal indeterminacy. Hence, the 'definitional dilemma' may be construed as relating to the determinacy of legal rules and concepts, as related to their legitimacy and compliance pull:

Perhaps the most self-evident of all characteristics making for legitimacy is textual determinacy. What is meant by this is the ability of the text to convey a clear message, to appear transparent in the sense that one can see through the language to the meaning. Obviously, rules with a readily ascertainable meaning have a better chance than those that do not to regulate the conduct of those to whom the rule is addressed or exert a compliance pull on their policymaking process. Those addressed will know precisely what is expected of them, which is a necessary first step towards compliance.[49]

Further exploring the 'definitional dilemma' as related to legal determinacy with reflections on the legitimacy and compliance pull of legal regulation, it may be posited that the determinacy of legal regulation is 'indispensable when assessing whether the relevant legal regulation is complete and effective'.[50] It has moreover been argued regarding rule legitimacy that

[48] As reasoned by Franck, definitional clarity promotes both legality and compliance of a rule: 'A rule of conduct that is highly transparent – its normative content exhibiting great clarity – actually encourages gratification deferral and rule compliance. States, in their relations with one another, frequently find themselves tempted to violate a rule of conduct in order to take advantage of a sudden opportunity. If they do not do so, but choose, instead, to obey the rule and forgo that gratification, it is likely to be because of their longer term interests in seeing a potentially useful rule reinforced. They can visualize future situations in which it will operate to their advantage. But they will only defer the attainable short-term gain if the rule is sufficiently specific to support reasonable expectations that benefit can be derived in a contingent future by strengthening the rule in the present instance.' Thomas M Franck, 'Legitimacy in the International System' (1988) 82 *American Journal of International Law* 705, 716.

[49] Franck (n 48) 713.

[50] Alexander Orakhelashvili, *The Interpretation of Acts and Rules in Public International Law* (Oxford University Press 2008) 22. On the topic of legal determinacy and rule legitimacy, see also, e.g.: Samantha Besson and John Tasioulas (eds.), *The Philosophy of International Law* (Oxford University Press 2010) Section II; Jules L. Coleman and Brian Leiter, 'Determinacy, Objectivity, and Authority' (1993) 142(2) *University of Pennsylvania Law Review*

'determinacy seems the most important, being that quality of a norm that generates an ascertainable understanding of what it permits and what it prohibits', further indicating that when that line becomes 'unascertainable', the rule's 'compliance pull evaporates'.[51] Legal indeterminacy, in the present sense lack of sufficient precision or clarity of a legal rule or concept, may thus plausibly imply a 'definitional dilemma' by reflecting on the legitimacy and correlated compliance pull of the legal rule or concept. Hence, in order to evade the 'definitional dilemma' and promote legal determinacy and its correlated legitimacy and compliance pull, an international legal concept of human security should conceivably be provided with a sufficiently precise and clear definition.

Providing a sufficiently contained and clearly defined international legal concept of human security would, however, seem to be a challenging task since 'human security' evidently conceptually spans wide-ranging legal and non-legal features, including economic security, food security, health security, environmental security, personal security, community security and political security.[52] A 'common understanding' of human security has been advanced by the General Assembly of the United Nations, which includes the following elements:

> (a) The right of people to live in freedom and dignity, free from poverty and despair. All individuals, in particular vulnerable people, are entitled to freedom from fear and freedom from want, with an equal opportunity to enjoy all their rights and fully develop their human potential;
> (b) Human security calls for people-centred, comprehensive, context-specific and prevention-oriented responses that strengthen the protection and empowerment of all people and all communities;
> (c) Human security recognizes the interlinkages between peace, development and human rights, and equally considers civil, political, economic, social and cultural rights;
> (d) The notion of human security is distinct from the responsibility to protect and its implementation;
> (e) Human security does not entail the threat or the use of force or coercive measures. Human security does not replace State security;
> (f) Human security is based on national ownership. Since the political, economic, social and cultural conditions for human security vary significantly across and within countries, and at different points in time, human security strengthens national solutions which are compatible with local realities;
> (g) Governments retain the primary role and responsibility for ensuring the survival, livelihood and dignity of their citizens. The role of the international community is to and provide the necessary support to Governments, upon their request, so as to strengthen their capacity to respond to current and emerging threats. Human security requires greater collaboration and partnership among Governments, international and regional organizations and civil society;
> (h) Human security must be implemented with full respect for the purposes and principles enshrined in the Charter of the United Nations, including full respect for the sovereignty

549; Christopher A. Thomas, 'The Uses and Abuses of Legitimacy in International Law' (2014) 34(4) *Oxford Journal of Legal Studies* 729.

[51] Thomas M. Franck, 'The Power of Legitimacy and the Legitimacy of Power: International Law in an Age of Power Disequilibrium' (2006) 100 *American Journal of International Law* 88, 93.

[52] Human Development Report 1994 (n 6) 22-23. See also, e.g.: Roland Paris, 'Human Security: Paradigm Shift or Hot Air?' (2001) 26 *International Security* 87.

> of States, territorial integrity and non-interference in matters that are essentially within the domestic jurisdiction of States. Human security does not entail additional legal obligations on the part of States.[53]

It would seem readily evident that a legal definition of a direct lawmaking human security concept based on such an extensive 'common understanding' would be riddled with internal contradictions and inconsistencies, rendering it cumbersome to legally apply and discouraging compliance due to elemental dearth of legal clarity and transparency – accentuating a 'definitional dilemma' related to legal determinacy.

Similar dilemmas of legal uncertainty and non-transparency would seem to emerge if human security is perceived only as a contained 'observable' referent international security object in the form of a lawmaking concept framework, discourse, agenda, or approach. At the same time, a holistic and inclusive 'common understanding' of human security, based on the fundamental backdrop of international human rights, would seem to be requisite in order to provide sufficient 'lawmaking gravity' of essential elements of human life and dignity, which conceivably lie at the heart of any perception of human security. A lawmaking concept of international security would seem to require a precise and narrow legal definition of human security, which would mayhap invest the concept with legal determinacy, but would then conceivably fail to meet the principal purpose of genuinely promoting human security. Abandoning a holistic understanding of human security may therefore lead to abandonment of the underlying legitimacy of human security as an international security concern, obliterating the array of true nuances of human security in the harsh and blinding light of legal certainty.

Hence, an alternative and complementary perception is provided in the present study, considering human security as an indirect or 'dark' lawmaking connector within, across and between legal structures and international legal regimes. This alternative perception of human security should be construed in a complementary manner, adding to rather than subtracting from other lawmaking facets of human security in international law. Thus, a significant additional lawmaking facet of human security may feasibly be provided by its function as a 'dark' connector without dimming its holistic features; as complementary to distributions of human security within and across international security galaxies, in the form of concentrations of human security concept(s), concept framework(s), discourse(s), agenda(s) or approach(es). This nuanced perception of the lawmaking import of human security as invested significantly in its normative connector *function* would seem to divert some of the legal dilemmas regarding delineating and harmonising diverse definition(s), content(s) and scope(s) of human security concept(s), concept framework(s), discourse(s), agenda(s) or approach(es). The legal perception of human security as a 'dark' lawmaking connector would seem to be able to accommodate a holistic and inclusive understanding of human security, as well as the extensive array of related contents and scopes of human security within and across the international legal regimes concerned with contemporary international security, permeating the Universe of international law.

As contemplated earlier in the present study, the ability to 'link diverse issues' may thus be regarded as constituting the 'most important contribution' of human security.[54] By considering the connector function of human security as a central yet largely 'non-visible' lawmaking facet, a holistic understanding of human security may presumably be facilitated and the polarity

[53] UNGA Res 290, UN Doc A/RES/66/290 (25 October 2012).
[54] von Tigerstrom (n 5) 46.

narrative of State security *versus* human security as contrasting opposites may presumably be at least partly circumvented. A focus on indirect lawmaking *function*, rather than only on direct lawmaking *content*, would therefore potentially clarify the lawmaking facets of human security in international law, by considering the 'gravitational effect' of human security on contemporary international security and the international legal structures and regimes concerned with regulating and maintaining it.

Hence, in line with the present connector argument construct, a lawmaking facet of human security may be inferred from the non-visible or 'dark' gravitational normative effect it seems to have on visible legal structures within and across the international security galaxy cluster. As posited in the present study, the lawmaking gravity generated by visible State security would seem to be insufficient to maintain contemporary international security – something that cannot be detected directly is therefore giving these legal structures of international security extra normative mass, generating the extra lawmaking gravity the international security galaxy cluster needs to stay intact. Accordingly, it may be argued that contemporary international security cannot effectively operate or be maintained without the 'dark' lawmaking of human security, wherefore human security would seem to be an essential and complementary counterpart of State security, rather than a contrasting international security concern. Hence, there would seem to be no need for a polarity narrative, positioning human security as opposed to State security; or human security concept(s), concept framework(s), discourse(s), agenda(s) and approach(es) in potential competition or conflict with each other.

The principal inference of the present argument construct would thereby be that human security may, in addition to holistic and inclusive perceptions, be perceived as an indirect lawmaking connector between the many nuances or concentrations of human security within legal international security regimes and also across and between these regimes, generating the extra lawmaking effect needed for these legal regimes to effectively regulate and maintain international security. The distributions of human security across the three 'galaxies' of the *jus ad bellum*, the *jus in bello* and the *jus post bellum* would seem to be generally and largely non-visible at least partly because most of visible international security concerns have traditionally been focused on State security. The mapped distribution of human security within and across this international security galaxy cluster would seem to present certain particularly bright halos of human security as part of a wide-ranging holistic cosmic web of concept(s), concept framework(s), discourse(s), agenda(s) and approach(es), with legally entangled definition(s), content(s) and scope(s).

Thus, as posited in the present study, a central lawmaking facet of human security may be its function as a legal conduit connecting the entangled and oscillating halos of human security within and across international legal structures and providing the gravitational and largely non-visible 'intergalactic normative glue' that holds contemporary international security together. The 'halos' of human security mapped in the review above would seem to form a 'dark' normative structure or 'cosmic web' by connecting the cluster of international security galaxies. In line with this reasoning, it is in the connections where human security 'halos' intersect that the 'dark' lawmaking function of human security becomes detectable, by distorting legal light from visible international security 'stars', like State security. Lawmaking gravity radiating from this 'dark cosmic web' of human security would seem to be normatively reflected in legal international security structures, conceivably investing human security with a lawmaking function in international law. By unveiling this 'dark cosmic web' of human security, the lawmaking function of human security may be clarified, as patterns of connecting normative reflections becomes observable in international legal structures and between international

legal regimes. This may in turn lead to new normative perceptions of human security and its lawmaking functions in the Universe of international law.

## 4. Final Reflections

Sovereignty may be said to be about the boundary between 'inside' (the domestic sphere) and 'outside' (the international arena). As reasoned by Chinkin and Kaldor, the 'outside' has historically been characterised by war and diplomacy, whereas the 'inside' has been the realm of politics, law and policing. They argue further that the prohibition on force in international law as stipulated in the Charter has signalled a 'momentous shift from national to international authority to use force'; consequently, security is no longer the exclusive domain of the State – blurring the boundary between 'outside' and 'inside'. Human security based on the 'primacy of human rights' may thus conceivably offer a conduit for addressing the blurring boundary between 'inside' and 'outside'.[55]

The present study posits that the existence and significance of human security in the context of international security may be inferred from the 'gravitational lawmaking effect' it seems to have on international legal structures and legal regimes concerned with international security. Human security may thus be perceived as forming a 'dark cosmic web' across the Universe of international law. International legal 'astronomers' may be able to work out where 'dark' human security is because it distorts legal light from conceptual international security 'stars', like State security; and the greater the distortion, the greater the 'dark' lawmaking function of human security.

Similarly to the international team of researchers that has recently created the largest and most detailed map of the distribution of dark matter in the Universe, the argument construct in the present study posits that human security would seem to function as a 'dark' intergalactic lawmaking connector of contemporary international security. The next step would be to further contemplate and clarify the lawmaking functions of human security in international law. These contemplations and examinations of potentially transforming and evolving lawmaking perceptions of human security from largely 'non-visible' intersecting and interconnecting 'halos' to more 'visible' lawmaking functions merit further legal investigation and consideration.

The present study has revealed and examined certain bright areas or halos where human security seems to be particularly concentrated in international law, from the particular contextual perspective of international security. These halos of human security are predominantly distributed within and across the international security galaxy cluster of the *jus ad bellum*, the *jus in bello* and the *jus post bellum* – shining brightly like tiny gems in the vast Universe of international law. As a final reflection on the dark lawmaking of human security, it may potentially be suggested that in the connections between and across these halos of human security is where the reality of humanity and international security exist.

[55] Chinkin and Kaldor (n 6) 534–536.